

**VIP Services:** (888) 855-9856 | info@trustprovident.com  
8880 W. Sunset Rd., Suite 250, Las Vegas, NV 89148

THIS CUSTODIAL AGREEMENT ("Agreement") is entered into between

\_\_\_\_\_ (the "Trustee"),  
\_\_\_\_\_ (the "Limited Trustee"),  
\_\_\_\_\_ (the "Custodian"),  
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 Custodian 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 Custodian 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

### 1.01 The Plan and This Agreement

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 Custodian. Nothing contained in the Plan shall be deemed to impose any additional rights, duties, and liabilities on the Custodian.

### 1.02 Directed Custodian

The Custodian will serve solely as a directed custodian and is required to act only upon direction from the plan administrator of the Plan ("Plan Administrator"), as defined under the Plan. The Custodian shall have no responsibility, discretion or authority with regard to the administration or interpretation of the Plan, including any determination of rights or benefits of any person having or claiming an interest under the Plan or this Agreement.

## 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

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. Unless otherwise agreed in writing by the parties, registered securities shall be held in the name of the Custodian;
- (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 are permitted under the terms of the Plan. The Custodian is not responsible for choosing to make such investments available for 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 is permitted under the Plan, 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;
  - (iv) the market price of such publicly traded securities, as reported to the public in a generally available form; and
  - (v) the market price of other property, as determined by a credible valuation provided by the Employer or Plan Administrator.

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.

The Employer or Plan Administrator must provide a valuation of such other property no later than 30 days after the Custodian requests the valuation in order to generate accurate IRS or DOL reporting. If the Employer or Plan Administrator does not provide the Custodian with a credible valuation of plan assets within 30 days of the Custodian's request, the Custodian may, but is not required to, seek a valuation determination. The expenses incurred in preparing such valuation will be considered the expense of the Fund and may be debited from the Fund. If Custodian obtains a determination of the value of any assets in the Fund for recordkeeping or reporting purposes, the Custodian will use reasonable good faith efforts to limit the cost of such appraisals. However, the Custodian neither guarantees the appropriateness of the appraisal techniques used, nor the accuracy of the valuations obtained due to the difficulty in appraising illiquid assets.

- (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.

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 under the Plan.

### **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 – COMPENSATION AND EXPENSES**

### **3.01 Custodian Compensation and Expenses**

- (a) The Custodian will receive such reasonable compensation as may be agreed upon by the Custodian and the Employer. Such amounts shall be deducted from the assets of the Fund in accordance with procedures established by the Custodian unless paid by the Employer. Transactional charges made by the Custodian may be deducted from distributions to participants or beneficiaries to the extent the Custodian is instructed to do so by the Employer. Moneys to be used to fund disbursements that have not yet been presented for payment and moneys to be invested in any investments where the appropriate data or investment direction has not been timely provided to the Custodian (i.e., the Custodian has received the funds to be invested but has not received the corresponding investment data) may be retained by the Custodian in cash or invested temporarily. Moneys to be invested will generally be invested within three business days of receipt of funds and the correct corresponding investment data.
- (b) As additional compensation for its services hereunder, the Custodian shall retain any interest earned on amounts to be invested pending receipt of investment instructions and the amounts in its disbursement account until disbursements are presented for payment, and interest earned in its contribution account until the amounts are invested. This interest is commonly known as "float" and is paid by the financial institutions at which the Custodian maintains such accounts and/or the investments in which the Custodian invests in such accounts. Employer agrees that while assets are held in these accounts, the assets shall not be considered plan assets. Generally, funds are distributed within three days of when the distribution request is received or when the distribution data is in good order. The assets on which float is earned are invested in a privately managed account

that may include stable value fund(s) and various overnight deposits with next day availability. The upcoming month's expected rate of return and historical actual rates of return for the assets on which float is earned are disclosed at <https://trustprovident.com/self-directed-retirement/investment-options>.

### **3.02 Uninvested Cash Funds**

Employer may deposit funds with Custodian, or Custodian may receive funds in settlement of trades, that are not subject to a current direction of investment or are awaiting Employer direction (collectively referred to as "Uninvested Cash Funds"). All cash deposits are initially placed in one or more demand deposit accounts maintained by Custodian, and Employer's account is credited with all Uninvested Cash Funds the same business day the moneys are received. Employer agrees that if Custodian receives no other instructions, Uninvested Cash Funds from the Fund shall be invested in a stable value fund and various overnight deposits with next day availability (hereinafter cash sweep funds) using a formula designed to maintain liquidity of the Uninvested Cash Funds. The formula and the cash sweep funds themselves are disclosed on the Custodian's website at <https://trustprovident.com/self-directed-retirement/investment-options>.

Employer authorizes and directs Custodian to sweep Uninvested Cash Funds automatically into these cash sweep funds until such time as further direction is received from Employer or Employer's Designated Representative(s).

Custodian may adjust the formula for investment between the cash sweep funds or replace any of the cash sweep funds from time to time, but only after providing Employer with at least a 30 day advance written notice of the change. Employer will be deemed to have consented to this change and the continued investment of any Uninvested Cash Funds in the updated cash sweep fund, unless Employer notifies Custodian in writing that Employer does not consent within the 30 day notice period, which begins on the day Custodian mails, or electronically delivers, the notice to Employer.

Employer understands and agrees that Custodian is entitled to retain as part of its compensation for the services Custodian provides under this Agreement the excess between the earnings credited to Employer's account and any interest or other income earned or otherwise generated from the Uninvested Cash Funds deposited in such accounts. Custodian will credit a percentage of these earnings back to Employer's account. The amount credited back to the account will be calculated monthly and the rate Employer will receive will be posted on the website <https://trustprovident.com/self-directed-retirement/investment-options>. Employer will be notified of any change in the rate in advance of that change. Employer will be deemed to have consented to this rate change, within 30 days from the date Custodian sends Employer notice of this rate change, which begins on the day Custodian mails, or electronically delivers, the notice to Employer unless Employer notifies Custodian in writing that Employer does not consent.

### **3.03 Taxes**

The Custodian is authorized to pay from the Fund all real and personal property taxes, income taxes and other taxes of any kind levied or assessed under existing or future laws against the Fund, unless paid by the Employer. The Custodian shall not be personally liable for any such taxes.

The Custodian 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 Custodian 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 Custodian shall take whatever action concerning payment of the levy or assessment as is indicated in the notice received by the Custodian; provided, however, that the Employer, and not the Custodian, will be responsible for contesting any such levies or assessments or litigating any such claims.

### **3.04 Other expenses**

- (a) Any expenses, charges, or fees incurred by the Custodian or the Recordkeeper in the administration of the Fund, including but not limited to recordkeeping, legal and accounting expenses, shall be deducted from the Fund in accordance with procedures established by the Custodian unless paid by the Employer.
- (b) Non-custodial fees and expenses (property management fees, property tax, etc.) associated with the investments of the Fund generally must be paid from the Fund, except for fees that must be paid outside of the Fund. The Custodian will not determine what fees may or must be paid outside of the Fund. If the Employer pays any fees outside of the Fund, the Employer represents to the Custodian that it has consulted with their tax or legal professional to make this determination.

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

The Employer shall furnish the Custodian 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 Custodian 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 V – REPLACEMENT OF THE CUSTODIAN**

### **5.01 Resignation and Removal**

The Custodian may resign at any time after providing at least 60 days' written notice to the Employer. The Employer may remove the Custodian at any time after providing at least 60 days' written notice to the Custodian.

### **5.02 Successor Custodian**

- (a) Upon resignation or removal of the Custodian, the Employer shall promptly appoint a successor custodian and promptly notify the Custodian of that appointment. If Employer fails to promptly appoint a successor custodian and promptly notify the Custodian of that appointment, the Custodian may (i) appoint a successor, who shall be subject to the reasonable approval of the Employer, or (ii) deem the Employer to be the successor. The successor custodian shall have all of the powers and duties conferred on the Custodian in this Agreement. The Custodian shall not cease to be the Custodian until the successor custodian assumes the appointment or 10 days have elapsed since its specified date of resignation, whichever occurs first.



- (b) The Custodian shall deliver to the successor custodian all assets and property of the Fund, either in-kind or as proceeds after liquidation, as determined by the Recordkeeper together with all records needed by the successor custodian to administer the Fund properly. The Custodian is authorized, however, to reserve such amount as may be necessary for the payment of its expenses as described in Article VI incurred prior to its transfer of such assets and records to the successor custodian to the extent not inconsistent with federal law.
- (c) The Custodian shall execute, acknowledge, and deliver all documents and written instruments which are necessary to transfer the right, title, and interest in the Fund assets, and all related rights and privileges, to the successor custodian.
- (d) Upon receipt of the assets of the Fund, the successor Custodian shall become a successor party to this Agreement, unless a successor custodial agreement has been substituted for this Agreement.

#### **ARTICLE VI – DEGREE OF CARE – LIMITATIONS OF LIABILITY**

The Custodian 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 Custodian with written instructions; provided that in no event may the Custodian's responsibilities be expanded except with its prior written consent. Any instructions hereunder may be delivered to the Trustee or directly by the responsible party or by other mutually agreed upon parties. The Custodian 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 Custodian 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 Custodian will not be responsible for determining that all instructions provided to the Custodian are being given by the appropriate party and are in proper form under the provisions of this Agreement, the Plan and applicable law. The Custodian 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 Custodian will not be responsible for the validity or effect or the qualification under the Code or the Plan. The Custodian 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 Custodian responsibilities in Sections 2.02) except to promptly forward a copy thereof to the Employer. Further, it is specifically understood that the Custodian 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 VII – INDEMNIFICATION OF CUSTODIAN**

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

The Custodian, 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 Custodian 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 Custodian.

The Custodian 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 Custodian. The Custodian will not be deemed accountable, responsible, or liable for the acts or omissions of any other custodian of the Plan. The Custodian 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 Custodian, or compliance with any statute, regulation, or rule applicable to such contributions. A directed Custodian 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 Custodian is signing this Agreement solely to signify its acceptance of appointment as Custodian 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 VII will survive the termination or amendment of this Agreement.

## **ARTICLE VIII – AMENDMENT AND TERMINATION**

### **8.01 Amendments**

- (a) Employer may not amend or modify this Agreement except in a written agreement signed by both parties. Custodian may amend and modify this Agreement from time to time by providing written notice to Employer; provide, however, that if Employer objects to any such amendment or modification, it may exercise its termination rights under this Agreement. Any handwritten changes, markings, or other alternations to this Agreement as initially provided to Employer will be binding upon Custodian only if initialed by a duly authorized officer of the Custodian.
- (b) Notwithstanding the provisions of subsection (a), above, the Custodian may amend this Agreement at any time for the purpose of conforming this Agreement to changes in the law or to cure any ambiguity, defect, or omission in the terms of this Agreement. The Custodian shall furnish written notice of any such amendment to the Trustee, Plan Administrator and Employer following its execution. Notwithstanding the foregoing, retroactive amendments may only be made if they satisfy the applicable requirements of the Internal Revenue Code and accompanying regulations and other Internal Revenue Service requirements (e.g., the Employee Plans Compliance Resolution System).

### **8.02 Termination of the Plan**

Although the trust is hereby declared to be irrevocable, the Employer may partially or completely terminate the Plan at any time and shall give the Custodian written notice thereof. The Custodian shall thereafter liquidate and distribute the Fund's assets pursuant to the directions of the Plan Administrator as communicated to the Custodian. In the event that the Employer is a sole proprietorship and the sole owner of the Employer is the Plan Administrator, the Plan will be deemed to be terminated upon the death of the owner of the Employer/Plan Administrator. If there is no designated successor Plan Administrator upon the death of the Employer/Plan Administrator, the executor of the estate of the deceased Plan Administrator shall provide such direction to the Custodian to liquidate and distribute the Fund's assets. If there is no executor of the estate of the Plan Administrator, the probate administrator shall have such authority and, if no probate administrator, the beneficiary of the Plan shall provide such direction to the Custodian.

## **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 Custodian not Responsible for Insurance**

The Custodian will not bear or assume any responsibility to notify Employer, secure, or maintain fire, casualty, liability or other insurance coverage on any personal or real property held in the Fund or which services as collateral under any mortgage or other security instrument held in the Fund with respect to any promissory note or other evidence of indebtedness. It is the responsibility of the Employer to arrange for such insurance and to direct Custodian in writing as to the payment of any premiums. The Custodian will not be responsible for notification or payments of any insurance premiums, real estate taxes, utilities, or other charges with respect to any investment held in the Fund, unless the Employer specifically directs the Custodian to pay the same in writing and sufficient funds are available to pay such amounts from the Fund. Furthermore, it is the Employer's responsibility to determine that payment has been made from the Fund.

#### **10.02 Successor Employers; Participating Employers**

If any successor to the Employer continues the Plan, it shall automatically become a successor party to this Agreement.

#### **10.03 Death of the Owner of the Employer/Plan Administrator**

In the event that the Employer is a sole proprietorship and the sole owner of the Employer is the Plan Administrator, the Plan will be deemed to be terminated upon the death of the owner of the Employer/Plan Administrator. If there is no designated successor Plan Administrator upon the death of the Employer/Plan Administrator, the executor of the estate of the Plan Administrator shall be responsible for providing direction to the Custodian to liquidate and distribute the assets of the Fund. In addition, the executor of the estate of the Plan Administrator shall be responsible for the applicable reporting for the Plan upon its termination. In the event that there is no executor of the estate of the Plan Administrator, the probate administrator shall have such authority and, if no probate administrator, the beneficiary of the Plan shall provide such direction to the Custodian and be responsible for the final reporting for the Plan.

#### **10.04 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.

#### **10.05 Force Majeure**

The Custodian 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").

**10.06 Governing Law and Venue**

This agreement is subject to all applicable Federal and State laws and regulations and, to the extent that federal law is inapplicable, shall be governed by the statutes and regulations of the State of Nevada. Each party hereby agrees any dispute, claim, controversy or other action pertaining to or arising out of this agreement in connection with or relating to the performance of this agreement or its termination shall only be instituted in the Federal District Court for the District of Nevada and agree Nevada will have exclusive jurisdiction and venue. 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.

**10.07 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.

**10.08 Time to Bring Legal Action; Two Year Limitations Period**

An action for breach of this agreement, or any obligation arising therefrom, must be commenced within two years after the cause of action has accrued.

**10.09 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 judge will have no authority to try 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 Employer and the Custodian agree otherwise, the judge 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.

**10.10 Necessary Parties**

To the extent permitted by law, only the Employer and the Trustee or Custodian 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, 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.

**10.11 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.

**10.12 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.

**10.13 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.

**11.01 Employer**

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

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



**11.02 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 \_\_\_\_\_

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)*

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)*

**11.03 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.)*

Provident Trust Group  
8880 W. Sunset Rd., Suite 250  
Las Vegas, NV 89148

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