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December 24, 2019

Gary Widerburg  
Commission Secretary  
Public Service Commission of Utah  
Heber M. Wells Building, 4<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, Utah 84111

Re: PacifiCorp Notice of Affiliate Transaction  
Docket No. 05-035-54

Dear Mr. Widerburg:

This letter will serve as notice pursuant to Commitment I 17(2), incorporated in the Idaho Public Utilities Commission Order No. 29973 issued February 13, 2006, as supplemented by Order No. 29998 March 14, 2006, in the above-referenced proceeding, approving the acquisition of PacifiCorp by MidAmerican Energy Holdings Company (now “Berkshire Hathaway Energy Company” or “BHE”), of an affiliate interest transaction with The Bank of New York Mellon Trust Company, N.A. (“BNY Mellon”). PacifiCorp intends to enter into up to seven (7) new Trust Agreements and/or Custodian Agreements with BNY Mellon as trustee.<sup>1</sup> In so doing, PacifiCorp will be replacing its current trustee with BNY Mellon, but not amending any retirement or benefit plans, or any other underlying commercial arrangements. BNY Mellon will provide the standard services that any bank trustee would serve for funds held in company pension funds and other similar trust arrangements. This decision was made after a Berkshire Hathaway Energy Company-wide Request for Proposal (“RFP”) process which yielded excellent fee savings for all platforms, including PacifiCorp. Attachment 1 to this notice includes copies of the Agreements between PacifiCorp and BNY Mellon. Attachment 2 includes a chart that shows the current fees paid by PacifiCorp for trustee services, compared to the BNY Mellon proposal. The selection of BNY Mellon was not influenced by Berkshire Hathaway’s ownership interest.

PacifiCorp is a wholly-owned, indirect subsidiary of Berkshire Hathaway Energy Company (“BHE”). BHE is a subsidiary of Berkshire Hathaway Inc. (“Berkshire Hathaway”). Warren E. Buffet (an individual who may be deemed to control Berkshire Hathaway), Berkshire Hathaway, various subsidiaries of Berkshire Hathaway and various employee benefit plans of Berkshire Hathaway subsidiaries together held an interest in excess of five percent in BNY Mellon.

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<sup>1</sup> The proposed new agreements are: (1) PacifiCorp Master Retirement Trust Agreement (including any successor master trust agreements); (2) PacifiCorp (Union) Welfare Benefits Trust Agreement; (3) PacifiCorp (Non-Union) Welfare Benefits Trust Agreement; (4) PacifiCorp Executive Trust and Trust-owned Life Insurance Policies (DCP/SERP) Rabbi Trust Agreements (which may be used for the PacifiCorp LTIP trust or custody agreement); (5) Bridger Reclamation Trust Agreement; and (6) Trojan Nuclear Decommissioning Trust Agreement.

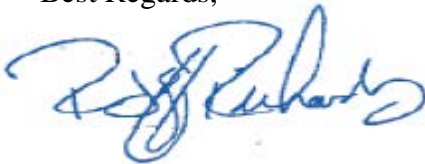
Notice of Affiliate Transaction  
December 24, 2019

Therefore, Berkshire Hathaway's ownership interest in BNY Mellon may create an affiliated interest in some PacifiCorp jurisdictions.

BHE worked closely with AON, specifically the AON Custodian & Trustee Search Team, on the RFP and in selecting a new pension trustee that could provide savings over current trustee fee costs across the platforms. The team focused on the trustee and custodian capabilities, including whether they have the institutional knowledge, manpower, and IT infrastructure to service complex BHE plans effectively. After careful review, based on a ten-point scoring system, the team agreed that BNY Mellon would be the best go-forward fit for the needs of the BHE plans when taking all factors into consideration. Accordingly, the transaction to which BNY Mellon will be a party (i.e. trustee under new trust agreements) is consistent with the public interest.

Please do not hesitate to contact me if you have any questions.

Best Regards,



R. Jeff Richards  
Vice President and General Counsel  
PacifiCorp

Enclosures

cc: Chris Parker, DPU  
Michele Beck, OCS

**ATTACHMENT A**



BNY MELLON

**DEFINED BENEFIT PLAN**

**TRUST AGREEMENT**

**By and Between**

**THE BANK OF NEW YORK MELLON**

**And**

**PACIFICORP**

**For the**

**PACIFICORP MASTER RETIREMENT TRUST**

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**DEFINED BENEFIT PLAN  
TRUST AGREEMENT**

This Agreement is made and entered into as of the latest date set forth on the signature page hereto (the “**Effective Date**”) by and between **THE BANK OF NEW YORK MELLON**, a bank organized under the laws of the state of New York (“**BNY Mellon**”), and **PACIFICORP**, an Oregon corporation (“**Customer**”). BNY Mellon and Customer are collectively referred to as the “**Parties**” and individually as a “**Party**”.

**RECITALS**

WHEREAS, Customer and its subsidiaries or affiliates have adopted an employee benefit plan intended to meet the requirements of Section 401(a) of the Code for the benefit of the employees therein described (the “**Plan**”);

WHEREAS, Customer has established or desires to continue a trust constituting a part of the Plan, pursuant to which assets will be held to provide for the funding of and payment of benefits under the Plan;

WHEREAS, Customer and State Street Bank and Trust Company previously entered into a Restated Trust Agreement effective November 1, 2014 (the “**Prior Agreement**”); and

WHEREAS, Customer wishes to have BNY Mellon act as the trustee of such trust, and BNY Mellon is willing to provide such services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and intending to be legally bound, the Prior Agreement is hereby amended and restated as follows.

**1. DEFINITIONS**

Whenever used in this Agreement, the following words have the meanings set forth below:

“**Act**” has the meaning set forth in Section 10.1(a).

“**Affiliate**” means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by or under common control with such entity.

“**Agreement**” means, collectively, this Defined Benefit Plan Trust Agreement, the Defined Benefit Schedule and any Exhibits hereto and any other documents incorporated herein by reference.

“**Assets**” means any assets acceptable to BNY Mellon, excluding any direct interest in real property, leaseholds or mineral interests, which Customer may transfer to BNY Mellon’s care, to be held in trust in accordance with this Agreement, except to the extent otherwise provided in the Defined Benefit Schedule.

“**Authorized Person**” has the meaning set forth in Section 3.1.



“**BNY Mellon**” has the meaning set forth in the introductory paragraph.

“**Cash**” means the money and currency of any jurisdiction which BNY Mellon accepts for deposit in the Fund.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Confidential Information**” means, with respect to a Party, the terms of this Agreement and all non-public business and financial information of such Party (including, with respect to Customer, information regarding the Fund and including, with respect to BNY Mellon, information regarding its practices and procedures related to the services provided hereunder) disclosed to the other Party in connection with this Agreement.

“**Customer**” has the meaning set forth in the introductory paragraph. In addition, references to “Customer” include reference to the Named Fiduciary if and to the extent such Named Fiduciary is responsible for the applicable function under the Plan or ERISA.

“**Data Terms Website**” means <http://www.bnymellon.com/products/asset servicing/vendoragreement.pdf> or any successor website the address of which is provided by BNY Mellon to Customer.

“**Depository**” means the Depository Trust Company, Euroclear, Clearstream Banking S.A., the Canadian Depository System, CLS Bank and any other securities depository, book-entry system or clearing agency authorized to act as a system for the central handling of securities pursuant to the laws of the applicable jurisdiction, and any successors to, and/or nominees of, any of the foregoing.

“**Effective Date**” has the meaning set forth in the introductory paragraph.

“**Electronic Access Services**” means such services made available by BNY Mellon or a BNY Mellon Affiliate to Customer to electronically access information relating to the Fund and/or transmit Instructions.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Fund**” means the account or accounts established pursuant to this Agreement to hold the Assets of the Plan.

“**Instructions**” means, with respect to this Agreement, instructions issued to BNY Mellon by way of (a) one of the following methods (each as and to the extent specified by BNY Mellon as available for use in connection with the services hereunder): (i) the Electronic Access Services; (ii) third-party electronic communication services containing, where applicable, appropriate authorization codes, passwords or authentication keys, or otherwise appearing on their face to have been transmitted by an Authorized Person or (iii) third-party institutional trade matching utilities used to effect transactions in accordance with such utility’s customary procedures or (b) such other method as may be agreed upon by the Parties and that appear on their face to have been transmitted by an Authorized Person.

“**Investment Manager**” means an investment manager within the meaning of Section 3(38) of ERISA with respect to the Fund that has been appointed pursuant to Section 2.2(d).

**“Market Data”** means pricing, valuations or other commercially sourced data applicable to any Security. Market Data also includes security identifiers, bond ratings and classification data.

**“Market Data Providers”** means vendors and analytics providers and any other Person providing Market Data to BNY Mellon.

**“Named Fiduciary”** means individually and collectively, as applicable, any entity, committee or Person identified herein as Named Fiduciary or otherwise having the authority to control and manage the operation and administration of the Plan or the power to manage and control the assets of the Plan. The Named Fiduciary with authority to appoint a trustee is Customer. The Named Fiduciary that is the administrator of the Plan is Customer.

**“Non-Fund Assets”** has the meaning set forth in Section 17.1(b).

**“Oral Instructions”** means, with respect to this Agreement, spoken instructions issued to BNY Mellon and reasonably believed by BNY Mellon to be from an Authorized Person.

**“Party”** or **“Parties”** has the meaning set forth in the introductory paragraph.

**“Person”** or **“Persons”** means any entity or individual.

**“Plan”** has the meaning set forth in the Recitals.

**“Sanctions”** means all economic sanctions laws, rules, regulations, executive orders and requirements administered by any governmental authority of the United States (including the United States Office of Foreign Assets Control) or any other applicable domestic or foreign authority with jurisdiction over Customer.

**“Securities”** means all (a) debt and equity securities and (b) instruments representing rights or interests therein, including rights to receive, subscribe to or purchase the foregoing; in each case as may be agreed upon from time to time by BNY Mellon and Customer and which are from time to time delivered to or received by BNY Mellon and/or any Subcustodian for deposit in the Fund.

**“Standard of Care”** has the meaning set forth in Section 14.1.

**“Subcustodian”** means a bank or other financial institution (other than a Depository) that is selected and used by BNY Mellon or a BNY Mellon Affiliate in connection with the settlement of transactions and/or custody of Assets hereunder, and any successors to, and/or nominees of, any of the foregoing.

**“Tax Obligations”** means taxes, withholding, certification and reporting requirements, claims for exemptions or refund, interest, penalties, additions to tax and other related expenses.

**“Third Party Data”** has the meaning set forth in Section 9.3(a).

**“Trust”** means the trust created by this Agreement, known as the PacifiCorp Master Retirement Trust.

## **2. APPOINTMENT OF TRUSTEE; THE FUND**

### **2.1. Appointment of Trustee**

- (a) The Trust is intended to comply with ERISA and to be tax-exempt under Section 501(a) of the Code. Customer represents that the Plan is qualified under Section 401(a) of the Code and will immediately notify BNY Mellon if the Plan ceases to be so qualified.
- (b) Customer hereby appoints BNY Mellon as trustee for the Assets and BNY Mellon hereby accepts such appointment. The Parties acknowledge and agree that BNY Mellon's duties pursuant to such appointment will be limited solely to those duties expressly undertaken pursuant to this Agreement.
- (c) Notwithstanding the foregoing, BNY Mellon has no obligation:
  - (i) With respect to any Assets until they are actually received and accepted by BNY Mellon in the Fund;
  - (ii) To inquire into, make recommendations, supervise or determine the suitability of any transactions affecting the Fund; or
  - (iii) To determine the adequacy of title to, or the validity or genuineness of, any Assets received by it or delivered by it pursuant to this Agreement.
- (d) Cash held hereunder may be subject to additional deposit terms and conditions issued by BNY Mellon or the applicable Subcustodian from time to time, including rates of interest and deposit account access.
- (e) If Customer engages in securities lending activities, such activities will be subject to certain additional and/or modified terms to be set forth in a separate written agreement between Customer and BNY Mellon or a BNY Mellon Affiliate.

### **2.2. Contributions; Investment of the Fund**

- (a) BNY Mellon will accept contributions that are paid to it by Customer (as well as rollover contributions and direct transfers from other qualified retirement plans) in accordance with this Agreement. Such contributions will be in Cash or in such other form as may be acceptable to BNY Mellon. BNY Mellon will have no duty to determine or collect contributions under the Plan. Customer represents that a Named Fiduciary (and not BNY Mellon) has the sole duty and responsibility for the determination of the accuracy or sufficiency of the contributions to be made under the Plan, the timely transmittal of the same to BNY Mellon and compliance with any statute, regulation or rule applicable to contributions.
- (b) BNY Mellon will return contributions made pursuant to subsection (a) above, if the following conditions are satisfied:
  - (i) (A) Contributions made prior to the receipt of an initial determination letter are conditional upon a favorable determination as to the qualified status of the Plan under Section 401(a) of the Code, so if the Plan receives an

adverse determination with respect to its initial qualification, any such contribution may be returned to Customer within one year after such determination, provided the application for determination is made by the time prescribed by law; (B) contributions made by Customer based upon mistake of fact may be returned to Customer within one year of such contribution; (C) all contributions to the Plan are conditioned upon their deductibility under the Code, so if a deduction for all or a portion of a contribution is disallowed, such contribution may be returned to Customer within one year of the disallowance of such deduction and (D) subject to Section 16.4, after all liabilities under the Plan have been satisfied, the remaining assets of the Trust may be distributed to Customer if such distribution is provided for in the Plan and does not contravene any provision of applicable law.

- (ii) In the case of the return of a contribution due to mistake of fact or the disallowance of a deduction, the amount which may be returned is the excess of the amount contributed over the amount that would have been contributed had there not been a mistake or disallowance. Earnings attributable to excess contributions may not be returned but losses attributable thereto must reduce the amount to be so returned. Any return of contribution or distribution of assets made by BNY Mellon will be made only upon Instructions of Customer, which has exclusive responsibility for determining whether the conditions of such return or distribution have been satisfied and for the amount to be returned or distributed.
- (c) BNY Mellon may commingle the Fund with funds of other trusts of similar nature created by Customer for the exclusive benefit of its employees. Where commingling is effected with other trusts maintained by Customer, the combined trust, to the extent that assets are attributable to contributions made under this Agreement, will be the Fund referred to herein. BNY Mellon will maintain such records as are necessary in order to maintain a separation of the Fund from the funds of the other trusts maintained by Customer.
- (d) Customer has the authority and responsibility to manage the assets of the Fund. In carrying out this responsibility, Customer may appoint (and remove) one or more Investment Managers, which may include BNY Mellon or a BNY Mellon Affiliate, if and to the extent set forth in a separate agreement executed by BNY Mellon or such Affiliate. BNY Mellon will not be responsible under this Agreement, directly or indirectly, for the investment or reinvestment of the assets of the Fund. If Customer appoints an Investment Manager, BNY Mellon will place in a separate subaccount those assets over which the Investment Manager has discretion and control.

### **2.3. Procedures for Segregation of Assets**

Customer may, if it so determines, at any time designate any group or groups of the eligible employees or other beneficiaries covered by the Plan as a separate class and may direct BNY Mellon to segregate in a separate fund, to be held for the benefit of such class, the part of the Fund allocable to such class as determined by Customer, or some lesser amount than such allocable part if Customer will determine that other equitable provision is made for the difference. Customer will cause BNY Mellon to effect such segregation by

providing Instructions to BNY Mellon of Customer's determination, together with evidence of appropriate action by the governing body directing such segregation. BNY Mellon may rely conclusively and without investigation upon any such notification of the determination and evidence of appropriate action by the governing body and will segregate such assets as Customer may direct. BNY Mellon's valuation of such assets for that purpose will be conclusive. BNY Mellon will hold all of the assets so segregated under this provision, together with such payments as will thereafter be made to the Fund on behalf of such class, and the income therefrom, as a subpart of the Fund and subject to the terms of this Agreement, or will dispose of the same as directed by Customer. In the event that the Fund or any subpart thereof created by this Agreement is terminated as to such class, Customer will direct the disposition of the assets held by BNY Mellon for such class through transfer to a successor trustee, the purchase of annuities, or other means, as Customer determines, and thereafter such employees and other beneficiaries will not have any rights in the Fund, or against BNY Mellon.

### **3. AUTHORIZED PERSONS AND INSTRUCTIONS; ELECTRONIC ACCESS**

#### **3.1. Authorized Persons**

Promptly following the Effective Date, Customer and/or its designee (including any of Customer's Investment Managers) will furnish BNY Mellon with one or more written lists or other documentation acceptable to BNY Mellon specifying the names and titles of, or otherwise identifying, all Persons authorized to act on behalf of Customer with respect to this Agreement (each, an "**Authorized Person**"). Customer will be responsible for keeping such lists and/or other documentation current, and will update such lists and/or other documentation, as necessary from time to time, pursuant to Instructions.

#### **3.2. Instructions**

- (a) Except as otherwise expressly provided in this Agreement, BNY Mellon will have no obligation to take any action hereunder unless and until it receives Instructions issued in accordance with this Agreement.
- (b) Customer will be responsible for ensuring that (i) only Authorized Persons issue Instructions to BNY Mellon and (ii) all Authorized Persons safeguard and treat with extreme care any user and authorization codes, passwords and authentication keys used in connection with the issuance of Instructions.
- (c) Where Customer may or is required to issue Instructions, such Instructions will be issued by an Authorized Person. The Authorized Person (and not BNY Mellon) will be responsible for determining that Instructions are in accordance with the terms of the Plan and applicable law.
- (d) BNY Mellon will be entitled to deal with any Authorized Person until notified otherwise pursuant to Instructions, and will be entitled to act and rely upon any Instruction received by BNY Mellon.
- (e) All Instructions must include all information necessary, and must be delivered using such methods and in such format as BNY Mellon may require and be received within BNY Mellon's established cut-off times and otherwise in sufficient time, to enable BNY Mellon to act upon such Instructions.

- (f) BNY Mellon may in its sole discretion decline to act upon any Instructions that do not comply with requirements set forth in Section 3.2(e) or that conflict with applicable law or regulations or BNY Mellon's operating policies and practices, in which event BNY Mellon will promptly notify Customer.
- (g) Customer acknowledges that while it is not part of BNY Mellon's normal practices and procedures to accept Oral Instructions, BNY Mellon may in certain limited circumstances accept Oral Instructions. In such event, such Oral Instructions will be deemed to be Instructions for purposes of this Agreement. An Authorized Person issuing such an Oral Instruction will promptly confirm such Oral Instruction to BNY Mellon in writing. Notwithstanding the foregoing, Customer agrees that the fact that such written confirmation is not received by BNY Mellon, or that such written confirmation contradicts the Oral Instruction, will in no way affect (i) BNY Mellon's reliance on such Oral Instruction or (ii) the validity or enforceability of transactions authorized by such Oral Instruction and effected by BNY Mellon.
- (h) Customer acknowledges and agrees that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to BNY Mellon and that there may be more secure methods of transmitting Instructions than the method selected by the sender. Customer agrees that the security procedures, if any, to be followed by Customer and BNY Mellon with respect to the transmission and authentication of Instructions provide to Customer a commercially reasonable degree of protection in light of the Fund's particular needs and circumstances.

### **3.3. BNY Mellon Actions Without Instructions**

Notwithstanding anything to the contrary set forth in this Agreement, Customer hereby authorizes BNY Mellon, without Instructions, to take any administrative or ministerial actions with respect to the Fund that it deems reasonably necessary or appropriate to perform its obligations under this Agreement, including the following:

- (a) Receive income and other payments due to the Fund; provided, however, that BNY Mellon will have no duty to pursue collection of any amount due to the Fund, including for Securities in default, if such amount is not paid when due;
- (b) Carry out any exchanges of Securities or other corporate actions not requiring discretionary decisions;
- (c) Facilitate access by Customer or its designee to ballots or online systems to assist it in the voting of proxies received by BNY Mellon (in its capacity as custodian) for eligible positions of Securities held in the Fund (excluding bankruptcy matters), all of which will be exercised by Customer or its designee and not by BNY Mellon;
- (d) Forward to Customer or its designee information (or summaries of information) that BNY Mellon receives (in its capacity as custodian) from Depositories or Subcustodians concerning Securities in the Fund (excluding bankruptcy matters);
- (e) Forward to Customer or its designee an initial notice of bankruptcy cases relating to Securities held in the Fund and a notice of any required action related to such bankruptcy cases as may be received by BNY Mellon (in its capacity as custodian).

BNY Mellon will take no further action nor provide further notification related to the bankruptcy case;

- (f) Unless otherwise elected by Customer, and in accordance with BNY Mellon's standard terms and conditions, provide class action filing services for settled claims related to Securities with industry recognized identifiers;
- (g) Endorse for collection checks, drafts or other negotiable instruments received on behalf of the Fund;
- (h) Deposit Cash in accounts bearing interest at a reasonable rate in the banking department of BNY Mellon or an affiliated banking organization; and
- (i) Execute and deliver, solely in its capacity as custodian, certificates, documents or instruments incidental to BNY Mellon's performance under this Agreement.

### **3.4. Funds Transfers**

With respect to each Instruction for a Cash transfer, when the Instruction is to credit or pay a party by both a name and a unique numeric or alpha-numeric identifier (e.g., IBAN or ABA or account number), BNY Mellon and any other bank participating in the Cash transfer will be entitled to rely solely on such numeric or alpha-numeric identifier, even if it identifies a party different from the party named. Such reliance on an identifier will apply to beneficiaries named in the Instruction, as well as any financial institution that is designated in the Instruction to act as an intermediary in such Cash transfer. To the extent permitted by applicable law, the parties will be bound by the rules of any transfer system used to effect a Cash transfer under this Agreement.

### **3.5. Electronic Access**

If Customer elects to use the Electronic Access Services in connection with this Agreement, the use thereof will be subject to any terms and conditions contained in a separate written agreement between the Parties or their Affiliates. If an Authorized Person elects, with BNY Mellon's prior consent, to transmit Instructions through a third-party electronic communications service, BNY Mellon will not be responsible or liable for the reliability or availability of any such service.

## **4. SUBCUSTODIANS, DEPOSITORIES AND AGENTS**

### **4.1. Use of Subcustodians and Depositories**

- (a) BNY Mellon will be entitled to utilize Subcustodians and Depositories in connection with its performance hereunder.
- (b) BNY Mellon will only utilize Subcustodians that have entered into an agreement with BNY Mellon or a BNY Mellon Affiliate, and Assets held through a Subcustodian will be held subject to the terms and conditions of such Subcustodian's respective agreement.



- (c) Assets deposited in a Depository will be held subject to the rules, procedures, terms and conditions of such Depository. Subcustodians may hold Assets in Depositories in which such Subcustodians participate.
- (d) Unless otherwise required by local law or practice or a particular Subcustodian agreement, Assets deposited with Subcustodians or Depositories may be held in a commingled account in the name of, as applicable, BNY Mellon, a BNY Mellon Affiliate or the applicable Subcustodian, for its clients.

#### **4.2. Liability for Subcustodians**

- (a) BNY Mellon will exercise the Standard of Care described in clause (a) of the first sentence of Section 14.1 in selecting, retaining and monitoring Subcustodians.
- (b) With respect to Assets held by a Subcustodian, BNY Mellon will be liable to Customer for the activities of such Subcustodian under this Agreement to the extent that BNY Mellon would have been liable to Customer under this Agreement if BNY Mellon had performed such activities itself in the relevant market in which such Subcustodian is located; provided, however, that with respect to Securities held by a Subcustodian that is not a BNY Mellon Affiliate:
  - (i) BNY Mellon's liability will be limited solely to the extent resulting directly from BNY Mellon's failure to exercise the Standard of Care described in clause (a) of the first sentence in Section 14.1 in selecting, retaining and monitoring such Subcustodian; and
  - (ii) To the extent that BNY Mellon is not liable pursuant to Section 4.2(b)(i), BNY Mellon's sole responsibility to Customer will be to: (A) take reasonable and appropriate action to recover from such Subcustodian, and (B) forward to the Trust any amounts so recovered (exclusive of costs and expenses incurred by BNY Mellon in connection therewith).

#### **4.3. Liability for Depositories**

BNY Mellon will have no responsibility or liability for the activities of any Depository arising out of or relating to this Agreement or any cost or burden imposed on the transfer or holding of Assets held with such Depository.

#### **4.4. Use of Agents**

BNY Mellon may appoint agents, including BNY Mellon Affiliates, on such terms and conditions as it deems appropriate to perform its obligations hereunder. Except as otherwise specifically provided herein, no such appointment will discharge BNY Mellon from its obligations hereunder.

### **5. CORPORATE ACTIONS**

#### **5.1. Notification**

BNY Mellon will notify Customer or its designee of rights or discretionary corporate actions as promptly as practicable under the circumstances, provided that BNY Mellon has



actually received, in its capacity as custodian, notice of such right or discretionary corporate action from the relevant issuer, or from a Subcustodian, Depository or third party vendor. Without actual receipt of such notice by BNY Mellon, BNY Mellon will have no responsibility or liability for failing to so notify Customer.

## **5.2. Exercise of Rights**

Whenever there are voluntary rights that may be exercised or alternate courses of action that may be taken with respect to Securities in the Fund, Customer or its designee will be responsible for making any decisions relating thereto and for instructing BNY Mellon to act. In order for BNY Mellon to act, Customer must issue Instructions either: (a) using the BNY Mellon-generated form provided along with BNY Mellon's notice under Section 5.1 or (b) if Customer is not using such BNY Mellon-generated form, clearly indicating, by reference to the options provided on such BNY Mellon-generated form, which action Customer is electing. Each such Instruction will be addressed as BNY Mellon may from time to time request and issued by such time as BNY Mellon will advise Customer or its designee.

## **5.3. Partial Redemptions, Payments, Etc.**

BNY Mellon will advise Customer or its designee upon its notification, in its capacity as custodian, of a partial redemption, partial payment or other action with respect to a Security affecting fewer than all such Securities held within the Fund. If BNY Mellon or any Subcustodian or Depository holds any Securities affected by one of the events described, BNY Mellon or such Subcustodian or Depository may select the Securities to participate in such partial redemption, partial payment or other action in any non-discriminatory manner that it customarily uses to make such selection.

## **6. SETTLEMENT**

### **6.1. Settlement Instructions**

Promptly after the execution of each Securities transaction, Customer will issue to BNY Mellon Instructions to settle such transaction. Unless otherwise agreed by BNY Mellon and subject to Section 8.1, Assets will be credited to the Fund only when actually received by BNY Mellon.

### **6.2. Settlement Funds**

For the purpose of settling a Securities transaction, Customer will provide BNY Mellon with sufficient immediately available funds or Securities, as applicable, by such time and date as is required to enable BNY Mellon to settle such transaction in the country of settlement and in the currency to be used to settle such transaction.

### **6.3. Settlement Practices**

Securities transactions will be settled using practices customary in the jurisdiction or market where the transaction occurs, which may include the delivery of Securities or Cash to a counterparty or its agents against, as applicable, the receipt of Securities or Cash in the future. Customer assumes, on behalf of the Trust, full responsibility for all

risks involved in connection with BNY Mellon's delivery of Securities or Cash in accordance with such practices.

## 7. TAX MATTERS

### 7.1. Tax Obligations

To the extent that BNY Mellon has received relevant and necessary information with respect to the Fund, BNY Mellon will perform the following services with respect to Tax Obligations:

- (a) BNY Mellon (or the applicable Subcustodian) will apply, withhold and report appropriate amounts as BNY Mellon (in its capacity as custodian) or the applicable Subcustodian (in its capacity as Subcustodian) is required to do under the relevant source country tax laws, and is authorized to debit the Fund in the amount of a Tax Obligation withheld and to pay such amount to the appropriate taxing authority.
- (b) BNY Mellon will, where appropriate and upon receipt of sufficient information, pursue claims for tax relief where (i) either a tax treaty or a source country's domestic tax laws provide for favorable tax treatment with respect to an Asset as a result of the Trust's status as a specific type of investor and/or residency status and (ii) the source country's tax authorities have outlined the requirements and qualification criteria required to obtain such relief.
- (c) BNY Mellon will forward to Customer or its designee information regarding Tax Obligations applicable to Customer that BNY Mellon receives in its capacity as custodian from third parties and that BNY Mellon reasonably believes would be useful to Customer or its designee in the submission of any reports or returns with respect to Tax Obligations.
- (d) BNY Mellon offers certain tax services pursuant to a separate tax service and fee agreement. Except to the extent Customer enters into a separate tax service and fee agreement with BNY Mellon specifying tax services related to the following matters to be performed by BNY Mellon, Customer assumes all responsibility for, and will perform all matters related to (i) the completion and filing of all required U.S. Federal income tax returns for the Trust and/or the required U.S. Federal informational returns for tax exempt trusts and (ii) all state tax compliance obligations with respect to the Trust, in each case including those Tax Obligations that may be imposed on BNY Mellon under any law.
- (e) BNY Mellon will only be responsible for performing, and will only perform, the obligations of BNY Mellon that are expressly set forth in this Section 7.1 and such other tax services (which may include non-income tax related services) that are expressly agreed upon by BNY Mellon and Customer pursuant to a separate tax service and fee agreement, if any.
- (f) BNY Mellon may consult with and rely upon Customer in matters pertaining to Tax Obligations. Customer will provide and/or will cause its Authorized Persons to provide information necessary for BNY Mellon to fulfill any obligations it may have hereunder or under any separate tax services agreement with respect to Tax Obligations in a timely manner.

## **7.2. Responsibility for Taxes**

Customer will be responsible and liable for all Tax Obligations with respect to any Assets held on behalf of Customer and any transaction related thereto. Customer acknowledges and agrees that BNY Mellon and its Affiliates are not tax advisers and will not under any circumstances provide tax advice to Customer. Customer will obtain its own independent tax advice for any tax-related matters.

## **7.3. Payments**

Where BNY Mellon receives Instructions to make distributions or transfers out of the Fund in order to pay Customer's third party service providers, Customer acknowledges that in making such payments BNY Mellon is acting in an administrative or ministerial capacity, and not as the payor, for tax information reporting and withholding purposes.

## **8. CREDITS AND ADVANCES**

### **8.1. Contractual Settlement and Income**

BNY Mellon may, in its sole discretion, as a matter of bookkeeping convenience, credit the Fund with the proceeds resulting from the purchase, sale, redemption or other delivery or receipt of Securities, or interest, dividends or other distributions payable on Securities, or any foreign exchange transaction effected in connection with this Agreement, prior to its actual receipt thereof. All such credits will be conditional until BNY Mellon's actual receipt of such proceeds and may be reversed by BNY Mellon to the extent that such proceeds are not received. Actual receipt of proceeds with respect to a transaction will not be deemed to have occurred, and the transaction will not be considered final, until BNY Mellon has received sufficient immediately available funds or Securities specifically applicable to such transaction that, under applicable local law, rule or practice, are irreversible and not subject to any security interest, levy or other encumbrance.

### **8.2. Advances**

If BNY Mellon receives an Instruction that, if processed, would result in an overdraft in the Fund, BNY Mellon may, in its sole discretion, advance funds in any currency hereunder.

### **8.3. Repayment**

If: (a) BNY Mellon has advanced funds to the Fund; (b) an overdraft has occurred in the Fund (including overdrafts incurred in connection with the settlement of securities transactions, funds transfers or foreign exchange transactions) or (c) the Trust is for any other reason indebted to BNY Mellon, Customer on behalf of the Trust agrees to repay BNY Mellon (on demand or upon becoming aware thereof) the amount of such advance, overdraft or indebtedness, plus accrued interest at a rate then charged by BNY Mellon to its institutional custody clients in the relevant currency.

### **8.4. Securing Repayment**

In order to secure repayment of the Trust's obligations and liabilities (whether or not matured) to BNY Mellon or any BNY Mellon Affiliate, arising under or related to this Agreement, and without limiting BNY Mellon's or such BNY Mellon Affiliate's rights under

applicable law or any other agreement, Customer on behalf of the Trust hereby pledges and grants to BNY Mellon and such BNY Mellon Affiliate, and agrees BNY Mellon and such BNY Mellon Affiliate will have to the maximum extent permitted by law, a continuing first lien and security interest in all of the Plan's and the Trust's right, title and interest in and to the Fund and the Assets now or hereafter held in the Fund (including proceeds thereof); provided that Customer does not hereby grant a security interest in any Securities issued by an affiliate (as defined in Section 23A of the U.S. Federal Reserve Act) of BNY Mellon. Customer represents, warrants and covenants that the Trust owns the Assets in the Fund free and clear of all liens, claims and security interests (except as otherwise acknowledged in writing by BNY Mellon), and that the first lien and security interest granted herein will be subject to no setoffs, counterclaims or other liens prior to or on a parity with it in favor of any third party (other than specific liens granted preferred status by statute). Customer will take any additional steps required to assure BNY Mellon of such priority security interest, including notifying third parties or obtaining their consent. BNY Mellon will be entitled to collect from the Fund sufficient Cash for reimbursement, and if such Cash is insufficient, to sell Securities to the extent necessary to obtain reimbursement. In this regard, BNY Mellon will be entitled to all the rights and remedies of a pledgee, secured creditor and/or securities intermediary under applicable laws, rules and regulations as then in effect as if the Trust is in default.

**9. STATEMENTS; BOOKS AND RECORDS; THIRD PARTY DATA**

**9.1. Statements**

BNY Mellon will make available to Customer, through the Electronic Access Services or such other method as may be agreed upon by the Parties, a monthly statement reflecting all transfers to or from the Fund during such month and all holdings in the Fund as of the last business day of such month. Customer will promptly review each such statement and, within ninety (90) days of when such statement is made available by BNY Mellon, notify BNY Mellon of any exception or objection thereto. Notwithstanding the foregoing, Customer may notify BNY Mellon of any such exceptions or objections at any time; provided, however, that BNY Mellon will not be responsible or liable for any losses reasonably evident from review of such statement that could have been mitigated had such notice been provided during such ninety (90) day period.

**9.2. Books and Records**

BNY Mellon will identify on its books and records the Assets belonging to the Fund, whether held directly or indirectly through Subcustodians or Depositories. Securities held in the Fund will be held in registered form in the name of BNY Mellon or one of its nominees and will be segregated on BNY Mellon's books and records from BNY Mellon's own property. Customer and its authorized representatives will have the right, at Customer's own expense and with reasonable prior written notice to BNY Mellon, to have reasonable access to those books and records directly pertaining to the Fund. Any such access will occur during BNY Mellon's normal business hours and will be subject to BNY Mellon's applicable security policies and procedures.

**9.3. Third Party Data**

- (a) Customer acknowledges that BNY Mellon will be receiving, utilizing and relying on Market Data and other data provided by Customer and/or by third parties in

connection with its performance of the services hereunder (collectively, “**Third Party Data**”). BNY Mellon is entitled to rely without inquiry on all Third Party Data provided to BNY Mellon hereunder (and all Instructions related to Third Party Data), and BNY Mellon makes no assurances or warranties in relation to the accuracy or completeness of Third Party Data and will not be responsible or liable for any losses or damages incurred as a result of any Third Party Data that is inaccurate or incomplete. BNY Mellon may follow Instructions with respect to Third Party Data, even if such Instructions direct BNY Mellon to override its usual procedures and data sources or if BNY Mellon, in performing services for itself or others (including services similar to those performed for Customer), receives different Third Party Data for the same or similar Securities.

- (b) To the extent that BNY Mellon provides values of, and pricing information in relation to, Securities, Customer acknowledges and agrees that:
  - (i) BNY Mellon is authorized to use generally recognized pricing services including Market Data Providers, brokers, dealers and other market makers. In the event that such pricing services are unable to provide a value of or pricing information in respect of Securities and BNY Mellon provides values and pricing information, BNY Mellon will so advise Customer, but will have no other responsibility or liability in respect of such valuation or pricing information;
  - (ii) Certain pricing or valuation information may be based on calculated amounts rather than actual market transactions and may not reflect actual market values, and the variance between such calculated amounts and actual market values may be material;
  - (iii) Certain third party service providers may not permit Customer’s directed price to be used, which may result in differences between third party service provider reports and custodial reports;
  - (iv) Performance measurement and analytic services may use different data sources than those used by BNY Mellon to provide Market Data for the Fund, which may result in differences between custodial reports and performance measurement and analytic reports; and
  - (v) BNY Mellon may require Customer to execute supplemental documentation prior to providing pricing for certain Securities.
- (c) Certain Market Data may be the intellectual property of Market Data Providers, which impose additional terms and conditions upon Customer’s use of such Market Data. Such additional terms and conditions can be found on the Data Terms Website. Customer agrees to those terms and conditions as they are posted on the Data Terms Website from time to time.

## 10. DISCLOSURES

### 10.1. Required Disclosure

- (a) With respect to Securities that are registered under the U.S. Securities Exchange Act of 1934, as amended, or that are issued by an issuer registered under the U.S. Investment Company Act of 1940, as amended, the U.S. Shareholder Communications Act of 1985 (the “**Act**”) requires BNY Mellon to disclose to issuers of such Securities, upon their request, the name, address and securities position of BNY Mellon’s clients who are “beneficial owners” (as defined in the Act) of the issuer’s Securities, unless the beneficial owner objects to such disclosure. The Act defines a “beneficial owner” as any person who has or shares the power to vote a security (pursuant to an agreement or otherwise) or who directs the voting of a security. Customer has designated on the signature page hereof whether (i) as beneficial owner, it objects to the disclosure of its name, address and securities position to any U.S. issuer that requests such information pursuant to the Act for the specific purpose of direct communications between such issuer and Customer or (ii) it requires BNY Mellon to contact the Investment Manager with respect to relevant Securities to make the decision as to whether it objects to the disclosure of the beneficial owner’s name, address and securities position to any U.S. issuer that requests such information pursuant to the Act.
- (b) With respect to certain Securities issued outside the United States, BNY Mellon may disclose information to issuers of Securities as required by the organizational documents of the relevant issuer or in accordance with local market practice.
- (c) In connection with any disclosure contemplated by this Section 10.1, Customer agrees to supply BNY Mellon with any required information.

### 10.2. Foreign Exchange Transactions

In connection with this Agreement, Customer may enter into foreign exchange transactions (including foreign exchange hedging transactions) with BNY Mellon or a BNY Mellon Affiliate acting as a principal or otherwise through customary channels. Customer may issue standing Instructions with respect to any such foreign exchange transactions, subject to any rules or limitations that may apply to any foreign exchange facility made available to the Fund. With respect to any such foreign exchange transactions, BNY Mellon or such BNY Mellon Affiliate is acting as a principal counterparty on its own behalf and is not acting as a fiduciary or agent for, or on behalf of, Customer, its Investment Manager or the Trust. Any such foreign exchange transactions will be governed by the relevant master netting agreement (e.g., an ISDA Master Agreement) in place between Customer and BNY Mellon or such BNY Mellon Affiliate, and such transactions will be secured by the Fund and the Assets therein pursuant to Section 8.4. In the event there is no such master netting agreement in place and Customer fails to settle or otherwise meet its obligations in respect of such foreign exchange transactions, BNY Mellon has the right to net all such outstanding foreign exchange transactions between the Trust and BNY Mellon or such BNY Mellon Affiliate for the purpose of ascertaining a single net obligation between the Trust and BNY Mellon, and to the extent such obligation is owed by the Trust to BNY Mellon or a BNY Mellon Affiliate, such obligation will be secured by the Fund and the Assets therein pursuant to Section 8.4.



### **10.3. Investment of Cash**

In connection with this Agreement, Customer may issue standing Instructions to invest Cash in one or more sweep investment vehicles. Such investment vehicles may be offered by a BNY Mellon Affiliate or by a client of BNY Mellon, and BNY Mellon may receive compensation therefrom. By making investment vehicles available, BNY Mellon and its Affiliates will not be deemed to have recommended, endorsed or guaranteed any such investment vehicle in any way or otherwise to have acted as a fiduciary or agent for, or on behalf of, Customer, any Named Fiduciary, any Investment Manager or the Fund. BNY Mellon will have no liability for any loss incurred on any such investments. Customer understands that Cash may be uninvested if it is received or reconciled to an account in the Fund after the applicable deadline to be swept into the selected investment vehicle.

## **11. REGULATORY MATTERS**

### **11.1. USA PATRIOT Act**

Section 326 of the U.S. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (including its implementing regulations) requires BNY Mellon to implement a customer identification program pursuant to which BNY Mellon must obtain certain information from Customer in order to verify Customer's identity prior to establishing an account. Accordingly, prior to establishing the Fund, Customer will be required to provide BNY Mellon with certain information, including Customer's name, physical address, tax identification number and other pertinent identifying information, to enable BNY Mellon to verify Customer's identity. Customer acknowledges that BNY Mellon cannot establish an account unless and until BNY Mellon has successfully performed such verification.

### **11.2. Sanctions**

- (a) Throughout the term of this Agreement, Customer: (i) will have in place and will implement policies and procedures designed to prevent violations of Sanctions, including measures to accomplish effective and timely scanning of all relevant data with respect to incoming or outgoing Assets or transactions relating to this Agreement; (ii) will ensure that neither Customer nor any of its Affiliates, directors, officers or employees is an individual or entity that is, or is owned or controlled by an individual or entity that is: (A) the target of Sanctions or (B) located, organized or resident in a country or territory that is, or whose government is, the target of Sanctions and (iii) will not, directly or indirectly, use the Fund in any manner that would result in a violation by Customer or BNY Mellon of Sanctions.
- (b) Customer will promptly provide to BNY Mellon such information as BNY Mellon reasonably requests in connection with the matters referenced in this Section 11.2, including information regarding the Fund, the Assets and the source thereof, and the identity of any individual or entity having or claiming an interest therein. BNY Mellon may decline to act or provide services in respect of the Fund, and take such other actions as it, in its reasonable discretion, deems necessary or advisable, in connection with the matters referenced in this Section 11.2. If BNY Mellon declines to act or provide services as provided in the preceding sentence, except as otherwise prohibited by applicable law or official request, BNY Mellon will inform Customer as soon as reasonably practicable.

### 11.3. Express Authorization for ERISA Purposes

Without limiting the generality of Section 3.2 (Instructions), which generally permits any actions by BNY Mellon hereunder pursuant to Instructions, BNY Mellon is expressly authorized to, in the administration of the Fund pursuant to Instructions, (i) settle purchases of annuities by making payments out of the Fund to purchase annuity contracts, including terminal group annuity contracts (which annuity contracts will not be held as Assets of the Plan and for which the Trustee will not be the contractholder); and (ii) settle investments in any collective investment fund, including a collective investment fund maintained by BNY Mellon or a BNY Mellon Affiliate and to appoint agents and sub-trustees. To the extent that any investment is made in any such collective investment fund, the terms of the collective trust indenture will solely govern the investment duties, responsibilities and powers of the trustee of such collective investment fund and such terms, responsibilities and powers will be incorporated herein by reference and will be a part of this Agreement. For purposes of valuation, the value of the interest maintained by the Fund in such collective investment fund will be the fair market value of the collective investment fund units held, determined in accordance with generally recognized valuation procedures. Customer understands and agrees that any such collective investment fund may provide for the lending of its securities by the collective investment fund trustee and that such collective investment fund trustee will receive compensation for the lending of securities that is separate from any compensation of BNY Mellon hereunder, or any compensation of the collective investment fund trustee for the management of such fund. BNY Mellon is authorized to invest in a collective fund which invests in The Bank of New York Mellon Corporation stock in accordance with the terms and conditions of the Department of Labor Prohibited Transaction Exemption 95-56 (the "**Exemption**") granted to Mellon Bank, N.A. and its affiliates and to use a cross-trading program in accordance with the Exemption. Customer acknowledges receipt of the notice entitled "Cross-Trading Information," a copy of which is attached as **Exhibit A**.

## 12. COMPENSATION

### 12.1. Fees and Expenses

In consideration of BNY Mellon's services provided hereunder, BNY Mellon will be (a) paid the fees set forth in the agreed upon fee schedule (as such fee schedule may be amended by BNY Mellon from time to time upon 45 days' prior written notice to Customer) and (b) reimbursed for any out-of-pocket and incidental expenses incurred by BNY Mellon in connection therewith. Unless otherwise agreed by the Parties, such amounts will be payable to BNY Mellon within 45 days of Customer's receipt of the relevant invoice. Without limiting BNY Mellon's other rights set forth in this Agreement, BNY Mellon may charge interest on overdue amounts at a rate then charged by BNY Mellon to its institutional trust clients in the relevant currency. BNY Mellon is authorized to charge and collect from the Fund its fees and expenses unless such fees and expenses are paid directly by Customer.

### 12.2. Other Compensation

Customer acknowledges that, as part of BNY Mellon's compensation, BNY Mellon will earn interest on Cash balances held by BNY Mellon (including disbursement balances, balances arising from purchase and sale transactions and when Cash otherwise remains uninvested) as provided in BNY Mellon's compensation disclosures.



### 13. REPRESENTATIONS, WARRANTIES AND COVENANTS

#### 13.1. BNY Mellon

BNY Mellon represents and warrants that: (a) it is duly organized, validly existing and in good standing in its jurisdiction of organization; (b) it has the requisite corporate power and authority to enter into and to carry out the transactions contemplated by this Agreement and (c) the individual executing this Agreement on its behalf has the requisite authority to bind BNY Mellon to this Agreement.

#### 13.2. Customer

- (a) Customer represents and warrants that: (i) it is duly organized, validly existing and in good standing in its jurisdiction of organization; (ii) it has the requisite corporate power and authority to enter into and to carry out the transactions contemplated by this Agreement and (iii) the individual executing this Agreement on its behalf has the requisite authority to bind Customer to this Agreement.
- (b) Customer represents and warrants that either: (i) it is the Named Fiduciary with authority to appoint a trustee under ERISA and the Plan or (ii) the Named Fiduciary with the authority to appoint a trustee under ERISA and the Plan is identified in the definition of Named Fiduciary and Customer is acting on behalf of and has authority to bind the Named Fiduciary to this Agreement.
- (c) Customer represents that it maintains and follows procedures to avoid any non-exempt “prohibited transaction” as defined in Section 406 of ERISA.

### 14. LIABILITY

#### 14.1. Standard of Care

BNY Mellon will discharge its duties under this Agreement (a) with the standard of care and diligence that a professional custodian would observe in these affairs taking into account the prevailing rules, practices, procedures and circumstances in the relevant market and (b) to the extent applicable to BNY Mellon’s duties, with the care and skill required under ERISA (as applicable, the “**Standard of Care**”). **Exhibit B** to this Agreement sets forth BNY Mellon’s statement of fiduciary status.

#### 14.2. Limitation of Liability

- (a) BNY Mellon’s liability arising out of or relating to this Agreement will be limited solely to those direct damages that are caused by BNY Mellon’s failure to perform its obligations under this Agreement in accordance with the Standard of Care. In no event will BNY Mellon be liable for any indirect, incidental, consequential, exemplary, punitive or special losses or damages, or for any loss of revenues, profits or business opportunity, arising out of or relating to this Agreement (whether or not foreseeable and even if BNY Mellon has been advised of the possibility of such losses or damages).

- (b) BNY Mellon is not a party to, and has no duties or responsibilities under, the Plan other than those that may be expressly contained in this Agreement. Customer acknowledges that the Plan does not impose any duties on BNY Mellon other than those contained in this Agreement.
- (c) The duties of BNY Mellon are limited to the Fund, and BNY Mellon has no duties with respect to assets held by any other Person including any other trustee for the Plan. Customer agrees that BNY Mellon will not serve as, and will not be deemed to be, a co-trustee under any circumstances, including any circumstances under which BNY Mellon continues to hold Assets under Section 16.5.
- (d) Notwithstanding anything to the contrary set forth in this Agreement, in no event will BNY Mellon be liable for any losses or damages arising out of any of the following:
  - (i) Customer's or an Authorized Person's decision to invest in or hold Assets in any particular country, including any losses or damages arising out of or relating to: (A) the financial infrastructure of a country; (B) a country's prevailing custody and settlement practices; (C) nationalization, expropriation or other governmental actions; (D) a country's regulation of the banking or securities industry; (E) currency and exchange controls, restrictions, devaluations, redenominations, fluctuations or asset freezes; (F) laws, rules, regulations or orders that at any time prohibit or impose burdens or costs on the transfer of Assets to, by or for the Fund or (G) market conditions which affect the orderly execution of securities transactions or affect the value of securities;
  - (ii) BNY Mellon's reliance on Instructions;
  - (iii) BNY Mellon's receipt or acceptance of fraudulent, forged or invalid Securities (or Securities which are otherwise not freely transferable or deliverable without encumbrance in any relevant market);
  - (iv) For any matter with respect to which BNY Mellon is required to act only upon the receipt of Instructions, (A) BNY Mellon's failure to act in the absence of such Instructions or (B) Instructions that are late or incomplete or do not otherwise satisfy the requirements of Section 3.2(e), whether or not BNY Mellon acted upon such Instructions;
  - (v) BNY Mellon receiving or transmitting any data to or from Customer or any Authorized Person via any non-secure method of transmission or communication selected by Customer;
  - (vi) Customer's or an Authorized Person's decision to invest in Securities or to hold Cash in any currency; or
  - (vii) The insolvency of any Person, including a Subcustodian that is not a BNY Mellon Affiliate, Depository, broker, bank or a counterparty to the settlement of a transaction or to a foreign exchange transaction, except as provided in Section 4.2.

- (e) If BNY Mellon is in doubt as to any action it should or should not take, either pursuant to, or in the absence of, Instructions, BNY Mellon may obtain the advice of either reputable counsel of its own choosing or counsel to Customer, and BNY Mellon will not be liable for acting in accordance with such advice.

### **14.3. Force Majeure**

BNY Mellon will not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement to the extent caused, directly or indirectly, by any event beyond its reasonable control, including acts of God, strikes or other labor disputes, work stoppages, acts of war, terrorism, general civil unrest, governmental or military actions, legal constraint or the interruption, loss or malfunction of utilities or communications or computer systems. BNY Mellon will promptly notify Customer upon the occurrence of any such event and will use commercially reasonable efforts to minimize its effect.

### **14.4. Indemnification**

Customer and, except to the extent prohibited by applicable law, the Trust will jointly and severally indemnify and hold harmless BNY Mellon from and against all losses, costs, expenses, damages and liabilities (including reasonable counsel fees and expenses) incurred by BNY Mellon, and will defend BNY Mellon against any third party claim, in each case arising out of or relating to BNY Mellon's performance under this Agreement, except to the extent resulting from BNY Mellon's failure to perform its obligations under this Agreement in accordance with the Standard of Care. The Parties agree that the foregoing will include reasonable counsel fees and expenses incurred by BNY Mellon in connection with its successful defense of claims asserted by Customer or relating to BNY Mellon's performance under this Agreement. BNY Mellon will indemnify and hold harmless Customer and the Trust from and against all losses, costs, expenses, damages and liabilities (including reasonable counsel fees and expenses) incurred by Customer and/or the Trust, and will defend them against any third party claim, in each case arising out of BNY Mellon's failure to perform its obligations under this Agreement in accordance with the Standard of Care.

## **15. CONFIDENTIALITY**

### **15.1. Confidentiality Obligations**

Each Party agrees to use the Confidential Information of the other Party solely to accomplish the purposes of this Agreement and, except in connection with such purposes or as otherwise permitted herein, not to disclose such information to any other Person without the prior written consent of the other Party. Notwithstanding the foregoing, BNY Mellon may: (a) use Customer's Confidential Information in connection with certain functions performed on a centralized basis by BNY Mellon, its Affiliates and joint ventures and their service providers (including audit, accounting, risk, legal, compliance, sales, administration, product communication, relationship management, compilation and analysis of customer-related data and storage); (b) disclose such information to its Affiliates and joint ventures and to its and their service providers who are subject to confidentiality obligations and (c) store the names and business contact information of Customer's employees and representatives relating to this Agreement on the systems or in the records of its Affiliates and joint ventures and its and their service providers. In

addition, BNY Mellon may aggregate information regarding Customer and the Fund on an anonymized basis with other similar client data for BNY Mellon's and its Affiliates' reporting, research, product development and distribution, and marketing purposes.

**15.2. Exceptions**

The Parties' respective obligations under Section 15.1 will not apply to any such information: (a) that is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than the receiving Party; (b) that was known to the receiving Party as of the time of its disclosure and was not otherwise subject to confidentiality obligations; (c) that is independently developed by the receiving Party without reference to such information; (d) that is subsequently learned from a third party not known to be under a confidentiality obligation to the disclosing Party or (e) that is required to be disclosed pursuant to applicable law, rule, regulation, requirement of any law enforcement agency, court order or other legal process or at the request of a regulatory authority including, but not limited to, the PUC or FERC.

**16. TERM AND TERMINATION**

**16.1. Term**

The term of this Agreement will commence on the Effective Date and will continue in effect until terminated in accordance with the provisions herein.

**16.2. Removal or Resignation**

BNY Mellon may be removed with respect to all or part of the Fund upon receipt of 60 days' written notice (unless a shorter or longer period is agreed upon) from Customer. BNY Mellon may resign as trustee hereunder upon 120 days' written notice (unless a shorter or longer period is agreed upon) delivered to Customer.

**16.3. Effect of Removal or Resignation**

In the event of such removal or resignation, a successor trustee will be appointed and BNY Mellon will transfer the Fund, less such amounts as may be reasonable and necessary to cover its compensation and expenses, to the successor trustee. In the event Customer fails to appoint a successor trustee within 120 days of receipt of written notice of resignation or removal, BNY Mellon reserves the right to seek the appointment of a successor trustee from a court of competent jurisdiction. This Agreement will terminate after a successor trustee has accepted its duties and BNY Mellon has transferred all Assets then held by BNY Mellon to the successor trustee. BNY Mellon will have no duties, responsibilities or liability with respect to the acts or omissions of any successor trustee.

**16.4. Plan Termination**

Subject to Section 1 of the Defined Benefit Schedule, if BNY Mellon receives written notice from Customer of the termination of the Plan, BNY Mellon will distribute all assets, less any fees and expenses payable from the Fund, pursuant to Instructions and upon receipt of appropriate documentation. BNY Mellon is entitled to assume that such distributions are in full compliance with, and not in violation of, the terms of the Plan or any applicable law.

## 16.5. Assets Not Transferred

BNY Mellon reserves the right to retain any Assets that are not suitable for distribution or transfer at the time of the termination of the Plan or this Agreement and will hold such Assets for the benefit of those Persons entitled to such Assets until such time as BNY Mellon is able to make distribution. Upon the appointment and acceptance of a successor trustee with respect to the Assets, BNY Mellon's sole duties will be those of a custodian with respect to the Assets not transferred.

## 16.6. Survival

Any and all provisions of this Agreement which by their nature or effect are required or intended to be observed, kept or performed after the expiration or termination of this Agreement will survive the expiration or any termination of this Agreement and remain binding upon and for the Parties' benefit, including Section 13 (Representations, Warranties and Covenants); Section 14 (Liability); Section 15 (Confidentiality); Sections 16.2 through 16.6 (Removal or Resignation; Effect of Removal or Resignation; Plan Termination; Assets Not Transferred; Survival); and Section 17.5 (Governing Law/Forum).

## 17. GENERAL

### 17.1. Line Item and Non-Fund Assets

- (a) BNY Mellon may reflect on its books and records certain bookkeeping entries for Assets including, but not limited to, book-entry Securities and limited partnership interests that are selected and monitored by an Authorized Person. BNY Mellon will rely without independent verification on information provided by Customer or its designee regarding such Assets, including but not limited to positions and market valuations.
- (b) At Customer's request pursuant to Instructions, subject to BNY Mellon's approval and as an accommodation to Customer, BNY Mellon will provide consolidated recordkeeping services reflecting on statements provided to Customer securities and other assets not held by BNY Mellon ("**Non-Fund Assets**"). Non-Fund Assets will be designated on BNY Mellon's books as "assets not held in custody" or by other similar designation and will not constitute part of the Fund for purposes of this Agreement. Customer acknowledges and agrees that, notwithstanding anything contained elsewhere in this Agreement, (a) Customer will have no security entitlement against BNY Mellon with respect to Non-Fund Assets; (b) BNY Mellon will rely, without independent verification, on information provided by Customer or its designee regarding Non-Fund Assets (including positions and market valuations) and (c) BNY Mellon will have no responsibility whatsoever with respect to Non-Fund Assets or the accuracy of any information maintained on BNY Mellon's books or set forth on account statements concerning Non-Fund Assets. To the extent assets of the Plan are held outside of the Fund pursuant to Instructions, Customer will cause such assets to be held in accordance with the trust, bonding and other requirements of ERISA.

**17.2. Assignment/U.S. Special Resolution Regime Transferability**

- (a) Neither Party may, without the other Party's prior written consent, assign any of its rights or delegate any of its duties under this Agreement (whether by change of control, operation of law or otherwise); provided, however that BNY Mellon may, without the prior written consent of Customer, assign this Agreement or any of its rights, or delegate any of its duties hereunder: (a) to any BNY Mellon Affiliate; (b) to any successor to the business of BNY Mellon to which this Agreement relates, in which event BNY Mellon agrees to provide notice of such successor to Customer or (c) as otherwise permitted in this Agreement. Any purported assignment or delegation by a Party in violation of this provision will be voidable at the option of the other Party. This Agreement will be binding upon, and inure to the benefit of, the Parties and their respective permitted successors and assigns.
- (b) Notwithstanding anything herein to the contrary, in the event BNY Mellon becomes subject to a proceeding under a U.S. special resolution regime, the transfer of the Agreement (and any interest and obligation in or under, and any property securing, the Agreement) from BNY Mellon will be effective to the same extent as the transfer would be effective under the U.S. special resolution regime if the Agreement (and any interest and obligation in or under, and any property securing, the Agreement) were governed by the laws of the United States or a state of the United States; and, in the event BNY Mellon or any affiliate becomes subject to a proceeding under a U.S. special resolution regime, default rights with respect to the Agreement that may be exercised against BNY Mellon are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regime if the Agreement were governed by the laws of the United States or a state of the United States.

**17.3. Exclusive Benefit**

The assets of the Trust will be held for the exclusive purposes of providing benefits to Plan participants and their beneficiaries and defraying the reasonable expenses of administering the Plan and the Trust. Except as may be permitted by law or by the terms of the Plan or this Agreement, at no time prior to the satisfaction of all liabilities with respect to Plan participants and their beneficiaries will any part of the Trust be used for or diverted to any purpose other than for the exclusive benefit of the participants and their beneficiaries. Except as may be provided by law, the Fund will not be subject to any form of attachment, garnishment, sequestration or other actions of collection afforded creditors of Customer or participants or beneficiaries under the Plan, and BNY Mellon will not recognize any assignment or alienation of benefits unless an Instruction is received.

**17.4. Amendment**

This Agreement may be amended or modified only in a written agreement signed by an authorized representative of each Party. For purposes of the foregoing, email exchanges between the Parties will not be deemed to constitute a written agreement.

**17.5. Governing Law/Forum**

- (a) To the extent not preempted by federal law, the substantive laws of the state of New York (without regard to its conflicts of law provisions) will govern all matters



arising out of or relating to this Agreement, including the establishment and maintenance of the Fund and for purposes of the Uniform Commercial Code and all issues specified in Article 2(1) of the Hague Securities Convention.

- (b) Each Party irrevocably agrees that all legal actions or proceedings brought by it against the other Party arising out of or relating to this Agreement will be brought solely and exclusively before the state or federal courts situated in New York City, New York. Each Party irrevocably submits to personal jurisdiction in such courts and waives any objection which it may now or hereafter have based on improper venue or *forum non conveniens*. The Parties hereby unconditionally waive, to the fullest extent permitted by applicable law, any right to a jury trial with respect to any such actions or proceedings.

#### **17.6. Sovereign Immunity**

To the extent that in any jurisdiction Customer may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, Customer irrevocably agrees not to claim, and it hereby waives, such immunity.

#### **17.7. Notices**

Other than routine communications in the ordinary course of providing or receiving services hereunder (including Instructions), notices given hereunder will be: (a) addressed to BNY Mellon or Customer at the address set forth on the signature page (or such other address as either Party may designate in writing to the other Party) and (b) sent by hand delivery, by certified mail, return receipt requested, or by overnight delivery service, in each case with postage or charges prepaid. All notices given in accordance with this Section will be effective upon receipt.

#### **17.8. Entire Agreement**

This Agreement constitutes the sole and entire agreement among the Parties with respect to the matters dealt with herein, and merges, integrates and supersedes all prior and contemporaneous discussions, agreements and understandings between the Parties, whether oral or written, with respect to such matters.

#### **17.9. Necessary Parties**

BNY Mellon reserves the right to seek a judicial or administrative determination as to its proper course of action under this Agreement. Nothing contained herein will be construed or interpreted to deny BNY Mellon or Customer the right to have BNY Mellon's account judicially determined. To the extent permitted by law, only BNY Mellon and Customer will be necessary parties in any application to the courts for an interpretation of this Agreement or for an accounting by BNY Mellon, and no participant under the Plan 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.

**17.10. No Third Party Beneficiaries**

This Agreement is entered into solely between, and may be enforced only by, the Parties. Each Party intends that this Agreement will not, and no provision of this Agreement will be interpreted to, benefit, or create any right or cause of action in or on behalf of, any party or entity other than the Parties, their respective successors and assigns, and participants and their beneficiaries under the Plan.

**17.11. Counterparts/Facsimile**

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and said counterparts when taken together will constitute one and the same instrument and may be sufficiently evidenced by one set of counterparts. This Agreement may also be executed and delivered by facsimile or email with confirmation of delivery and/or receipt.

**17.12. Interpretation**

The terms and conditions of this Agreement are the result of negotiations between the Parties. The Parties intend that this Agreement will not be construed in favor of or against a Party by reason of the extent to which such Party or its professional advisors participated in the preparation or drafting of this Agreement.

**17.13. No Waiver**

No failure or delay by a Party to exercise any right, remedy or power it has under this Agreement will impair or be construed as a waiver of such right, remedy or power. A waiver by a Party of any provision or any breach of any provision will not be construed to be a waiver by such Party of such provision in any other instance or any succeeding breach of such provision or a breach of any other provision. All waivers will be in writing and signed by an authorized representative of the waiving Party.

**17.14. Headings**

All section and subsection headings in this Agreement are included for convenience of reference only and will not be considered in the interpretation of the scope or intent of any provision of this Agreement.

**17.15. Severability**

If a court of competent jurisdiction determines that any provision of this Agreement is illegal or invalid for any reason, such illegality or invalidity will not affect the validity of the remainder of this Agreement. In such case, the Parties will negotiate in good faith to replace each illegal or invalid provision with a valid, legal and enforceable provision that fulfills as closely as possible the original intent of the Parties.

[Signature page follows]



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**THE BANK OF NEW YORK MELLON**

**PACIFICORP**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Address for Notice:**

**Address for Notice:**

The Bank of New York Mellon  
[\_\_\_\_\_] ]  
[\_\_\_\_\_] ]  
Attention: [\_\_\_\_\_] ]

PacifiCorp  
[\_\_\_\_\_] ]  
[\_\_\_\_\_] ]  
Attention: [\_\_\_\_\_] ]

Pursuant to Section 10.1(a):  
[ ] as beneficial owner, Customer OBJECTS to disclosure  
[ ] as beneficial owner, Customer DOES NOT OBJECT to disclosure  
[ ] BNY Mellon will CONTACT THE INVESTMENT MANAGER with respect to relevant Securities to make the decision whether it objects to disclosure  
  
IF NO BOX IS CHECKED, BNY MELLON WILL RELEASE SUCH INFORMATION UNTIL IT RECEIVES A CONTRARY INSTRUCTION FROM CUSTOMER OR INVESTMENT MANAGER, AS APPLICABLE.

## DEFINED BENEFIT SCHEDULE

### ADDITIONAL PROVISIONS FOR DEFINED BENEFIT PLANS

The following additional terms and conditions supplement the Agreement and will in all respects be considered part of the Agreement.

#### 1. Plan Termination

If the Plan is subject to the jurisdiction of the Pension Benefit Guaranty Corporation (“**PBGC**”) as provided under ERISA and BNY Mellon receives written notice of the termination of the Plan by Customer, BNY Mellon will take no action with respect to the termination until it has received notice from Customer that PBGC has been notified of the termination and has not notified Customer of its disapproval, in accordance with its regulations. Thereafter, BNY Mellon will distribute all assets then constituting the Fund, less any fees and expenses payable from the Fund, pursuant to Instructions and upon receipt of appropriate documentation.

#### 2. 401(h) Account

This Section 2 of the Defined Benefit Schedule only applies if any Plan includes a separate account established and maintained to provide sickness, accident, hospitalization and/or medical expenses pursuant to Section 401(h) of the Code, which account may include excess pension assets contributed pursuant to Section 420 of the Code (a “**401(h) Account**”).

- (a) In addition to the return of contributions to Customer permitted under Section 2.2(b), BNY Mellon will pay to Customer from the 401(h) Account an amount determined by Customer, provided that Customer certifies to BNY Mellon that such amount constitutes reimbursement to Customer for its payment of “qualified current retiree health liabilities,” as permitted under Section 420(c)(1)(A) of the Code.
- (b) Prior to the satisfaction of all liabilities under the 401(h) Account, no part of the 401(h) Account may be used for, or diverted to, any purpose other than providing 401(h) benefits. Upon the satisfaction of all liabilities under the Plan to provide 401(h) benefits, any amount remaining in the 401(h) Account must, under the terms of such Plan, be returned to the applicable employer.
- (c) Subject to Section 2.3 (Procedures for Segregation of Assets), for investment purposes BNY Mellon will commingle the assets of the Plan with the assets of the 401(h) Account unless Customer directs BNY Mellon to do otherwise. While the assets of the 401(h) Account and the Plan will be commingled for investment purposes, BNY Mellon at all times will maintain such records as are necessary to separately identify the portion of the Fund that is attributable to the 401(h) Account and the Plan.

## EXHIBIT A

### CROSS-TRADING INFORMATION

As part of the Cross-Trading Program covered by the Department of Labor Prohibited Transaction Exemption (“PTE”) 95-56 granted to Mellon Bank, N.A. and its affiliates (“**BNY Mellon**”), BNY Mellon is to provide to each affected employee benefit plan the following information:

#### I. The Existence of the Cross-Trading Program

BNY Mellon has developed and intends to utilize, wherever practicable, a Cross-Trading Program for Indexed Accounts and Large Accounts as those terms are defined in PTE 95-56.

#### II. The “Triggering Events” Creating Cross-Trade Opportunities

In accordance with PTE 95-56, three “Triggering Events” may create opportunities for Cross-Trading transactions. They are generally the following (see PTE 95-56 for more information):

1. A change in the composition or weighting of the index by the independent organization creating and maintaining the index;
2. A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals on the Indexed Account’s opening date, where the Indexed Account is a bank collective fund, or on any relevant date for non-bank collective funds; provided, however, a change in an Indexed Account resulting from investments or withdrawals of assets of BNY Mellon’s own plans (other than BNY Mellon’s defined contributions plans under which participants may direct among various investment options, including Indexed Accounts) are excluded as a “Triggering Events”; or
3. A recorded declaration by BNY Mellon that an accumulation of cash in an Indexed Account attributable to interest or dividends on, and/or tender offers for portfolio securities equal to not more than .5% of the Indexed Account’s total value has occurred.

#### III. The Pricing Mechanism Utilized for Securities Purchased or Sold

Securities will be valued at the current market value for the securities on the date of the crossing transaction.

Equity Securities - the current market value for the equity security will be the closing price on the day of trading as determined by an independent pricing service; unless the security was added to or deleted from an index after the close of trading, in which case the price will be the opening price for that security on the next business day after the announcement of the addition or deletion.

Debt Securities - the current market value of the debt security will be the price determined by BNY Mellon as of the close of the day of trading according to the Securities and Exchange Commission’s Rule 17a-7(b)(4) under the Investment Company Act of 1940.

Debt securities that are not reported securities or traded on an exchange, will be valued based on an average of the highest current independent bids and the lowest current independent offers on the day of cross trading. BNY Mellon will use reasonable inquiry to obtain such prices from at least three independent sources that are brokers or market makers. If there are fewer than three independent sources to price a certain debt security, the closing price quotations will be obtained from all available sources.

IV. The Allocation Method and Other Procedures

Direct cross-trade opportunities will be allocated among potential buyers or sellers of debt or equity securities on a pro-rata basis. With respect to equity securities, please note BNY Mellon imposes a trivial dollar amount constraint to reduce excessive custody ticket charges to participating accounts.

## **EXHIBIT B**

### **FIDUCIARY STATUS**

The following statement is required by Section 408(b)(2) of ERISA:

29 C.F.R. § 2550.408b-2(c)(1)(iv)(B) requires a covered service provider, if applicable, to provide a statement that the service provider expects to provide services as a fiduciary within the meaning of Section 3(21) of ERISA. As trustee, BNY Mellon reasonably expects that some of the services which it will provide under the Agreement will be as a fiduciary as defined in Section 3(21) of ERISA and some will be non-fiduciary in nature. In its role as a directed trustee, BNY Mellon does not have discretionary investment management authority, render investment advice for a fee or have discretionary authority or responsibility in the administration of the covered Plan(s). Nonetheless, as a directed trustee, BNY Mellon retains certain limited fiduciary responsibilities, such as determining that directions of a named fiduciary are proper, following processes designed to avoid non-exempt prohibited transactions, and not knowingly participating in a breach of fiduciary responsibility of another fiduciary. All of BNY Mellon's custodial duties and responsibilities, including but not limited to safekeeping of assets, processing of corporate actions, trade settlement, posting of income and other receipts, reporting of transactions and reporting of prices are expected to be performed in a non-fiduciary capacity. Ultimately, whether BNY Mellon is acting as a fiduciary is dependent upon the terms of the Agreement and the facts surrounding a particular function. With respect to foreign exchange transactions done through BNY Mellon's Global Markets FX Desk, it is acting as a principal counterparty on its own behalf and is not acting as a fiduciary or agent for Customer, any Authorized Person or the Trust.



**BNY MELLON**

**WELFARE TRUST AGREEMENT**

**By and Between**

**THE BANK OF NEW YORK MELLON**

**And**

**PACIFICORP**

**For the**

**PACIFICORP UNION EMPLOYEES WELFARE BENEFITS TRUST**

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## WELFARE TRUST AGREEMENT

This Agreement is made and entered into as of the latest date set forth on the signature page hereto (the “**Effective Date**”) by and between **THE BANK OF NEW YORK MELLON**, a bank organized under the laws of the state of New York (“**BNY Mellon**”), and **PACIFICORP**, an Oregon corporation (“**Customer**”). BNY Mellon and Customer are collectively referred to as the “**Parties**” and individually as a “**Party**”.

### RECITALS

WHEREAS, Customer and its subsidiaries or affiliates have established one or more welfare benefit plans and may in the future adopt additional welfare benefit plans for the benefit of the employees and retirees who are eligible for coverage thereunder (individually or collectively the “**Plan**”);

WHEREAS, Customer has established or desires to establish a trust to provide for the funding of and payment of certain welfare benefits under the Plan;

WHEREAS, Customer and State Street Bank and Trust Company (and its predecessors) previously entered into a Welfare Benefits Trust effective January 1, 1997, as subsequently amended (the “**Prior Agreement**”); and

WHEREAS, Customer wishes to have BNY Mellon act as the trustee of such trust, and BNY Mellon is willing to provide such services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and intending to be legally bound, the Parties agree that the Prior Agreement is amended and restated as follows.

### 1. DEFINITIONS

Whenever used in this Agreement, the following words have the meanings set forth below:

“**Act**” has the meaning set forth in Section 10.1(a).

“**Affiliate**” means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by or under common control with such entity.

“**Agreement**” means, collectively, this Welfare Trust Agreement, the Welfare Schedule and any Exhibits hereto and any other documents incorporated herein by reference.

“**Assets**” means any assets acceptable to BNY Mellon, excluding any direct interest in real property, leaseholds or mineral interests, which Customer may transfer to BNY Mellon’s care, to be held in trust in accordance with this Agreement.

“**Authorized Person**” has the meaning set forth in Section 3.1.

“**BNY Mellon**” has the meaning set forth in the introductory paragraph.

“**Cash**” means the money and currency of any jurisdiction which BNY Mellon accepts for deposit in the Fund.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Confidential Information**” means, with respect to a Party, the terms of this Agreement and all non-public business and financial information of such Party (including, with respect to Customer, information regarding the Fund and including, with respect to BNY Mellon, information regarding its practices and procedures related to the services provided hereunder) disclosed to the other Party in connection with this Agreement.

“**Customer**” has the meaning set forth in the introductory paragraph. In addition, references to “Customer” include reference to the Named Fiduciary if and to the extent such Named Fiduciary is responsible for the applicable function under the Plan or ERISA.

“**Data Terms Website**” means <http://www.bnymellon.com/products/assetservicing/vendoragreement.pdf> or any successor website the address of which is provided by BNY Mellon to Customer.

“**Depository**” means the Depository Trust Company, Euroclear, Clearstream Banking S.A., the Canadian Depository System, CLS Bank and any other securities depository, book-entry system or clearing agency authorized to act as a system for the central handling of securities pursuant to the laws of the applicable jurisdiction, and any successors to, and/or nominees of, any of the foregoing.

“**Effective Date**” has the meaning set forth in the introductory paragraph.

“**Electronic Access Services**” means such services made available by BNY Mellon or a BNY Mellon Affiliate to Customer to electronically access information relating to the Fund and/or transmit Instructions.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Fund**” means the account or accounts established pursuant to this Agreement to hold the Assets of the Plan.

“**Instructions**” means, with respect to this Agreement, instructions issued to BNY Mellon by way of (a) one of the following methods (each as and to the extent specified by BNY Mellon as available for use in connection with the services hereunder): (i) the Electronic Access Services; (ii) third-party electronic communication services containing, where applicable, appropriate authorization codes, passwords or authentication keys, or otherwise appearing on their face to have been transmitted by an Authorized Person or (iii) third-party institutional trade matching utilities used to effect transactions in accordance with such utility’s customary procedures or (b) such other method as may be agreed upon by the Parties and that appear on their face to have been transmitted by an Authorized Person.

“**Investment Manager**” means an investment manager within the meaning of Section 3(38) of ERISA with respect to the Fund that has been appointed pursuant to Section 2.2(d).

**“Market Data”** means pricing, valuations or other commercially sourced data applicable to any Security. Market Data also includes security identifiers, bond ratings and classification data.

**“Market Data Providers”** means vendors and analytics providers and any other Person providing Market Data to BNY Mellon.

**“Named Fiduciary”** means individually and collectively, as applicable, any entity, committee or Person identified herein as Named Fiduciary or otherwise having the authority to control and manage the operation and administration of the Plan or the power to manage and control the assets of the Plan. The Named Fiduciary with authority to appoint a trustee is Customer. The Named Fiduciary that is the administrator of the Plan is Customer.

**“Non-Fund Assets”** has the meaning set forth in Section 17.1(b).

**“Oral Instructions”** means, with respect to this Agreement, spoken instructions issued to BNY Mellon and reasonably believed by BNY Mellon to be from an Authorized Person.

**“Party”** or **“Parties”** has the meaning set forth in the introductory paragraph.

**“Person”** or **“Persons”** means any entity or individual.

**“Plan”** has the meaning set forth in the Recitals.

**“Sanctions”** means all economic sanctions laws, rules, regulations, executive orders and requirements administered by any governmental authority of the United States (including the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury) or any other applicable domestic or foreign authority with jurisdiction over Customer.

**“Securities”** means all (a) debt and equity securities and (b) instruments representing rights or interests therein, including rights to receive, subscribe to or purchase the foregoing; in each case as may be agreed upon from time to time by BNY Mellon and Customer and which are from time to time delivered to or received by BNY Mellon and/or any Subcustodian for deposit in the Fund.

**“Standard of Care”** has the meaning set forth in Section 14.1.

**“Subcustodian”** means a bank or other financial institution (other than a Depository) that is selected and used by BNY Mellon or a BNY Mellon Affiliate in connection with the settlement of transactions and/or custody of Assets hereunder, and any successors to, and/or nominees of, any of the foregoing.

**“Tax Obligations”** means taxes, withholding, certification and reporting requirements, claims for exemptions or refund, interest, penalties, additions to tax and other related expenses.

**“Third Party Data”** has the meaning set forth in Section 9.3(a).

**“Trust”** means the trust created by this Agreement, known as the PacifiCorp Union Employees Welfare Benefits Trust.

“**Welfare Schedule**” means the Welfare Schedule attached hereto that contains additional provisions for welfare plans.

## **2. APPOINTMENT OF TRUSTEE; THE FUND**

### **2.1 Appointment of Trustee**

- (a) The Trust is intended to comply with ERISA and to be tax-exempt under Section 501(c)(9) of the Code.
- (b) Customer hereby appoints BNY Mellon as trustee for the Assets and BNY Mellon hereby accepts such appointment. The Parties acknowledge and agree that BNY Mellon’s duties pursuant to such appointment will be limited solely to those duties expressly undertaken pursuant to this Agreement.
- (c) Notwithstanding the foregoing, BNY Mellon has no obligation:
  - (i) With respect to any Assets until they are actually received and accepted by BNY Mellon in the Fund;
  - (ii) To inquire into, make recommendations, supervise or determine the suitability of any transactions affecting the Fund; or
  - (iii) To determine the adequacy of title to, or the validity or genuineness of, any Assets received by it or delivered by it pursuant to this Agreement.
- (d) Cash held hereunder may be subject to additional deposit terms and conditions issued by BNY Mellon or the applicable Subcustodian from time to time, including rates of interest and deposit account access.
- (e) If Customer engages in securities lending activities, such activities will be subject to certain additional and/or modified terms to be set forth in a separate written agreement between Customer and BNY Mellon or a BNY Mellon Affiliate.

### **2.2 Contributions; Investment of the Fund**

- (a) BNY Mellon will accept contributions that are paid to it by Customer in accordance with this Agreement. Such contributions will be in Cash or in such other form as may be acceptable to BNY Mellon. BNY Mellon will have no duty to determine or collect contributions under the Plan. Customer represents that a Named Fiduciary (and not BNY Mellon) has the sole duty and responsibility for the determination of the accuracy or sufficiency of the contributions to be made under the Plan, the timely transmittal of the same to BNY Mellon and compliance with any statute, regulation or rule applicable to contributions.
- (b) BNY Mellon will return contributions made pursuant to subsection (a) above, if the following conditions are satisfied:
  - (i) Contributions made by Customer based upon mistake of fact may be returned to Customer within one year of such contribution.

- (ii) The amount which may be returned is the excess of the amount contributed over the amount that would have been contributed had there not been a mistake. Earnings attributable to excess contributions may not be returned but losses attributable thereto must reduce the amount to be so returned. Any return of contribution or distribution of assets made by BNY Mellon will be made only upon Instructions of Customer, which has exclusive responsibility for determining whether the conditions of such return or distribution have been satisfied and for the amount to be returned or distributed.
- (c) BNY Mellon may commingle the assets attributable to more than one Plan, and may commingle the Fund with funds of other trusts of similar nature created by Customer for the exclusive benefit of its employees. Where commingling is effected with other trusts maintained by Customer, the combined trust, to the extent that assets are attributable to contributions made under this Agreement, will be the Fund referred to herein. BNY Mellon will maintain such records as are necessary in order to maintain a separation of the Fund from the funds of the other trusts maintained by Customer and, if and to the extent directed by Customer, to separate the assets attributable to each Plan. Customer will be responsible for causing sufficient records to be maintained to ensure that benefits and liabilities payable with respect to each Plan will be paid from the assets allocable to each such Plan.
- (d) Customer has the authority and responsibility to manage the assets of the Fund. In carrying out this responsibility, Customer may appoint (and remove) one or more Investment Managers, which may include BNY Mellon or a BNY Mellon Affiliate, if and to the extent set forth in a separate agreement executed by BNY Mellon or such Affiliate. BNY Mellon will not be responsible under this Agreement, directly or indirectly, for the investment or reinvestment of the assets of the Fund. If Customer appoints an Investment Manager, BNY Mellon will place in a separate subaccount those assets over which the Investment Manager has discretion and control.

### **2.3 Procedures for Segregation of Assets**

Customer may, if it so determines, at any time designate any group or groups of the eligible employees or other beneficiaries covered by the Plan as a separate class and may direct BNY Mellon to segregate in a separate fund, to be held for the benefit of such class, the part of the Fund allocable to such class as determined by Customer, or some lesser amount than such allocable part if Customer will determine that other equitable provision is made for the difference. Customer will cause BNY Mellon to effect such segregation by providing Instructions to BNY Mellon of Customer's determination, together with evidence of appropriate action by the governing body directing such segregation. BNY Mellon may rely conclusively and without investigation upon any such notification of the determination and evidence of appropriate action by the governing body and will segregate such assets as Customer may direct. BNY Mellon's valuation of such assets for that purpose will be conclusive. BNY Mellon will hold all of the assets so segregated under this provision, together with such payments as will thereafter be made to the Fund on behalf of such class, and the income therefrom, as a subpart of the Fund and subject to the terms of this Agreement, or will dispose of the same as directed by Customer. In the event that the

Fund or any subpart thereof created by this Agreement is terminated as to such class, Customer will direct the disposition of the assets held by BNY Mellon for such class through transfer to a successor trustee or other means, as Customer determines, and thereafter such employees and other beneficiaries will not have any rights in the Fund, or against BNY Mellon.

### **3. AUTHORIZED PERSONS AND INSTRUCTIONS; ELECTRONIC ACCESS**

#### **3.1 Authorized Persons**

Promptly following the Effective Date, Customer and/or its designee (including any of Customer's Investment Managers) will furnish BNY Mellon with one or more written lists or other documentation acceptable to BNY Mellon specifying the names and titles of, or otherwise identifying, all Persons authorized to act on behalf of Customer with respect to this Agreement (each, an "**Authorized Person**"). Customer will be responsible for keeping such lists and/or other documentation current, and will update such lists and/or other documentation, as necessary from time to time, pursuant to Instructions.

#### **3.2 Instructions**

- (a) Except as otherwise expressly provided in this Agreement, BNY Mellon will have no obligation to take any action hereunder unless and until it receives Instructions issued in accordance with this Agreement.
- (b) Customer will be responsible for ensuring that (i) only Authorized Persons issue Instructions to BNY Mellon and (ii) all Authorized Persons safeguard and treat with extreme care any user and authorization codes, passwords and authentication keys used in connection with the issuance of Instructions.
- (c) Where Customer may or is required to issue Instructions, such Instructions will be issued by an Authorized Person. The Authorized Person (and not BNY Mellon) will be responsible for determining that Instructions are in accordance with the terms of the Plan and applicable law.
- (d) BNY Mellon will be entitled to deal with any Authorized Person until notified otherwise pursuant to Instructions, and will be entitled to act and rely upon any Instruction received by BNY Mellon.
- (e) All Instructions must include all information necessary, and must be delivered using such methods and in such format as BNY Mellon may require and be received within BNY Mellon's established cut-off times and otherwise in sufficient time, to enable BNY Mellon to act upon such Instructions.
- (f) BNY Mellon may in its sole discretion decline to act upon any Instructions that do not comply with requirements set forth in Section 3.2(e) or that conflict with applicable law or regulations or BNY Mellon's operating policies and practices, in which event BNY Mellon will promptly notify Customer.
- (g) Customer acknowledges that while it is not part of BNY Mellon's normal practices and procedures to accept Oral Instructions, BNY Mellon may in certain limited circumstances accept Oral Instructions. In such event, such Oral Instructions will

be deemed to be Instructions for purposes of this Agreement. An Authorized Person issuing such an Oral Instruction will promptly confirm such Oral Instruction to BNY Mellon in writing. Notwithstanding the foregoing, Customer agrees that the fact that such written confirmation is not received by BNY Mellon, or that such written confirmation contradicts the Oral Instruction, will in no way affect (i) BNY Mellon's reliance on such Oral Instruction or (ii) the validity or enforceability of transactions authorized by such Oral Instruction and effected by BNY Mellon.

- (h) Customer acknowledges and agrees that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to BNY Mellon and that there may be more secure methods of transmitting Instructions than the method selected by the sender. Customer agrees that the security procedures, if any, to be followed by Customer and BNY Mellon with respect to the transmission and authentication of Instructions provide to Customer a commercially reasonable degree of protection in light of the Fund's particular needs and circumstances.

### **3.3 BNY Mellon Actions Without Instructions**

Notwithstanding anything to the contrary set forth in this Agreement, Customer hereby authorizes BNY Mellon, without Instructions, to take any administrative or ministerial actions with respect to the Fund that it deems reasonably necessary or appropriate to perform its obligations under this Agreement, including the following:

- (a) Receive income and other payments due to the Fund; provided, however, that BNY Mellon will have no duty to pursue collection of any amount due to the Fund, including for Securities in default, if such amount is not paid when due;
- (b) Carry out any exchanges of Securities or other corporate actions not requiring discretionary decisions;
- (c) Facilitate access by Customer or its designee to ballots or online systems to assist it in the voting of proxies received by BNY Mellon (in its capacity as custodian) for eligible positions of Securities held in the Fund (excluding bankruptcy matters), all of which will be exercised by Customer or its designee and not by BNY Mellon;
- (d) Forward to Customer or its designee information (or summaries of information) that BNY Mellon receives (in its capacity as custodian) from Depositories or Subcustodians concerning Securities in the Fund (excluding bankruptcy matters);
- (e) Forward to Customer or its designee an initial notice of bankruptcy cases relating to Securities held in the Fund and a notice of any required action related to such bankruptcy cases as may be received by BNY Mellon (in its capacity as custodian). BNY Mellon will take no further action nor provide further notification related to the bankruptcy case;
- (f) Unless otherwise elected by Customer, and in accordance with BNY Mellon's standard terms and conditions, provide class action filing services for settled claims related to Securities with industry recognized identifiers;



- (g) Endorse for collection checks, drafts or other negotiable instruments received on behalf of the Fund;
- (h) Deposit Cash in accounts bearing interest at a reasonable rate in the banking department of BNY Mellon or an affiliated banking organization; and
- (i) Execute and deliver, solely in its capacity as custodian, certificates, documents or instruments incidental to BNY Mellon's performance under this Agreement.

### **3.4 Funds Transfers**

With respect to each Instruction for a Cash transfer, when the Instruction is to credit or pay a party by both a name and a unique numeric or alpha-numeric identifier (e.g., IBAN or ABA or account number), BNY Mellon and any other bank participating in the Cash transfer will be entitled to rely solely on such numeric or alpha-numeric identifier, even if it identifies a party different from the party named. Such reliance on an identifier will apply to beneficiaries named in the Instruction, as well as any financial institution that is designated in the Instruction to act as an intermediary in such Cash transfer. To the extent permitted by applicable law, the parties will be bound by the rules of any transfer system used to effect a Cash transfer under this Agreement.

### **3.5 Electronic Access**

If Customer elects to use the Electronic Access Services in connection with this Agreement, the use thereof will be subject to any terms and conditions contained in a separate written agreement between the Parties or their Affiliates. If an Authorized Person elects, with BNY Mellon's prior consent, to transmit Instructions through a third-party electronic communications service, BNY Mellon will not be responsible or liable for the reliability or availability of any such service.

## **4. SUBCUSTODIANS, DEPOSITORIES AND AGENTS**

### **4.1 Use of Subcustodians and Depositories**

- (a) BNY Mellon will be entitled to utilize Subcustodians and Depositories in connection with its performance hereunder.
- (b) BNY Mellon will only utilize Subcustodians that have entered into an agreement with BNY Mellon or a BNY Mellon Affiliate, and Assets held through a Subcustodian will be held subject to the terms and conditions of such Subcustodian's respective agreement.
- (c) Assets deposited in a Depository will be held subject to the rules, procedures, terms and conditions of such Depository. Subcustodians may hold Assets in Depositories in which such Subcustodians participate.
- (d) Unless otherwise required by local law or practice or a particular Subcustodian agreement, Assets deposited with Subcustodians or Depositories may be held in a commingled account in the name of, as applicable, BNY Mellon, a BNY Mellon Affiliate or the applicable Subcustodian, for its clients.

## **4.2 Liability for Subcustodians**

- (a) BNY Mellon will exercise the Standard of Care described in clause (a) of the first sentence of Section 14.1 in selecting, retaining and monitoring Subcustodians.
- (b) With respect to Assets held by a Subcustodian, BNY Mellon will be liable to Customer for the activities of such Subcustodian under this Agreement to the extent that BNY Mellon would have been liable to Customer under this Agreement if BNY Mellon had performed such activities itself in the relevant market in which such Subcustodian is located; provided, however, that with respect to Securities held by a Subcustodian that is not a BNY Mellon Affiliate:
  - (i) BNY Mellon's liability will be limited solely to the extent resulting directly from BNY Mellon's failure to exercise the Standard of Care described in clause (a) of the first sentence in Section 14.1 in selecting, retaining and monitoring such Subcustodian; and
  - (ii) To the extent that BNY Mellon is not liable pursuant to Section 4.2(b)(i), BNY Mellon's sole responsibility to Customer will be to: (A) take reasonable and appropriate action to recover from such Subcustodian, and (B) forward to the Trust any amounts so recovered (exclusive of costs and expenses incurred by BNY Mellon in connection therewith).

## **4.3 Liability for Depositories**

BNY Mellon will have no responsibility or liability for the activities of any Depository arising out of or relating to this Agreement or any cost or burden imposed on the transfer or holding of Assets held with such Depository.

## **4.4 Use of Agents**

BNY Mellon may appoint agents, including BNY Mellon Affiliates, on such terms and conditions as it deems appropriate to perform its obligations hereunder. Except as otherwise specifically provided herein, no such appointment will discharge BNY Mellon from its obligations hereunder.

## **5. CORPORATE ACTIONS**

### **5.1 Notification**

BNY Mellon will notify Customer or its designee of rights or discretionary corporate actions as promptly as practicable under the circumstances, provided that BNY Mellon has actually received, in its capacity as custodian, notice of such right or discretionary corporate action from the relevant issuer, or from a Subcustodian, Depository or third party vendor. Without actual receipt of such notice by BNY Mellon, BNY Mellon will have no responsibility or liability for failing to so notify Customer.

### **5.2 Exercise of Rights**

Whenever there are voluntary rights that may be exercised or alternate courses of action that may be taken with respect to Securities in the Fund, Customer or its designee will be

responsible for making any decisions relating thereto and for instructing BNY Mellon to act. In order for BNY Mellon to act, Customer must issue Instructions either: (a) using the BNY Mellon-generated form provided along with BNY Mellon's notice under Section 5.1 or (b) if Customer is not using such BNY Mellon-generated form, clearly indicating, by reference to the options provided on such BNY Mellon-generated form, which action Customer is electing. Each such Instruction will be addressed as BNY Mellon may from time to time request and issued by such time as BNY Mellon will advise Customer or its designee.

### **5.3 Partial Redemptions, Payments, Etc.**

BNY Mellon will advise Customer or its designee upon its notification, in its capacity as custodian, of a partial redemption, partial payment or other action with respect to a Security affecting fewer than all such Securities held within the Fund. If BNY Mellon or any Subcustodian or Depository holds any Securities affected by one of the events described, BNY Mellon or such Subcustodian or Depository may select the Securities to participate in such partial redemption, partial payment or other action in any non-discriminatory manner that it customarily uses to make such selection.

## **6. SETTLEMENT**

### **6.1 Settlement Instructions**

Promptly after the execution of each Securities transaction, Customer will issue to BNY Mellon Instructions to settle such transaction. Unless otherwise agreed by BNY Mellon and subject to Section 8.1, Assets will be credited to the Fund only when actually received by BNY Mellon.

### **6.2 Settlement Funds**

For the purpose of settling a Securities transaction, Customer will provide BNY Mellon with sufficient immediately available funds or Securities, as applicable, by such time and date as is required to enable BNY Mellon to settle such transaction in the country of settlement and in the currency to be used to settle such transaction.

### **6.3 Settlement Practices**

Securities transactions will be settled using practices customary in the jurisdiction or market where the transaction occurs, which may include the delivery of Securities or Cash to a counterparty or its agents against, as applicable, the receipt of Securities or Cash in the future. Customer assumes, on behalf of the Trust, full responsibility for all risks involved in connection with BNY Mellon's delivery of Securities or Cash in accordance with such practices.

## **7. TAX MATTERS**

### **7.1 Tax Obligations**

To the extent that BNY Mellon has received relevant and necessary information with respect to the Fund, BNY Mellon will perform the following services with respect to Tax Obligations:

- (a) BNY Mellon (or the applicable Subcustodian) will apply, withhold and report appropriate amounts as BNY Mellon (in its capacity as custodian) or the applicable Subcustodian (in its capacity as Subcustodian) is required to do under the relevant source country tax laws, and is authorized to debit the Fund in the amount of a Tax Obligation withheld and to pay such amount to the appropriate taxing authority.
- (b) BNY Mellon will, where appropriate and upon receipt of sufficient information, pursue claims for tax relief where (i) either a tax treaty or a source country's domestic tax laws provide for favorable tax treatment with respect to an Asset as a result of the Trust's status as a specific type of investor and/or residency status and (ii) the source country's tax authorities have outlined the requirements and qualification criteria required to obtain such relief.
- (c) BNY Mellon will forward to Customer or its designee information regarding Tax Obligations applicable to Customer that BNY Mellon receives in its capacity as custodian from third parties and that BNY Mellon reasonably believes would be useful to Customer or its designee in the submission of any reports or returns with respect to Tax Obligations.
- (d) BNY Mellon offers certain tax services pursuant to a separate tax service and fee agreement. Except to the extent Customer enters into a separate tax service and fee agreement with BNY Mellon specifying tax services related to the following matters to be performed by BNY Mellon, Customer assumes all responsibility for, and will perform all matters related to (i) the completion and filing of all required U.S. Federal income tax returns for the Trust and/or the required U.S. Federal informational returns for tax exempt trusts and (ii) all state tax compliance obligations with respect to the Trust, in each case including those Tax Obligations that may be imposed on BNY Mellon under any law.
- (e) BNY Mellon will only be responsible for performing, and will only perform, the obligations of BNY Mellon that are expressly set forth in this Section 7.1 and such other tax services (which may include non-income tax related services) that are expressly agreed upon by BNY Mellon and Customer pursuant to a separate tax service and fee agreement, if any.
- (f) BNY Mellon may consult with and rely upon Customer in matters pertaining to Tax Obligations. Customer will provide and/or will cause its Authorized Persons to provide information necessary for BNY Mellon to fulfill any obligations it may have hereunder or under any separate tax services agreement with respect to Tax Obligations in a timely manner.

## **7.2 Responsibility for Taxes**

Customer will be responsible and liable for all Tax Obligations with respect to any Assets held on behalf of Customer and any transaction related thereto. Customer acknowledges and agrees that BNY Mellon and its Affiliates are not tax advisers and will not under any circumstances provide tax advice to Customer. Customer will obtain its own independent tax advice for any tax-related matters.

### **7.3 Payments**

Where BNY Mellon receives Instructions to make distributions or transfers out of the Fund in order to pay Customer's third party service providers, Customer acknowledges that in making such payments BNY Mellon is acting in an administrative or ministerial capacity, and not as the payor, for tax information reporting and withholding purposes.

## **8. CREDITS AND ADVANCES**

### **8.1 Contractual Settlement and Income**

BNY Mellon may, in its sole discretion, as a matter of bookkeeping convenience, credit the Fund with the proceeds resulting from the purchase, sale, redemption or other delivery or receipt of Securities, or interest, dividends or other distributions payable on Securities, or any foreign exchange transaction effected in connection with this Agreement, prior to its actual receipt thereof. All such credits will be conditional until BNY Mellon's actual receipt of such proceeds and may be reversed by BNY Mellon to the extent that such proceeds are not received. Actual receipt of proceeds with respect to a transaction will not be deemed to have occurred, and the transaction will not be considered final, until BNY Mellon has received sufficient immediately available funds or Securities specifically applicable to such transaction that, under applicable local law, rule or practice, are irreversible and not subject to any security interest, levy or other encumbrance.

### **8.2 Advances**

If BNY Mellon receives an Instruction that, if processed, would result in an overdraft in the Fund, BNY Mellon may, in its sole discretion, advance funds in any currency hereunder.

### **8.3 Repayment**

If: (a) BNY Mellon has advanced funds to the Fund; (b) an overdraft has occurred in the Fund (including overdrafts incurred in connection with the settlement of securities transactions, funds transfers or foreign exchange transactions) or (c) the Trust is for any other reason indebted to BNY Mellon, Customer on behalf of the Trust agrees to repay BNY Mellon (on demand or upon becoming aware thereof) the amount of such advance, overdraft or indebtedness, plus accrued interest at a rate then charged by BNY Mellon to its institutional custody clients in the relevant currency.

### **8.4 Securing Repayment**

In order to secure repayment of the Trust's obligations and liabilities (whether or not matured) to BNY Mellon or any BNY Mellon Affiliate, arising under or related to this Agreement, and without limiting BNY Mellon's or such BNY Mellon Affiliate's rights under applicable law or any other agreement, Customer on behalf of the Trust hereby pledges and grants to BNY Mellon and such BNY Mellon Affiliate, and agrees BNY Mellon and such BNY Mellon Affiliate will have to the maximum extent permitted by law, a continuing first lien and security interest in all of the Plan's and the Trust's right, title and interest in and to the Fund and the Assets now or hereafter held in the Fund (including proceeds thereof); provided that Customer does not hereby grant a security interest in any Securities issued by an affiliate (as defined in Section 23A of the U.S. Federal Reserve Act) of BNY

Mellon. Customer represents, warrants and covenants that the Trust owns the Assets in the Fund free and clear of all liens, claims and security interests (except as otherwise acknowledged in writing by BNY Mellon), and that the first lien and security interest granted herein will be subject to no setoffs, counterclaims or other liens prior to or on a parity with it in favor of any third party (other than specific liens granted preferred status by statute). Customer will take any additional steps required to assure BNY Mellon of such priority security interest, including notifying third parties or obtaining their consent. BNY Mellon will be entitled to collect from the Fund sufficient Cash for reimbursement, and if such Cash is insufficient, to sell Securities to the extent necessary to obtain reimbursement. In this regard, BNY Mellon will be entitled to all the rights and remedies of a pledgee, secured creditor and/or securities intermediary under applicable laws, rules and regulations as then in effect as if the Trust is in default.

## **9. STATEMENTS; BOOKS AND RECORDS; THIRD PARTY DATA**

### **9.1 Statements**

BNY Mellon will make available to Customer, through the Electronic Access Services or such other method as may be agreed upon by the Parties, a monthly statement reflecting all transfers to or from the Fund during such month and all holdings in the Fund as of the last business day of such month. Customer will promptly review each such statement and, within ninety (90) days of when such statement is made available by BNY Mellon, notify BNY Mellon of any exception or objection thereto. Notwithstanding the foregoing, Customer may notify BNY Mellon of any such exceptions or objections at any time; provided, however, that BNY Mellon will not be responsible or liable for any losses reasonably evident from review of such statement that could have been mitigated had such notice been provided during such ninety (90) day period.

### **9.2 Books and Records**

BNY Mellon will identify on its books and records the Assets belonging to the Fund, whether held directly or indirectly through Subcustodians or Depositories. Securities held in the Fund will be held in registered form in the name of BNY Mellon or one of its nominees and will be segregated on BNY Mellon's books and records from BNY Mellon's own property. Customer and its authorized representatives will have the right, at Customer's own expense and with reasonable prior written notice to BNY Mellon, to have reasonable access to those books and records directly pertaining to the Fund. Any such access will occur during BNY Mellon's normal business hours and will be subject to BNY Mellon's applicable security policies and procedures.

### **9.3 Third Party Data**

- (a) Customer acknowledges that BNY Mellon will be receiving, utilizing and relying on Market Data and other data provided by Customer and/or by third parties in connection with its performance of the services hereunder (collectively, "**Third Party Data**"). BNY Mellon is entitled to rely without inquiry on all Third Party Data provided to BNY Mellon hereunder (and all Instructions related to Third Party Data), and BNY Mellon makes no assurances or warranties in relation to the accuracy or completeness of Third Party Data and will not be responsible or liable for any losses or damages incurred as a result of any Third Party Data that is



inaccurate or incomplete. BNY Mellon may follow Instructions with respect to Third Party Data, even if such Instructions direct BNY Mellon to override its usual procedures and data sources or if BNY Mellon, in performing services for itself or others (including services similar to those performed for Customer), receives different Third Party Data for the same or similar Securities.

- (b) To the extent that BNY Mellon provides values of, and pricing information in relation to, Securities, Customer acknowledges and agrees that:
  - (i) BNY Mellon is authorized to use generally recognized pricing services including Market Data Providers, brokers, dealers and other market makers. In the event that such pricing services are unable to provide a value of or pricing information in respect of Securities and BNY Mellon provides values and pricing information, BNY Mellon will so advise Customer, but will have no other responsibility or liability in respect of such valuation or pricing information;
  - (ii) Certain pricing or valuation information may be based on calculated amounts rather than actual market transactions and may not reflect actual market values, and the variance between such calculated amounts and actual market values may be material;
  - (iii) Certain third party service providers may not permit Customer's directed price to be used, which may result in differences between third party service provider reports and custodial reports;
  - (iv) Performance measurement and analytic services may use different data sources than those used by BNY Mellon to provide Market Data for the Fund, which may result in differences between custodial reports and performance measurement and analytic reports; and
  - (v) BNY Mellon may require Customer to execute supplemental documentation prior to providing pricing for certain Securities.
- (c) Certain Market Data may be the intellectual property of Market Data Providers, which impose additional terms and conditions upon Customer's use of such Market Data. Such additional terms and conditions can be found on the Data Terms Website. Customer agrees to those terms and conditions as they are posted on the Data Terms Website from time to time.

## 10. DISCLOSURES

### 10.1 Required Disclosure

- (a) With respect to Securities that are registered under the U.S. Securities Exchange Act of 1934, as amended, or that are issued by an issuer registered under the U.S. Investment Company Act of 1940, as amended, the U.S. Shareholder Communications Act of 1985 (the "**Act**") requires BNY Mellon to disclose to issuers of such Securities, upon their request, the name, address and securities position of BNY Mellon's clients who are "beneficial owners" (as defined in the Act) of the

issuer's Securities, unless the beneficial owner objects to such disclosure. The Act defines a "beneficial owner" as any person who has or shares the power to vote a security (pursuant to an agreement or otherwise) or who directs the voting of a security. Customer has designated on the signature page hereof whether (i) as beneficial owner, it objects to the disclosure of its name, address and securities position to any U.S. issuer that requests such information pursuant to the Act for the specific purpose of direct communications between such issuer and Customer or (ii) it requires BNY Mellon to contact the Investment Manager with respect to relevant Securities to make the decision as to whether it objects to the disclosure of the beneficial owner's name, address and securities position to any U.S. issuer that requests such information pursuant to the Act.

- (b) With respect to certain Securities issued outside the United States, BNY Mellon may disclose information to issuers of Securities as required by the organizational documents of the relevant issuer or in accordance with local market practice.
- (c) In connection with any disclosure contemplated by this Section 10.1, Customer agrees to supply BNY Mellon with any required information.

## **10.2 Foreign Exchange Transactions**

In connection with this Agreement, Customer may enter into foreign exchange transactions (including foreign exchange hedging transactions) with BNY Mellon or a BNY Mellon Affiliate acting as a principal or otherwise through customary channels. Customer may issue standing Instructions with respect to any such foreign exchange transactions, subject to any rules or limitations that may apply to any foreign exchange facility made available to the Fund. With respect to any such foreign exchange transactions, BNY Mellon or such BNY Mellon Affiliate is acting as a principal counterparty on its own behalf and is not acting as a fiduciary or agent for, or on behalf of, Customer, its Investment Manager or the Trust. Any such foreign exchange transactions will be governed by the relevant master netting agreement (e.g., an ISDA Master Agreement) in place between Customer and BNY Mellon or such BNY Mellon Affiliate, and such transactions will be secured by the Fund and the Assets therein pursuant to Section 8.4. In the event there is no such master netting agreement in place and Customer fails to settle or otherwise meet its obligations in respect of such foreign exchange transactions, BNY Mellon has the right to net all such outstanding foreign exchange transactions between the Trust and BNY Mellon or such BNY Mellon Affiliate for the purpose of ascertaining a single net obligation between the Trust and BNY Mellon, and to the extent such obligation is owed by the Trust to BNY Mellon or a BNY Mellon Affiliate, such obligation will be secured by the Fund and the Assets therein pursuant to Section 8.4.

## **10.3 Investment of Cash**

In connection with this Agreement, Customer may issue standing Instructions to invest Cash in one or more sweep investment vehicles. Such investment vehicles may be offered by a BNY Mellon Affiliate or by a client of BNY Mellon, and BNY Mellon may receive compensation therefrom. By making investment vehicles available, BNY Mellon and its Affiliates will not be deemed to have recommended, endorsed or guaranteed any such investment vehicle in any way or otherwise to have acted as a fiduciary or agent for, or on behalf of, Customer, any Named Fiduciary, any Investment Manager or the Fund.



BNY Mellon will have no liability for any loss incurred on any such investments. Customer understands that Cash may be uninvested if it is received or reconciled to an account in the Fund after the applicable deadline to be swept into the selected investment vehicle.

## **11. REGULATORY MATTERS**

### **11.1 USA PATRIOT Act**

Section 326 of the U.S. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (including its implementing regulations) requires BNY Mellon to implement a customer identification program pursuant to which BNY Mellon must obtain certain information from Customer in order to verify Customer's identity prior to establishing an account. Accordingly, prior to establishing the Fund, Customer will be required to provide BNY Mellon with certain information, including Customer's name, physical address, tax identification number and other pertinent identifying information, to enable BNY Mellon to verify Customer's identity. Customer acknowledges that BNY Mellon cannot establish an account unless and until BNY Mellon has successfully performed such verification.

### **11.2 Sanctions**

- (a) Throughout the term of this Agreement, Customer: (i) will have in place and will implement policies and procedures designed to prevent violations of Sanctions, including measures to accomplish effective and timely scanning of all relevant data with respect to incoming or outgoing Assets or transactions relating to this Agreement; (ii) will ensure that neither Customer nor any of its Affiliates, directors, officers or employees is an individual or entity that is, or is owned or controlled by an individual or entity that is: (A) the target of Sanctions or (B) located, organized or resident in a country or territory that is, or whose government is, the target of Sanctions and (iii) will not, directly or indirectly, use the Fund in any manner that would result in a violation by Customer or BNY Mellon of Sanctions.
- (b) Customer will promptly provide to BNY Mellon such information as BNY Mellon reasonably requests in connection with the matters referenced in this Section 11.2, including information regarding the Fund, the Assets and the source thereof, and the identity of any individual or entity having or claiming an interest therein. BNY Mellon may decline to act or provide services in respect of the Fund, and take such other actions as it, in its reasonable discretion, deems necessary or advisable, in connection with the matters referenced in this Section 11.2. If BNY Mellon declines to act or provide services as provided in the preceding sentence, except as otherwise prohibited by applicable law or official request, BNY Mellon will inform Customer as soon as reasonably practicable.

### **11.3 Express Authorization for ERISA Purposes**

Without limiting the generality of Section 3.2 (Instructions), which generally permits any actions by BNY Mellon hereunder pursuant to Instructions, BNY Mellon is expressly authorized to, in the administration of the Fund pursuant to Instructions, settle investments in any collective investment fund, including a collective investment fund maintained by BNY Mellon or a BNY Mellon Affiliate and to appoint agents and sub-trustees. To the

extent that any investment is made in any such collective investment fund, the terms of the collective trust indenture will solely govern the investment duties, responsibilities and powers of the trustee of such collective investment fund and such terms, responsibilities and powers will be incorporated herein by reference and will be a part of this Agreement. For purposes of valuation, the value of the interest maintained by the Fund in such collective investment fund will be the fair market value of the collective investment fund units held, determined in accordance with generally recognized valuation procedures. Customer understands and agrees that any such collective investment fund may provide for the lending of its securities by the collective investment fund trustee and that such collective investment fund trustee will receive compensation for the lending of securities that is separate from any compensation of BNY Mellon hereunder, or any compensation of the collective investment fund trustee for the management of such fund. BNY Mellon is authorized to invest in a collective fund which invests in The Bank of New York Mellon Corporation stock in accordance with the terms and conditions of the Department of Labor Prohibited Transaction Exemption 95-56 (the "**Exemption**") granted to Mellon Bank, N.A. and its affiliates and to use a cross-trading program in accordance with the Exemption. Customer acknowledges receipt of the notice entitled "Cross-Trading Information," a copy of which is attached as **Exhibit A**.

## **12. COMPENSATION**

### **12.1 Fees and Expenses**

In consideration of BNY Mellon's services provided hereunder, BNY Mellon will be (a) paid the fees set forth in the agreed upon fee schedule (as such fee schedule may be amended by BNY Mellon from time to time upon 45 days' prior written notice to Customer) and (b) reimbursed for any out-of-pocket and incidental expenses incurred by BNY Mellon in connection therewith. Unless otherwise agreed by the Parties, such amounts will be payable to BNY Mellon within 45 days of Customer's receipt of the relevant invoice. Without limiting BNY Mellon's other rights set forth in this Agreement, BNY Mellon may charge interest on overdue amounts at a rate then charged by BNY Mellon to its institutional trust clients in the relevant currency. BNY Mellon is authorized to charge and collect from the Fund its fees and expenses unless such fees and expenses are paid directly by Customer.

### **12.2 Other Compensation**

Customer acknowledges that, as part of BNY Mellon's compensation, BNY Mellon will earn interest on Cash balances held by BNY Mellon (including disbursement balances, balances arising from purchase and sale transactions and when Cash otherwise remains uninvested) as provided in BNY Mellon's compensation disclosures.

## **13. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **13.1 BNY Mellon**

BNY Mellon represents and warrants that: (a) it is duly organized, validly existing and in good standing in its jurisdiction of organization; (b) it has the requisite corporate power and authority to enter into and to carry out the transactions contemplated by this

Agreement and (c) the individual executing this Agreement on its behalf has the requisite authority to bind BNY Mellon to this Agreement.

### 13.2 Customer

- (a) Customer represents and warrants that: (i) it is duly organized, validly existing and in good standing in its jurisdiction of organization; (ii) it has the requisite corporate power and authority to enter into and to carry out the transactions contemplated by this Agreement and (iii) the individual executing this Agreement on its behalf has the requisite authority to bind Customer to this Agreement.
- (b) Customer represents and warrants that either: (i) it is the Named Fiduciary with authority to appoint a trustee under ERISA and the Plan or (ii) the Named Fiduciary with the authority to appoint a trustee under ERISA and the Plan is identified in the definition of Named Fiduciary and Customer is acting on behalf of and has authority to bind the Named Fiduciary to this Agreement.
- (c) Customer represents that it maintains and follows procedures to avoid any non-exempt “prohibited transaction” as defined in Section 406 of ERISA.

## 14. LIABILITY

### 14.1 Standard of Care

BNY Mellon will discharge its duties under this Agreement (a) with the standard of care and diligence that a professional custodian would observe in these affairs taking into account the prevailing rules, practices, procedures and circumstances in the relevant market and (b) to the extent applicable to BNY Mellon’s duties, with the care and skill required under ERISA (as applicable, the “**Standard of Care**”). **Exhibit B** to this Agreement sets forth BNY Mellon’s statement of fiduciary status.

### 14.2 Limitation of Liability

- (a) BNY Mellon’s liability arising out of or relating to this Agreement will be limited solely to those direct damages that are caused by BNY Mellon’s failure to perform its obligations under this Agreement in accordance with the Standard of Care. In no event will BNY Mellon be liable for any indirect, incidental, consequential, exemplary, punitive or special losses or damages, or for any loss of revenues, profits or business opportunity, arising out of or relating to this Agreement (whether or not foreseeable and even if BNY Mellon has been advised of the possibility of such losses or damages).
- (b) BNY Mellon is not a party to, and has no duties or responsibilities under, the Plan other than those that may be expressly contained in this Agreement. Customer acknowledges that the Plan does not impose any duties on BNY Mellon other than those contained in this Agreement.
- (c) The duties of BNY Mellon are limited to the Fund, and BNY Mellon has no duties with respect to assets held by any other Person including any other trustee for the Plan. Customer agrees that BNY Mellon will not serve as, and will not be deemed

to be, a co-trustee under any circumstances, including any circumstances under which BNY Mellon continues to hold Assets under Section 16.5.

- (d) Notwithstanding anything to the contrary set forth in this Agreement, in no event will BNY Mellon be liable for any losses or damages arising out of any of the following:
- (i) Customer's or an Authorized Person's decision to invest in or hold Assets in any particular country, including any losses or damages arising out of or relating to: (A) the financial infrastructure of a country; (B) a country's prevailing custody and settlement practices; (C) nationalization, expropriation or other governmental actions; (D) a country's regulation of the banking or securities industry; (E) currency and exchange controls, restrictions, devaluations, redenominations, fluctuations or asset freezes; (F) laws, rules, regulations or orders that at any time prohibit or impose burdens or costs on the transfer of Assets to, by or for the Fund or (G) market conditions which affect the orderly execution of securities transactions or affect the value of securities;
  - (ii) BNY Mellon's reliance on Instructions;
  - (iii) BNY Mellon's receipt or acceptance of fraudulent, forged or invalid Securities (or Securities which are otherwise not freely transferable or deliverable without encumbrance in any relevant market);
  - (iv) For any matter with respect to which BNY Mellon is required to act only upon the receipt of Instructions, (A) BNY Mellon's failure to act in the absence of such Instructions or (B) Instructions that are late or incomplete or do not otherwise satisfy the requirements of Section 3.2(e), whether or not BNY Mellon acted upon such Instructions;
  - (v) BNY Mellon receiving or transmitting any data to or from Customer or any Authorized Person via any non-secure method of transmission or communication selected by Customer;
  - (vi) Customer's or an Authorized Person's decision to invest in Securities or to hold Cash in any currency; or
  - (vii) The insolvency of any Person, including a Subcustodian that is not a BNY Mellon Affiliate, Depository, broker, bank or a counterparty to the settlement of a transaction or to a foreign exchange transaction, except as provided in Section 4.2.
- (e) If BNY Mellon is in doubt as to any action it should or should not take, either pursuant to, or in the absence of, Instructions, BNY Mellon may obtain the advice of either reputable counsel of its own choosing or counsel to Customer, and BNY Mellon will not be liable for acting in accordance with such advice.

### **14.3 Force Majeure**

BNY Mellon will not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement to the extent caused, directly or indirectly, by any event beyond its reasonable control, including acts of God, strikes or other labor disputes, work stoppages, acts of war, terrorism, general civil unrest, governmental or military actions, legal constraint or the interruption, loss or malfunction of utilities or communications or computer systems. BNY Mellon will promptly notify Customer upon the occurrence of any such event and will use commercially reasonable efforts to minimize its effect.

### **14.4 Indemnification**

Customer and, except to the extent prohibited by applicable law, the Trust will jointly and severally indemnify and hold harmless BNY Mellon from and against all losses, costs, expenses, damages and liabilities (including reasonable counsel fees and expenses) incurred by BNY Mellon, and will defend BNY Mellon against any third party claim, in each case arising out of or relating to BNY Mellon's performance under this Agreement, except to the extent resulting from BNY Mellon's failure to perform its obligations under this Agreement in accordance with the Standard of Care. The Parties agree that the foregoing will include reasonable counsel fees and expenses incurred by BNY Mellon in connection with its successful defense of claims asserted by Customer or relating to BNY Mellon's performance under this Agreement. BNY Mellon will indemnify and hold harmless Customer and the Trust from and against all losses, costs, expenses, damages and liabilities (including reasonable counsel fees and expenses) incurred by Customer and/or the Trust, and will defend them against any third party claim, in each case arising out of BNY Mellon's failure to perform its obligations under this Agreement in accordance with the Standard of Care.

## **15. CONFIDENTIALITY**

### **15.1 Confidentiality Obligations**

Each Party agrees to use the Confidential Information of the other Party solely to accomplish the purposes of this Agreement and, except in connection with such purposes or as otherwise permitted herein, not to disclose such information to any other Person without the prior written consent of the other Party. Notwithstanding the foregoing, BNY Mellon may: (a) use Customer's Confidential Information in connection with certain functions performed on a centralized basis by BNY Mellon, its Affiliates and joint ventures and their service providers (including audit, accounting, risk, legal, compliance, sales, administration, product communication, relationship management, compilation and analysis of customer-related data and storage); (b) disclose such information to its Affiliates and joint ventures and to its and their service providers who are subject to confidentiality obligations and (c) store the names and business contact information of Customer's employees and representatives relating to this Agreement on the systems or in the records of its Affiliates and joint ventures and its and their service providers. In addition, BNY Mellon may aggregate information regarding Customer and the Fund on an anonymized basis with other similar client data for BNY Mellon's and its Affiliates' reporting, research, product development and distribution, and marketing purposes.

## **15.2 Exceptions**

The Parties' respective obligations under Section 15.1 will not apply to any such information: (a) that is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than the receiving Party; (b) that was known to the receiving Party as of the time of its disclosure and was not otherwise subject to confidentiality obligations; (c) that is independently developed by the receiving Party without reference to such information; (d) that is subsequently learned from a third party not known to be under a confidentiality obligation to the disclosing Party or (e) that is required to be disclosed pursuant to applicable law, rule, regulation, requirement of any law enforcement agency, court order or other legal process or at the request of a regulatory authority including, but not limited to, the PUC or FERC.

## **16. TERM AND TERMINATION**

### **16.1 Term**

The term of this Agreement will commence on the Effective Date and will continue in effect until terminated in accordance with the provisions herein.

### **16.2 Removal or Resignation**

BNY Mellon may be removed with respect to all or part of the Fund upon receipt of 60 days' written notice (unless a shorter or longer period is agreed upon) from Customer. BNY Mellon may resign as trustee hereunder upon 120 days' written notice (unless a shorter or longer period is agreed upon) delivered to Customer.

### **16.3 Effect of Removal or Resignation**

In the event of such removal or resignation, a successor trustee will be appointed and BNY Mellon will transfer the Fund, less such amounts as may be reasonable and necessary to cover its compensation and expenses, to the successor trustee. In the event Customer fails to appoint a successor trustee within 120 days of receipt of written notice of resignation or removal, BNY Mellon reserves the right to seek the appointment of a successor trustee from a court of competent jurisdiction. This Agreement will terminate after a successor trustee has accepted its duties and BNY Mellon has transferred all Assets then held by BNY Mellon to the successor trustee. BNY Mellon will have no duties, responsibilities or liability with respect to the acts or omissions of any successor trustee.

### **16.4 Plan Termination**

Subject to Section 2 of the Welfare Schedule, if BNY Mellon receives written notice from Customer of the termination of the Plan, BNY Mellon will distribute all assets, less any fees and expenses payable from the Plan's allocable portion of the Fund, pursuant to Instructions and upon receipt of appropriate documentation. BNY Mellon is entitled to assume that such distributions are in full compliance with, and not in violation of, the terms of the Plan or any applicable law.



## 16.5 Assets Not Transferred

BNY Mellon reserves the right to retain any Assets that are not suitable for distribution or transfer at the time of the termination of the Plan or this Agreement and will hold such Assets for the benefit of those Persons entitled to such Assets until such time as BNY Mellon is able to make distribution. Upon the appointment and acceptance of a successor trustee with respect to the Assets, BNY Mellon's sole duties will be those of a custodian with respect to the Assets not transferred.

## 16.6 Survival

Any and all provisions of this Agreement which by their nature or effect are required or intended to be observed, kept or performed after the expiration or termination of this Agreement will survive the expiration or any termination of this Agreement and remain binding upon and for the Parties' benefit, including Section 13 (Representations, Warranties and Covenants); Section 14 (Liability); Section 15 (Confidentiality); Sections 16.2 through 16.6 (Removal or Resignation; Effect of Removal or Resignation; Plan Termination; Assets Not Transferred; Survival); and Section 17.5 (Governing Law/Forum).

## 17. GENERAL

### 17.1 Line Item and Non-Fund Assets

- (a) BNY Mellon may reflect on its books and records certain bookkeeping entries for Assets including, but not limited to, book-entry Securities and limited partnership interests that are selected and monitored by an Authorized Person. BNY Mellon will rely without independent verification on information provided by Customer or its designee regarding such Assets, including but not limited to positions and market valuations.
- (b) At Customer's request pursuant to Instructions, subject to BNY Mellon's approval and as an accommodation to Customer, BNY Mellon will provide consolidated recordkeeping services reflecting on statements provided to Customer securities and other assets not held by BNY Mellon ("**Non-Fund Assets**"). Non-Fund Assets will be designated on BNY Mellon's books as "assets not held in custody" or by other similar designation and will not constitute part of the Fund for purposes of this Agreement. Customer acknowledges and agrees that, notwithstanding anything contained elsewhere in this Agreement, (a) Customer will have no security entitlement against BNY Mellon with respect to Non-Fund Assets; (b) BNY Mellon will rely, without independent verification, on information provided by Customer or its designee regarding Non-Fund Assets (including positions and market valuations) and (c) BNY Mellon will have no responsibility whatsoever with respect to Non-Fund Assets or the accuracy of any information maintained on BNY Mellon's books or set forth on account statements concerning Non-Fund Assets. To the extent assets of the Plan are held outside of the Fund pursuant to Instructions, Customer will cause such assets to be held in accordance with the trust, bonding and other requirements of ERISA.

## **17.2 Assignment/U.S. Special Resolution Regime Transferability**

- (a) Neither Party may, without the other Party's prior written consent, assign any of its rights or delegate any of its duties under this Agreement (whether by change of control, operation of law or otherwise); provided, however that BNY Mellon may, without the prior written consent of Customer, assign this Agreement or any of its rights, or delegate any of its duties hereunder: (a) to any BNY Mellon Affiliate; (b) to any successor to the business of BNY Mellon to which this Agreement relates, in which event BNY Mellon agrees to provide notice of such successor to Customer or (c) as otherwise permitted in this Agreement. Any purported assignment or delegation by a Party in violation of this provision will be voidable at the option of the other Party. This Agreement will be binding upon, and inure to the benefit of, the Parties and their respective permitted successors and assigns.
- (b) Notwithstanding anything herein to the contrary, in the event BNY Mellon becomes subject to a proceeding under a U.S. special resolution regime, the transfer of the Agreement (and any interest and obligation in or under, and any property securing, the Agreement) from BNY Mellon will be effective to the same extent as the transfer would be effective under the U.S. special resolution regime if the Agreement (and any interest and obligation in or under, and any property securing, the Agreement) were governed by the laws of the United States or a state of the United States; and, in the event BNY Mellon or any affiliate becomes subject to a proceeding under a U.S. special resolution regime, default rights with respect to the Agreement that may be exercised against BNY Mellon are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regime if the Agreement were governed by the laws of the United States or a state of the United States.

## **17.3 Exclusive Benefit**

The assets of the Trust allocable to the Plan will be held for the exclusive purposes of providing benefits to Plan participants and their beneficiaries and defraying the reasonable expenses of administering the Plan and the Trust. This Agreement will be interpreted in a manner consistent with that intent and with the intention of Customer that the Trust hereunder satisfies those provisions of the Code relating to voluntary employees' beneficiary associations. Except as may be provided by law, the Fund will not be subject to any form of attachment, garnishment, sequestration or other actions of collection afforded creditors of Customer or participants or beneficiaries under the Plan, and BNY Mellon will not recognize any assignment or alienation of benefits unless an Instruction is received.

## **17.4 Amendment**

This Agreement may be amended or modified only in a written agreement signed by an authorized representative of each Party. For purposes of the foregoing, email exchanges between the Parties will not be deemed to constitute a written agreement.



### **17.5 Governing Law/Forum**

- (a) To the extent not preempted by federal law, the substantive laws of the state of New York (without regard to its conflicts of law provisions) will govern all matters arising out of or relating to this Agreement, including the establishment and maintenance of the Fund and for purposes of the Uniform Commercial Code and all issues specified in Article 2(1) of the Hague Securities Convention.
- (b) Each Party irrevocably agrees that all legal actions or proceedings brought by it against the other Party arising out of or relating to this Agreement will be brought solely and exclusively before the state or federal courts situated in New York City, New York. Each Party irrevocably submits to personal jurisdiction in such courts and waives any objection which it may now or hereafter have based on improper venue or *forum non conveniens*. The Parties hereby unconditionally waive, to the fullest extent permitted by applicable law, any right to a jury trial with respect to any such actions or proceedings.

### **17.6 Sovereign Immunity**

To the extent that in any jurisdiction Customer may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, Customer irrevocably agrees not to claim, and it hereby waives, such immunity.

### **17.7 Notices**

Other than routine communications in the ordinary course of providing or receiving services hereunder (including Instructions), notices given hereunder will be: (a) addressed to BNY Mellon or Customer at the address set forth on the signature page (or such other address as either Party may designate in writing to the other Party) and (b) sent by hand delivery, by certified mail, return receipt requested, or by overnight delivery service, in each case with postage or charges prepaid. All notices given in accordance with this Section will be effective upon receipt.

### **17.8 Entire Agreement**

This Agreement constitutes the sole and entire agreement among the Parties with respect to the matters dealt with herein, and merges, integrates and supersedes all prior and contemporaneous discussions, agreements and understandings between the Parties, whether oral or written, with respect to such matters.

### **17.9 Necessary Parties**

BNY Mellon reserves the right to seek a judicial or administrative determination as to its proper course of action under this Agreement. Nothing contained herein will be construed or interpreted to deny BNY Mellon or Customer the right to have BNY Mellon's account judicially determined. To the extent permitted by law, only BNY Mellon and Customer will be necessary parties in any application to the courts for an interpretation of this Agreement or for an accounting by BNY Mellon, and no participant under the Plan 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.

**17.10 No Third Party Beneficiaries**

This Agreement is entered into solely between, and may be enforced only by, the Parties. Each Party intends that this Agreement will not, and no provision of this Agreement will be interpreted to, benefit, or create any right or cause of action in or on behalf of, any party or entity other than the Parties, their respective successors and assigns, and participants and their beneficiaries under the Plan.

**17.11 Counterparts/Facsimile**

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and said counterparts when taken together will constitute one and the same instrument and may be sufficiently evidenced by one set of counterparts. This Agreement may also be executed and delivered by facsimile or email with confirmation of delivery and/or receipt.

**17.12 Interpretation**

The terms and conditions of this Agreement are the result of negotiations between the Parties. The Parties intend that this Agreement will not be construed in favor of or against a Party by reason of the extent to which such Party or its professional advisors participated in the preparation or drafting of this Agreement.

**17.13 No Waiver**

No failure or delay by a Party to exercise any right, remedy or power it has under this Agreement will impair or be construed as a waiver of such right, remedy or power. A waiver by a Party of any provision or any breach of any provision will not be construed to be a waiver by such Party of such provision in any other instance or any succeeding breach of such provision or a breach of any other provision. All waivers will be in writing and signed by an authorized representative of the waiving Party.

**17.14 Headings**

All section and subsection headings in this Agreement are included for convenience of reference only and will not be considered in the interpretation of the scope or intent of any provision of this Agreement.

**17.15 Severability**

If a court of competent jurisdiction determines that any provision of this Agreement is illegal or invalid for any reason, such illegality or invalidity will not affect the validity of the remainder of this Agreement. In such case, the Parties will negotiate in good faith to replace each illegal or invalid provision with a valid, legal and enforceable provision that fulfills as closely as possible the original intent of the Parties.

[Signature page follows]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**THE BANK OF NEW YORK MELLON**

**PACIFICORP**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Address for Notice:**

**Address for Notice:**

The Bank of New York Mellon

PacifiCorp

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Attention: \_\_\_\_\_

Pursuant to Section 10.1(a):

- as beneficial owner, Customer OBJECTS to disclosure
- as beneficial owner, Customer DOES NOT OBJECT to disclosure
- BNY Mellon will CONTACT THE INVESTMENT MANAGER with respect to relevant Securities to make the decision whether it objects to disclosure

IF NO BOX IS CHECKED, BNY MELLON WILL RELEASE SUCH INFORMATION UNTIL IT RECEIVES A CONTRARY INSTRUCTION FROM CUSTOMER OR INVESTMENT MANAGER, AS APPLICABLE.

## WELFARE SCHEDULE

### ADDITIONAL PROVISIONS FOR WELFARE PLANS

The following additional terms and conditions supplement the Agreement and will in all respects be considered part of the Agreement.

#### 1. Plan Establishment

- (a) The form and nature of the Plan will be established exclusively by Customer; provided, however, that the Plan will provide for the payment of life, sickness, accident or other benefits to employees or their dependents or beneficiaries. The phrase "other benefits" will not, however, include any benefit which is not permitted pursuant to Section 501(c)(9) of the Code. Customer will self-insure such welfare benefits under the terms and conditions of the Plan.
- (b) Customer will be solely responsible for the Plan's compliance with the Code and ERISA, including the nondiscrimination requirements.
- (c) It is the intent of Customer that the Trust be in the form and be in operation at all times so as to comply with the requirements of Section 501(c)(9) of the Code, and applicable provisions of ERISA. Customer has taken such action and has filed such documents, or will in a timely manner take such action and file such documents, as are required under Section 505(c) of the Code to notify the Internal Revenue Service that the Trust is applying for recognition as an organization which is exempt from tax under Section 501(c)(9) of the Code. Customer will be responsible for taking such action and filing such documents with respect to the Plan as may be required by the Code or ERISA, and Customer agrees to notify BNY Mellon promptly of any notification or determination by the Internal Revenue Service which adversely affects the Trust's status as a tax-exempt organization.
- (d) Assets will not be used for purposes other than the payment of eligible welfare benefits or the expenses incident thereto or expenses of the Trust.

#### 2. Plan Termination

Upon the Plan's termination pursuant to Section 16.4, the distributed assets will be used, in accordance with Instructions, to provide benefits described in Section 501(c)(9) of the Code to Plan participants or their dependents or beneficiaries (or used as provided in 26 C.F.R. Section 1.501(c)(9)-4(d)), except as otherwise provided in regulations of the Department of Labor promulgated under Section 403(d)(2) of ERISA. Until all assets of the Trust are distributed, the Trust shall continue.

## EXHIBIT A

### CROSS-TRADING INFORMATION

As part of the Cross-Trading Program covered by the Department of Labor Prohibited Transaction Exemption (“PTE”) 95-56 granted to Mellon Bank, N.A. and its affiliates (“**BNY Mellon**”), BNY Mellon is to provide to each affected employee benefit plan the following information:

I. The Existence of the Cross-Trading Program

BNY Mellon has developed and intends to utilize, wherever practicable, a Cross-Trading Program for Indexed Accounts and Large Accounts as those terms are defined in PTE 95-56.

II. The “Triggering Events” Creating Cross-Trade Opportunities

In accordance with PTE 95-56, three “Triggering Events” may create opportunities for Cross-Trading transactions. They are generally the following (see PTE 95-56 for more information):

1. A change in the composition or weighting of the index by the independent organization creating and maintaining the index;
2. A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals on the Indexed Account’s opening date, where the Indexed Account is a bank collective fund, or on any relevant date for non-bank collective funds; provided, however, a change in an Indexed Account resulting from investments or withdrawals of assets of BNY Mellon’s own plans (other than BNY Mellon’s defined contributions plans under which participants may direct among various investment options, including Indexed Accounts) are excluded as a “Triggering Events”; or
3. A recorded declaration by BNY Mellon that an accumulation of cash in an Indexed Account attributable to interest or dividends on, and/or tender offers for portfolio securities equal to not more than .5% of the Indexed Account’s total value has occurred.

III. The Pricing Mechanism Utilized for Securities Purchased or Sold

Securities will be valued at the current market value for the securities on the date of the crossing transaction.

Equity Securities - the current market value for the equity security will be the closing price on the day of trading as determined by an independent pricing service; unless the security was added to or deleted from an index after the close of trading, in which case the price will be the opening price for that security on the next business day after the announcement of the addition or deletion.

Debt Securities - the current market value of the debt security will be the price determined by BNY Mellon as of the close of the day of trading according to the Securities and

Exchange Commission's Rule 17a-7(b)(4) under the Investment Company Act of 1940. Debt securities that are not reported securities or traded on an exchange, will be valued based on an average of the highest current independent bids and the lowest current independent offers on the day of cross trading. BNY Mellon will use reasonable inquiry to obtain such prices from at least three independent sources that are brokers or market makers. If there are fewer than three independent sources to price a certain debt security, the closing price quotations will be obtained from all available sources.

IV. The Allocation Method and Other Procedures

Direct cross-trade opportunities will be allocated among potential buyers or sellers of debt or equity securities on a pro-rata basis. With respect to equity securities, please note BNY Mellon imposes a trivial dollar amount constraint to reduce excessive custody ticket charges to participating accounts.

## **EXHIBIT B**

### **FIDUCIARY STATUS**

As trustee, BNY Mellon reasonably expects that some of the services which it will provide under the Agreement will be as a fiduciary as defined in Section 3(21) of ERISA and some will be non-fiduciary in nature. In its role as a directed trustee, BNY Mellon does not have discretionary investment management authority, render investment advice for a fee or have discretionary authority or responsibility in the administration of the covered Plan(s). Nonetheless, as a directed trustee, BNY Mellon retains certain limited fiduciary responsibilities, such as determining that directions of a named fiduciary are proper, following processes designed to avoid non-exempt prohibited transactions, and not knowingly participating in a breach of fiduciary responsibility of another fiduciary. All of BNY Mellon's custodial duties and responsibilities, including but not limited to safekeeping of assets, processing of corporate actions, trade settlement, posting of income and other receipts, reporting of transactions and reporting of prices are expected to be performed in a non-fiduciary capacity. Ultimately, whether BNY Mellon is acting as a fiduciary is dependent upon the terms of the Agreement and the facts surrounding a particular function. With respect to foreign exchange transactions done through BNY Mellon's Global Markets FX Desk, it is acting as a principal counterparty on its own behalf and is not acting as a fiduciary or agent for Customer, any Authorized Person or the Trust.



**BNY MELLON**

**WELFARE TRUST AGREEMENT**

**By and Between**

**THE BANK OF NEW YORK MELLON**

**And**

**PACIFICORP**

**For the**

**PACIFICORP WELFARE BENEFITS TRUST**



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## WELFARE TRUST AGREEMENT

This Agreement is made and entered into as of the latest date set forth on the signature page hereto (the “**Effective Date**”) by and between **THE BANK OF NEW YORK MELLON**, a bank organized under the laws of the state of New York (“**BNY Mellon**”), and **PACIFICORP**, an Oregon corporation (“**Customer**”). BNY Mellon and Customer are collectively referred to as the “**Parties**” and individually as a “**Party**”.

### RECITALS

WHEREAS, Customer and its subsidiaries or affiliates have established one or more welfare benefit plans and may in the future adopt additional welfare benefit plans for the benefit of the employees and retirees who are eligible for coverage thereunder (individually or collectively the “**Plan**”);

WHEREAS, Customer has established or desires to establish a trust to provide for the funding of and payment of certain welfare benefits under the Plan;

WHEREAS, Customer and State Street Bank and Trust Company (and its predecessors) previously entered into a Welfare Benefits Trust effective January 1, 1997, as subsequently amended (the “**Prior Agreement**”); and

WHEREAS, Customer wishes to have BNY Mellon act as the trustee of such trust, and BNY Mellon is willing to provide such services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and intending to be legally bound, the Parties agree that the Prior Agreement is amended and restated as follows.

### 1. DEFINITIONS

Whenever used in this Agreement, the following words have the meanings set forth below:

“**Act**” has the meaning set forth in Section 10.1(a).

“**Affiliate**” means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by or under common control with such entity.

“**Agreement**” means, collectively, this Welfare Trust Agreement, the Welfare Schedule and any Exhibits hereto and any other documents incorporated herein by reference.

“**Assets**” means any assets acceptable to BNY Mellon, excluding any direct interest in real property, leaseholds or mineral interests, which Customer may transfer to BNY Mellon’s care, to be held in trust in accordance with this Agreement.

“**Authorized Person**” has the meaning set forth in Section 3.1.

“**BNY Mellon**” has the meaning set forth in the introductory paragraph.

“**Cash**” means the money and currency of any jurisdiction which BNY Mellon accepts for deposit in the Fund.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Confidential Information**” means, with respect to a Party, the terms of this Agreement and all non-public business and financial information of such Party (including, with respect to Customer, information regarding the Fund and including, with respect to BNY Mellon, information regarding its practices and procedures related to the services provided hereunder) disclosed to the other Party in connection with this Agreement.

“**Customer**” has the meaning set forth in the introductory paragraph. In addition, references to “Customer” include reference to the Named Fiduciary if and to the extent such Named Fiduciary is responsible for the applicable function under the Plan or ERISA.

“**Data**” means **Terms** **Website** **Website** means *http://www.bnymellon.com/products/assetservicing/vendoragreement.pdf* or any successor website the address of which is provided by BNY Mellon to Customer.

“**Depository**” means the Depository Trust Company, Euroclear, Clearstream Banking S.A., the Canadian Depository System, CLS Bank and any other securities depository, book-entry system or clearing agency authorized to act as a system for the central handling of securities pursuant to the laws of the applicable jurisdiction, and any successors to, and/or nominees of, any of the foregoing.

“**Effective Date**” has the meaning set forth in the introductory paragraph.

“**Electronic Access Services**” means such services made available by BNY Mellon or a BNY Mellon Affiliate to Customer to electronically access information relating to the Fund and/or transmit Instructions.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Fund**” means the account or accounts established pursuant to this Agreement to hold the Assets of the Plan.

“**Instructions**” means, with respect to this Agreement, instructions issued to BNY Mellon by way of (a) one of the following methods (each as and to the extent specified by BNY Mellon as available for use in connection with the services hereunder): (i) the Electronic Access Services; (ii) third-party electronic communication services containing, where applicable, appropriate authorization codes, passwords or authentication keys, or otherwise appearing on their face to have been transmitted by an Authorized Person or (iii) third-party institutional trade matching utilities used to effect transactions in accordance with such utility’s customary procedures or (b) such other method as may be agreed upon by the Parties and that appear on their face to have been transmitted by an Authorized Person.

“**Investment Manager**” means an investment manager within the meaning of Section 3(38) of ERISA with respect to the Fund that has been appointed pursuant to Section 2.2(d).

**“Market Data”** means pricing, valuations or other commercially sourced data applicable to any Security. Market Data also includes security identifiers, bond ratings and classification data.

**“Market Data Providers”** means vendors and analytics providers and any other Person providing Market Data to BNY Mellon.

**“Named Fiduciary”** means individually and collectively, as applicable, any entity, committee or Person identified herein as Named Fiduciary or otherwise having the authority to control and manage the operation and administration of the Plan or the power to manage and control the assets of the Plan. The Named Fiduciary with authority to appoint a trustee is Customer. The Named Fiduciary that is the administrator of the Plan is Customer.

**“Non-Fund Assets”** has the meaning set forth in Section 17.1(b).

**“Oral Instructions”** means, with respect to this Agreement, spoken instructions issued to BNY Mellon and reasonably believed by BNY Mellon to be from an Authorized Person.

**“Party”** or **“Parties”** has the meaning set forth in the introductory paragraph.

**“Person”** or **“Persons”** means any entity or individual.

**“Plan”** has the meaning set forth in the Recitals.

**“Sanctions”** means all economic sanctions laws, rules, regulations, executive orders and requirements administered by any governmental authority of the United States (including the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury) or any other applicable domestic or foreign authority with jurisdiction over Customer.

**“Securities”** means all (a) debt and equity securities and (b) instruments representing rights or interests therein, including rights to receive, subscribe to or purchase the foregoing; in each case as may be agreed upon from time to time by BNY Mellon and Customer and which are from time to time delivered to or received by BNY Mellon and/or any Subcustodian for deposit in the Fund.

**“Standard of Care”** has the meaning set forth in Section 14.1.

**“Subcustodian”** means a bank or other financial institution (other than a Depository) that is selected and used by BNY Mellon or a BNY Mellon Affiliate in connection with the settlement of transactions and/or custody of Assets hereunder, and any successors to, and/or nominees of, any of the foregoing.

**“Tax Obligations”** means taxes, withholding, certification and reporting requirements, claims for exemptions or refund, interest, penalties, additions to tax and other related expenses.

**“Third Party Data”** has the meaning set forth in Section 9.3(a).

**“Trust”** means the trust created by this Agreement, known as the PacifiCorp Welfare Benefits Trust.

“**Welfare Schedule**” means the Welfare Schedule attached hereto that contains additional provisions for welfare plans.

## **2. APPOINTMENT OF TRUSTEE; THE FUND**

### **2.1 Appointment of Trustee**

- (a) The Trust is intended to comply with ERISA and to be tax-exempt under Section 501(c)(9) of the Code.
- (b) Customer hereby appoints BNY Mellon as trustee for the Assets and BNY Mellon hereby accepts such appointment. The Parties acknowledge and agree that BNY Mellon’s duties pursuant to such appointment will be limited solely to those duties expressly undertaken pursuant to this Agreement.
- (c) Notwithstanding the foregoing, BNY Mellon has no obligation:
  - (i) With respect to any Assets until they are actually received and accepted by BNY Mellon in the Fund;
  - (ii) To inquire into, make recommendations, supervise or determine the suitability of any transactions affecting the Fund; or
  - (iii) To determine the adequacy of title to, or the validity or genuineness of, any Assets received by it or delivered by it pursuant to this Agreement.
- (d) Cash held hereunder may be subject to additional deposit terms and conditions issued by BNY Mellon or the applicable Subcustodian from time to time, including rates of interest and deposit account access.
- (e) If Customer engages in securities lending activities, such activities will be subject to certain additional and/or modified terms to be set forth in a separate written agreement between Customer and BNY Mellon or a BNY Mellon Affiliate.

### **2.2 Contributions; Investment of the Fund**

- (a) BNY Mellon will accept contributions that are paid to it by Customer in accordance with this Agreement. Such contributions will be in Cash or in such other form as may be acceptable to BNY Mellon. BNY Mellon will have no duty to determine or collect contributions under the Plan. Customer represents that a Named Fiduciary (and not BNY Mellon) has the sole duty and responsibility for the determination of the accuracy or sufficiency of the contributions to be made under the Plan, the timely transmittal of the same to BNY Mellon and compliance with any statute, regulation or rule applicable to contributions.
- (b) BNY Mellon will return contributions made pursuant to subsection (a) above, if the following conditions are satisfied:
  - (i) Contributions made by Customer based upon mistake of fact may be returned to Customer within one year of such contribution.

- (ii) The amount which may be returned is the excess of the amount contributed over the amount that would have been contributed had there not been a mistake. Earnings attributable to excess contributions may not be returned but losses attributable thereto must reduce the amount to be so returned. Any return of contribution or distribution of assets made by BNY Mellon will be made only upon Instructions of Customer, which has exclusive responsibility for determining whether the conditions of such return or distribution have been satisfied and for the amount to be returned or distributed.
- (c) BNY Mellon may commingle the assets attributable to more than one Plan, and may commingle the Fund with funds of other trusts of similar nature created by Customer for the exclusive benefit of its employees. Where commingling is effected with other trusts maintained by Customer, the combined trust, to the extent that assets are attributable to contributions made under this Agreement, will be the Fund referred to herein. BNY Mellon will maintain such records as are necessary in order to maintain a separation of the Fund from the funds of the other trusts maintained by Customer and, if and to the extent directed by Customer, to separate the assets attributable to each Plan. Customer will be responsible for causing sufficient records to be maintained to ensure that benefits and liabilities payable with respect to each Plan will be paid from the assets allocable to each such Plan.
- (d) Customer has the authority and responsibility to manage the assets of the Fund. In carrying out this responsibility, Customer may appoint (and remove) one or more Investment Managers, which may include BNY Mellon or a BNY Mellon Affiliate, if and to the extent set forth in a separate agreement executed by BNY Mellon or such Affiliate. BNY Mellon will not be responsible under this Agreement, directly or indirectly, for the investment or reinvestment of the assets of the Fund. If Customer appoints an Investment Manager, BNY Mellon will place in a separate subaccount those assets over which the Investment Manager has discretion and control.

### **2.3 Procedures for Segregation of Assets**

Customer may, if it so determines, at any time designate any group or groups of the eligible employees or other beneficiaries covered by the Plan as a separate class and may direct BNY Mellon to segregate in a separate fund, to be held for the benefit of such class, the part of the Fund allocable to such class as determined by Customer, or some lesser amount than such allocable part if Customer will determine that other equitable provision is made for the difference. Customer will cause BNY Mellon to effect such segregation by providing Instructions to BNY Mellon of Customer's determination, together with evidence of appropriate action by the governing body directing such segregation. BNY Mellon may rely conclusively and without investigation upon any such notification of the determination and evidence of appropriate action by the governing body and will segregate such assets as Customer may direct. BNY Mellon's valuation of such assets for that purpose will be conclusive. BNY Mellon will hold all of the assets so segregated under this provision, together with such payments as will thereafter be made to the Fund on behalf of such class, and the income therefrom, as a subpart of the Fund and subject to the terms of this Agreement, or will dispose of the same as directed by Customer. In the event that the



Fund or any subpart thereof created by this Agreement is terminated as to such class, Customer will direct the disposition of the assets held by BNY Mellon for such class through transfer to a successor trustee or other means, as Customer determines, and thereafter such employees and other beneficiaries will not have any rights in the Fund, or against BNY Mellon.

### **3. AUTHORIZED PERSONS AND INSTRUCTIONS; ELECTRONIC ACCESS**

#### **3.1 Authorized Persons**

Promptly following the Effective Date, Customer and/or its designee (including any of Customer's Investment Managers) will furnish BNY Mellon with one or more written lists or other documentation acceptable to BNY Mellon specifying the names and titles of, or otherwise identifying, all Persons authorized to act on behalf of Customer with respect to this Agreement (each, an "**Authorized Person**"). Customer will be responsible for keeping such lists and/or other documentation current, and will update such lists and/or other documentation, as necessary from time to time, pursuant to Instructions.

#### **3.2 Instructions**

- (a) Except as otherwise expressly provided in this Agreement, BNY Mellon will have no obligation to take any action hereunder unless and until it receives Instructions issued in accordance with this Agreement.
- (b) Customer will be responsible for ensuring that (i) only Authorized Persons issue Instructions to BNY Mellon and (ii) all Authorized Persons safeguard and treat with extreme care any user and authorization codes, passwords and authentication keys used in connection with the issuance of Instructions.
- (c) Where Customer may or is required to issue Instructions, such Instructions will be issued by an Authorized Person. The Authorized Person (and not BNY Mellon) will be responsible for determining that Instructions are in accordance with the terms of the Plan and applicable law.
- (d) BNY Mellon will be entitled to deal with any Authorized Person until notified otherwise pursuant to Instructions, and will be entitled to act and rely upon any Instruction received by BNY Mellon.
- (e) All Instructions must include all information necessary, and must be delivered using such methods and in such format as BNY Mellon may require and be received within BNY Mellon's established cut-off times and otherwise in sufficient time, to enable BNY Mellon to act upon such Instructions.
- (f) BNY Mellon may in its sole discretion decline to act upon any Instructions that do not comply with requirements set forth in Section 3.2(e) or that conflict with applicable law or regulations or BNY Mellon's operating policies and practices, in which event BNY Mellon will promptly notify Customer.
- (g) Customer acknowledges that while it is not part of BNY Mellon's normal practices and procedures to accept Oral Instructions, BNY Mellon may in certain limited circumstances accept Oral Instructions. In such event, such Oral Instructions will

be deemed to be Instructions for purposes of this Agreement. An Authorized Person issuing such an Oral Instruction will promptly confirm such Oral Instruction to BNY Mellon in writing. Notwithstanding the foregoing, Customer agrees that the fact that such written confirmation is not received by BNY Mellon, or that such written confirmation contradicts the Oral Instruction, will in no way affect (i) BNY Mellon's reliance on such Oral Instruction or (ii) the validity or enforceability of transactions authorized by such Oral Instruction and effected by BNY Mellon.

- (h) Customer acknowledges and agrees that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to BNY Mellon and that there may be more secure methods of transmitting Instructions than the method selected by the sender. Customer agrees that the security procedures, if any, to be followed by Customer and BNY Mellon with respect to the transmission and authentication of Instructions provide to Customer a commercially reasonable degree of protection in light of the Fund's particular needs and circumstances.

### **3.3 BNY Mellon Actions Without Instructions**

Notwithstanding anything to the contrary set forth in this Agreement, Customer hereby authorizes BNY Mellon, without Instructions, to take any administrative or ministerial actions with respect to the Fund that it deems reasonably necessary or appropriate to perform its obligations under this Agreement, including the following:

- (a) Receive income and other payments due to the Fund; provided, however, that BNY Mellon will have no duty to pursue collection of any amount due to the Fund, including for Securities in default, if such amount is not paid when due;
- (b) Carry out any exchanges of Securities or other corporate actions not requiring discretionary decisions;
- (c) Facilitate access by Customer or its designee to ballots or online systems to assist it in the voting of proxies received by BNY Mellon (in its capacity as custodian) for eligible positions of Securities held in the Fund (excluding bankruptcy matters), all of which will be exercised by Customer or its designee and not by BNY Mellon;
- (d) Forward to Customer or its designee information (or summaries of information) that BNY Mellon receives (in its capacity as custodian) from Depositories or Subcustodians concerning Securities in the Fund (excluding bankruptcy matters);
- (e) Forward to Customer or its designee an initial notice of bankruptcy cases relating to Securities held in the Fund and a notice of any required action related to such bankruptcy cases as may be received by BNY Mellon (in its capacity as custodian). BNY Mellon will take no further action nor provide further notification related to the bankruptcy case;
- (f) Unless otherwise elected by Customer, and in accordance with BNY Mellon's standard terms and conditions, provide class action filing services for settled claims related to Securities with industry recognized identifiers;

- (g) Endorse for collection checks, drafts or other negotiable instruments received on behalf of the Fund;
- (h) Deposit Cash in accounts bearing interest at a reasonable rate in the banking department of BNY Mellon or an affiliated banking organization; and
- (i) Execute and deliver, solely in its capacity as custodian, certificates, documents or instruments incidental to BNY Mellon's performance under this Agreement.

### **3.4 Funds Transfers**

With respect to each Instruction for a Cash transfer, when the Instruction is to credit or pay a party by both a name and a unique numeric or alpha-numeric identifier (e.g., IBAN or ABA or account number), BNY Mellon and any other bank participating in the Cash transfer will be entitled to rely solely on such numeric or alpha-numeric identifier, even if it identifies a party different from the party named. Such reliance on an identifier will apply to beneficiaries named in the Instruction, as well as any financial institution that is designated in the Instruction to act as an intermediary in such Cash transfer. To the extent permitted by applicable law, the parties will be bound by the rules of any transfer system used to effect a Cash transfer under this Agreement.

### **3.5 Electronic Access**

If Customer elects to use the Electronic Access Services in connection with this Agreement, the use thereof will be subject to any terms and conditions contained in a separate written agreement between the Parties or their Affiliates. If an Authorized Person elects, with BNY Mellon's prior consent, to transmit Instructions through a third-party electronic communications service, BNY Mellon will not be responsible or liable for the reliability or availability of any such service.

## **4. SUBCUSTODIANS, DEPOSITORIES AND AGENTS**

### **4.1 Use of Subcustodians and Depositories**

- (a) BNY Mellon will be entitled to utilize Subcustodians and Depositories in connection with its performance hereunder.
- (b) BNY Mellon will only utilize Subcustodians that have entered into an agreement with BNY Mellon or a BNY Mellon Affiliate, and Assets held through a Subcustodian will be held subject to the terms and conditions of such Subcustodian's respective agreement.
- (c) Assets deposited in a Depository will be held subject to the rules, procedures, terms and conditions of such Depository. Subcustodians may hold Assets in Depositories in which such Subcustodians participate.
- (d) Unless otherwise required by local law or practice or a particular Subcustodian agreement, Assets deposited with Subcustodians or Depositories may be held in a commingled account in the name of, as applicable, BNY Mellon, a BNY Mellon Affiliate or the applicable Subcustodian, for its clients.

## 4.2 Liability for Subcustodians

- (a) BNY Mellon will exercise the Standard of Care described in clause (a) of the first sentence of Section 14.1 in selecting, retaining and monitoring Subcustodians.
- (b) With respect to Assets held by a Subcustodian, BNY Mellon will be liable to Customer for the activities of such Subcustodian under this Agreement to the extent that BNY Mellon would have been liable to Customer under this Agreement if BNY Mellon had performed such activities itself in the relevant market in which such Subcustodian is located; provided, however, that with respect to Securities held by a Subcustodian that is not a BNY Mellon Affiliate:
  - (i) BNY Mellon's liability will be limited solely to the extent resulting directly from BNY Mellon's failure to exercise the Standard of Care described in clause (a) of the first sentence in Section 14.1 in selecting, retaining and monitoring such Subcustodian; and
  - (ii) To the extent that BNY Mellon is not liable pursuant to Section 4.2(b)(i), BNY Mellon's sole responsibility to Customer will be to: (A) take reasonable and appropriate action to recover from such Subcustodian, and (B) forward to the Trust any amounts so recovered (exclusive of costs and expenses incurred by BNY Mellon in connection therewith).

## 4.3 Liability for Depositories

BNY Mellon will have no responsibility or liability for the activities of any Depository arising out of or relating to this Agreement or any cost or burden imposed on the transfer or holding of Assets held with such Depository.

## 4.4 Use of Agents

BNY Mellon may appoint agents, including BNY Mellon Affiliates, on such terms and conditions as it deems appropriate to perform its obligations hereunder. Except as otherwise specifically provided herein, no such appointment will discharge BNY Mellon from its obligations hereunder.

## 5. CORPORATE ACTIONS

### 5.1 Notification

BNY Mellon will notify Customer or its designee of rights or discretionary corporate actions as promptly as practicable under the circumstances, provided that BNY Mellon has actually received, in its capacity as custodian, notice of such right or discretionary corporate action from the relevant issuer, or from a Subcustodian, Depository or third party vendor. Without actual receipt of such notice by BNY Mellon, BNY Mellon will have no responsibility or liability for failing to so notify Customer.

### 5.2 Exercise of Rights

Whenever there are voluntary rights that may be exercised or alternate courses of action that may be taken with respect to Securities in the Fund, Customer or its designee will be

responsible for making any decisions relating thereto and for instructing BNY Mellon to act. In order for BNY Mellon to act, Customer must issue Instructions either: (a) using the BNY Mellon-generated form provided along with BNY Mellon's notice under Section 5.1 or (b) if Customer is not using such BNY Mellon-generated form, clearly indicating, by reference to the options provided on such BNY Mellon-generated form, which action Customer is electing. Each such Instruction will be addressed as BNY Mellon may from time to time request and issued by such time as BNY Mellon will advise Customer or its designee.

### **5.3 Partial Redemptions, Payments, Etc.**

BNY Mellon will advise Customer or its designee upon its notification, in its capacity as custodian, of a partial redemption, partial payment or other action with respect to a Security affecting fewer than all such Securities held within the Fund. If BNY Mellon or any Subcustodian or Depository holds any Securities affected by one of the events described, BNY Mellon or such Subcustodian or Depository may select the Securities to participate in such partial redemption, partial payment or other action in any non-discriminatory manner that it customarily uses to make such selection.

## **6. SETTLEMENT**

### **6.1 Settlement Instructions**

Promptly after the execution of each Securities transaction, Customer will issue to BNY Mellon Instructions to settle such transaction. Unless otherwise agreed by BNY Mellon and subject to Section 8.1, Assets will be credited to the Fund only when actually received by BNY Mellon.

### **6.2 Settlement Funds**

For the purpose of settling a Securities transaction, Customer will provide BNY Mellon with sufficient immediately available funds or Securities, as applicable, by such time and date as is required to enable BNY Mellon to settle such transaction in the country of settlement and in the currency to be used to settle such transaction.

### **6.3 Settlement Practices**

Securities transactions will be settled using practices customary in the jurisdiction or market where the transaction occurs, which may include the delivery of Securities or Cash to a counterparty or its agents against, as applicable, the receipt of Securities or Cash in the future. Customer assumes, on behalf of the Trust, full responsibility for all risks involved in connection with BNY Mellon's delivery of Securities or Cash in accordance with such practices.

## **7. TAX MATTERS**

### **7.1 Tax Obligations**

To the extent that BNY Mellon has received relevant and necessary information with respect to the Fund, BNY Mellon will perform the following services with respect to Tax Obligations:

- (a) BNY Mellon (or the applicable Subcustodian) will apply, withhold and report appropriate amounts as BNY Mellon (in its capacity as custodian) or the applicable Subcustodian (in its capacity as Subcustodian) is required to do under the relevant source country tax laws, and is authorized to debit the Fund in the amount of a Tax Obligation withheld and to pay such amount to the appropriate taxing authority.
- (b) BNY Mellon will, where appropriate and upon receipt of sufficient information, pursue claims for tax relief where (i) either a tax treaty or a source country's domestic tax laws provide for favorable tax treatment with respect to an Asset as a result of the Trust's status as a specific type of investor and/or residency status and (ii) the source country's tax authorities have outlined the requirements and qualification criteria required to obtain such relief.
- (c) BNY Mellon will forward to Customer or its designee information regarding Tax Obligations applicable to Customer that BNY Mellon receives in its capacity as custodian from third parties and that BNY Mellon reasonably believes would be useful to Customer or its designee in the submission of any reports or returns with respect to Tax Obligations.
- (d) BNY Mellon offers certain tax services pursuant to a separate tax service and fee agreement. Except to the extent Customer enters into a separate tax service and fee agreement with BNY Mellon specifying tax services related to the following matters to be performed by BNY Mellon, Customer assumes all responsibility for, and will perform all matters related to (i) the completion and filing of all required U.S. Federal income tax returns for the Trust and/or the required U.S. Federal informational returns for tax exempt trusts and (ii) all state tax compliance obligations with respect to the Trust, in each case including those Tax Obligations that may be imposed on BNY Mellon under any law.
- (e) BNY Mellon will only be responsible for performing, and will only perform, the obligations of BNY Mellon that are expressly set forth in this Section 7.1 and such other tax services (which may include non-income tax related services) that are expressly agreed upon by BNY Mellon and Customer pursuant to a separate tax service and fee agreement, if any.
- (f) BNY Mellon may consult with and rely upon Customer in matters pertaining to Tax Obligations. Customer will provide and/or will cause its Authorized Persons to provide information necessary for BNY Mellon to fulfill any obligations it may have hereunder or under any separate tax services agreement with respect to Tax Obligations in a timely manner.

## **7.2 Responsibility for Taxes**

Customer will be responsible and liable for all Tax Obligations with respect to any Assets held on behalf of Customer and any transaction related thereto. Customer acknowledges and agrees that BNY Mellon and its Affiliates are not tax advisers and will not under any circumstances provide tax advice to Customer. Customer will obtain its own independent tax advice for any tax-related matters.

### **7.3 Payments**

Where BNY Mellon receives Instructions to make distributions or transfers out of the Fund in order to pay Customer's third party service providers, Customer acknowledges that in making such payments BNY Mellon is acting in an administrative or ministerial capacity, and not as the payor, for tax information reporting and withholding purposes.

## **8. CREDITS AND ADVANCES**

### **8.1 Contractual Settlement and Income**

BNY Mellon may, in its sole discretion, as a matter of bookkeeping convenience, credit the Fund with the proceeds resulting from the purchase, sale, redemption or other delivery or receipt of Securities, or interest, dividends or other distributions payable on Securities, or any foreign exchange transaction effected in connection with this Agreement, prior to its actual receipt thereof. All such credits will be conditional until BNY Mellon's actual receipt of such proceeds and may be reversed by BNY Mellon to the extent that such proceeds are not received. Actual receipt of proceeds with respect to a transaction will not be deemed to have occurred, and the transaction will not be considered final, until BNY Mellon has received sufficient immediately available funds or Securities specifically applicable to such transaction that, under applicable local law, rule or practice, are irreversible and not subject to any security interest, levy or other encumbrance.

### **8.2 Advances**

If BNY Mellon receives an Instruction that, if processed, would result in an overdraft in the Fund, BNY Mellon may, in its sole discretion, advance funds in any currency hereunder.

### **8.3 Repayment**

If: (a) BNY Mellon has advanced funds to the Fund; (b) an overdraft has occurred in the Fund (including overdrafts incurred in connection with the settlement of securities transactions, funds transfers or foreign exchange transactions) or (c) the Trust is for any other reason indebted to BNY Mellon, Customer on behalf of the Trust agrees to repay BNY Mellon (on demand or upon becoming aware thereof) the amount of such advance, overdraft or indebtedness, plus accrued interest at a rate then charged by BNY Mellon to its institutional custody clients in the relevant currency.

### **8.4 Securing Repayment**

In order to secure repayment of the Trust's obligations and liabilities (whether or not matured) to BNY Mellon or any BNY Mellon Affiliate, arising under or related to this Agreement, and without limiting BNY Mellon's or such BNY Mellon Affiliate's rights under applicable law or any other agreement, Customer on behalf of the Trust hereby pledges and grants to BNY Mellon and such BNY Mellon Affiliate, and agrees BNY Mellon and such BNY Mellon Affiliate will have to the maximum extent permitted by law, a continuing first lien and security interest in all of the Plan's and the Trust's right, title and interest in and to the Fund and the Assets now or hereafter held in the Fund (including proceeds thereof); provided that Customer does not hereby grant a security interest in any Securities issued by an affiliate (as defined in Section 23A of the U.S. Federal Reserve Act) of BNY



Mellon. Customer represents, warrants and covenants that the Trust owns the Assets in the Fund free and clear of all liens, claims and security interests (except as otherwise acknowledged in writing by BNY Mellon), and that the first lien and security interest granted herein will be subject to no setoffs, counterclaims or other liens prior to or on a parity with it in favor of any third party (other than specific liens granted preferred status by statute). Customer will take any additional steps required to assure BNY Mellon of such priority security interest, including notifying third parties or obtaining their consent. BNY Mellon will be entitled to collect from the Fund sufficient Cash for reimbursement, and if such Cash is insufficient, to sell Securities to the extent necessary to obtain reimbursement. In this regard, BNY Mellon will be entitled to all the rights and remedies of a pledgee, secured creditor and/or securities intermediary under applicable laws, rules and regulations as then in effect as if the Trust is in default.

## **9. STATEMENTS; BOOKS AND RECORDS; THIRD PARTY DATA**

### **9.1 Statements**

BNY Mellon will make available to Customer, through the Electronic Access Services or such other method as may be agreed upon by the Parties, a monthly statement reflecting all transfers to or from the Fund during such month and all holdings in the Fund as of the last business day of such month. Customer will promptly review each such statement and, within ninety (90) days of when such statement is made available by BNY Mellon, notify BNY Mellon of any exception or objection thereto. Notwithstanding the foregoing, Customer may notify BNY Mellon of any such exceptions or objections at any time; provided, however, that BNY Mellon will not be responsible or liable for any losses reasonably evident from review of such statement that could have been mitigated had such notice been provided during such ninety (90) day period.

### **9.2 Books and Records**

BNY Mellon will identify on its books and records the Assets belonging to the Fund, whether held directly or indirectly through Subcustodians or Depositories. Securities held in the Fund will be held in registered form in the name of BNY Mellon or one of its nominees and will be segregated on BNY Mellon's books and records from BNY Mellon's own property. Customer and its authorized representatives will have the right, at Customer's own expense and with reasonable prior written notice to BNY Mellon, to have reasonable access to those books and records directly pertaining to the Fund. Any such access will occur during BNY Mellon's normal business hours and will be subject to BNY Mellon's applicable security policies and procedures.

### **9.3 Third Party Data**

- (a) Customer acknowledges that BNY Mellon will be receiving, utilizing and relying on Market Data and other data provided by Customer and/or by third parties in connection with its performance of the services hereunder (collectively, "**Third Party Data**"). BNY Mellon is entitled to rely without inquiry on all Third Party Data provided to BNY Mellon hereunder (and all Instructions related to Third Party Data), and BNY Mellon makes no assurances or warranties in relation to the accuracy or completeness of Third Party Data and will not be responsible or liable for any losses or damages incurred as a result of any Third Party Data that is



inaccurate or incomplete. BNY Mellon may follow Instructions with respect to Third Party Data, even if such Instructions direct BNY Mellon to override its usual procedures and data sources or if BNY Mellon, in performing services for itself or others (including services similar to those performed for Customer), receives different Third Party Data for the same or similar Securities.

- (b) To the extent that BNY Mellon provides values of, and pricing information in relation to, Securities, Customer acknowledges and agrees that:
  - (i) BNY Mellon is authorized to use generally recognized pricing services including Market Data Providers, brokers, dealers and other market makers. In the event that such pricing services are unable to provide a value of or pricing information in respect of Securities and BNY Mellon provides values and pricing information, BNY Mellon will so advise Customer, but will have no other responsibility or liability in respect of such valuation or pricing information;
  - (ii) Certain pricing or valuation information may be based on calculated amounts rather than actual market transactions and may not reflect actual market values, and the variance between such calculated amounts and actual market values may be material;
  - (iii) Certain third party service providers may not permit Customer's directed price to be used, which may result in differences between third party service provider reports and custodial reports;
  - (iv) Performance measurement and analytic services may use different data sources than those used by BNY Mellon to provide Market Data for the Fund, which may result in differences between custodial reports and performance measurement and analytic reports; and
  - (v) BNY Mellon may require Customer to execute supplemental documentation prior to providing pricing for certain Securities.
- (c) Certain Market Data may be the intellectual property of Market Data Providers, which impose additional terms and conditions upon Customer's use of such Market Data. Such additional terms and conditions can be found on the Data Terms Website. Customer agrees to those terms and conditions as they are posted on the Data Terms Website from time to time.

## 10. DISCLOSURES

### 10.1 Required Disclosure

- (a) With respect to Securities that are registered under the U.S. Securities Exchange Act of 1934, as amended, or that are issued by an issuer registered under the U.S. Investment Company Act of 1940, as amended, the U.S. Shareholder Communications Act of 1985 (the "**Act**") requires BNY Mellon to disclose to issuers of such Securities, upon their request, the name, address and securities position of BNY Mellon's clients who are "beneficial owners" (as defined in the Act) of the

issuer's Securities, unless the beneficial owner objects to such disclosure. The Act defines a "beneficial owner" as any person who has or shares the power to vote a security (pursuant to an agreement or otherwise) or who directs the voting of a security. Customer has designated on the signature page hereof whether (i) as beneficial owner, it objects to the disclosure of its name, address and securities position to any U.S. issuer that requests such information pursuant to the Act for the specific purpose of direct communications between such issuer and Customer or (ii) it requires BNY Mellon to contact the Investment Manager with respect to relevant Securities to make the decision as to whether it objects to the disclosure of the beneficial owner's name, address and securities position to any U.S. issuer that requests such information pursuant to the Act.

- (b) With respect to certain Securities issued outside the United States, BNY Mellon may disclose information to issuers of Securities as required by the organizational documents of the relevant issuer or in accordance with local market practice.
- (c) In connection with any disclosure contemplated by this Section 10.1, Customer agrees to supply BNY Mellon with any required information.

## **10.2 Foreign Exchange Transactions**

In connection with this Agreement, Customer may enter into foreign exchange transactions (including foreign exchange hedging transactions) with BNY Mellon or a BNY Mellon Affiliate acting as a principal or otherwise through customary channels. Customer may issue standing Instructions with respect to any such foreign exchange transactions, subject to any rules or limitations that may apply to any foreign exchange facility made available to the Fund. With respect to any such foreign exchange transactions, BNY Mellon or such BNY Mellon Affiliate is acting as a principal counterparty on its own behalf and is not acting as a fiduciary or agent for, or on behalf of, Customer, its Investment Manager or the Trust. Any such foreign exchange transactions will be governed by the relevant master netting agreement (e.g., an ISDA Master Agreement) in place between Customer and BNY Mellon or such BNY Mellon Affiliate, and such transactions will be secured by the Fund and the Assets therein pursuant to Section 8.4. In the event there is no such master netting agreement in place and Customer fails to settle or otherwise meet its obligations in respect of such foreign exchange transactions, BNY Mellon has the right to net all such outstanding foreign exchange transactions between the Trust and BNY Mellon or such BNY Mellon Affiliate for the purpose of ascertaining a single net obligation between the Trust and BNY Mellon, and to the extent such obligation is owed by the Trust to BNY Mellon or a BNY Mellon Affiliate, such obligation will be secured by the Fund and the Assets therein pursuant to Section 8.4.

## **10.3 Investment of Cash**

In connection with this Agreement, Customer may issue standing Instructions to invest Cash in one or more sweep investment vehicles. Such investment vehicles may be offered by a BNY Mellon Affiliate or by a client of BNY Mellon, and BNY Mellon may receive compensation therefrom. By making investment vehicles available, BNY Mellon and its Affiliates will not be deemed to have recommended, endorsed or guaranteed any such investment vehicle in any way or otherwise to have acted as a fiduciary or agent for, or on behalf of, Customer, any Named Fiduciary, any Investment Manager or the Fund.

BNY Mellon will have no liability for any loss incurred on any such investments. Customer understands that Cash may be uninvested if it is received or reconciled to an account in the Fund after the applicable deadline to be swept into the selected investment vehicle.

## **11. REGULATORY MATTERS**

### **11.1 USA PATRIOT Act**

Section 326 of the U.S. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (including its implementing regulations) requires BNY Mellon to implement a customer identification program pursuant to which BNY Mellon must obtain certain information from Customer in order to verify Customer's identity prior to establishing an account. Accordingly, prior to establishing the Fund, Customer will be required to provide BNY Mellon with certain information, including Customer's name, physical address, tax identification number and other pertinent identifying information, to enable BNY Mellon to verify Customer's identity. Customer acknowledges that BNY Mellon cannot establish an account unless and until BNY Mellon has successfully performed such verification.

### **11.2 Sanctions**

- (a) Throughout the term of this Agreement, Customer: (i) will have in place and will implement policies and procedures designed to prevent violations of Sanctions, including measures to accomplish effective and timely scanning of all relevant data with respect to incoming or outgoing Assets or transactions relating to this Agreement; (ii) will ensure that neither Customer nor any of its Affiliates, directors, officers or employees is an individual or entity that is, or is owned or controlled by an individual or entity that is: (A) the target of Sanctions or (B) located, organized or resident in a country or territory that is, or whose government is, the target of Sanctions and (iii) will not, directly or indirectly, use the Fund in any manner that would result in a violation by Customer or BNY Mellon of Sanctions.
- (b) Customer will promptly provide to BNY Mellon such information as BNY Mellon reasonably requests in connection with the matters referenced in this Section 11.2, including information regarding the Fund, the Assets and the source thereof, and the identity of any individual or entity having or claiming an interest therein. BNY Mellon may decline to act or provide services in respect of the Fund, and take such other actions as it, in its reasonable discretion, deems necessary or advisable, in connection with the matters referenced in this Section 11.2. If BNY Mellon declines to act or provide services as provided in the preceding sentence, except as otherwise prohibited by applicable law or official request, BNY Mellon will inform Customer as soon as reasonably practicable.

### **11.3 Express Authorization for ERISA Purposes**

Without limiting the generality of Section 3.2 (Instructions), which generally permits any actions by BNY Mellon hereunder pursuant to Instructions, BNY Mellon is expressly authorized to, in the administration of the Fund pursuant to Instructions, settle investments in any collective investment fund, including a collective investment fund maintained by BNY Mellon or a BNY Mellon Affiliate and to appoint agents and sub-trustees. To the

extent that any investment is made in any such collective investment fund, the terms of the collective trust indenture will solely govern the investment duties, responsibilities and powers of the trustee of such collective investment fund and such terms, responsibilities and powers will be incorporated herein by reference and will be a part of this Agreement. For purposes of valuation, the value of the interest maintained by the Fund in such collective investment fund will be the fair market value of the collective investment fund units held, determined in accordance with generally recognized valuation procedures. Customer understands and agrees that any such collective investment fund may provide for the lending of its securities by the collective investment fund trustee and that such collective investment fund trustee will receive compensation for the lending of securities that is separate from any compensation of BNY Mellon hereunder, or any compensation of the collective investment fund trustee for the management of such fund. BNY Mellon is authorized to invest in a collective fund which invests in The Bank of New York Mellon Corporation stock in accordance with the terms and conditions of the Department of Labor Prohibited Transaction Exemption 95-56 (the "**Exemption**") granted to Mellon Bank, N.A. and its affiliates and to use a cross-trading program in accordance with the Exemption. Customer acknowledges receipt of the notice entitled "Cross-Trading Information," a copy of which is attached as **Exhibit A**.

## **12. COMPENSATION**

### **12.1 Fees and Expenses**

In consideration of BNY Mellon's services provided hereunder, BNY Mellon will be (a) paid the fees set forth in the agreed upon fee schedule (as such fee schedule may be amended by BNY Mellon from time to time upon 45 days' prior written notice to Customer) and (b) reimbursed for any out-of-pocket and incidental expenses incurred by BNY Mellon in connection therewith. Unless otherwise agreed by the Parties, such amounts will be payable to BNY Mellon within 45 days of Customer's receipt of the relevant invoice. Without limiting BNY Mellon's other rights set forth in this Agreement, BNY Mellon may charge interest on overdue amounts at a rate then charged by BNY Mellon to its institutional trust clients in the relevant currency. BNY Mellon is authorized to charge and collect from the Fund its fees and expenses unless such fees and expenses are paid directly by Customer.

### **12.2 Other Compensation**

Customer acknowledges that, as part of BNY Mellon's compensation, BNY Mellon will earn interest on Cash balances held by BNY Mellon (including disbursement balances, balances arising from purchase and sale transactions and when Cash otherwise remains uninvested) as provided in BNY Mellon's compensation disclosures.

## **13. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **13.1 BNY Mellon**

BNY Mellon represents and warrants that: (a) it is duly organized, validly existing and in good standing in its jurisdiction of organization; (b) it has the requisite corporate power and authority to enter into and to carry out the transactions contemplated by this

Agreement and (c) the individual executing this Agreement on its behalf has the requisite authority to bind BNY Mellon to this Agreement.

### 13.2 Customer

- (a) Customer represents and warrants that: (i) it is duly organized, validly existing and in good standing in its jurisdiction of organization; (ii) it has the requisite corporate power and authority to enter into and to carry out the transactions contemplated by this Agreement and (iii) the individual executing this Agreement on its behalf has the requisite authority to bind Customer to this Agreement.
- (b) Customer represents and warrants that either: (i) it is the Named Fiduciary with authority to appoint a trustee under ERISA and the Plan or (ii) the Named Fiduciary with the authority to appoint a trustee under ERISA and the Plan is identified in the definition of Named Fiduciary and Customer is acting on behalf of and has authority to bind the Named Fiduciary to this Agreement.
- (c) Customer represents that it maintains and follows procedures to avoid any non-exempt “prohibited transaction” as defined in Section 406 of ERISA.

## 14. LIABILITY

### 14.1 Standard of Care

BNY Mellon will discharge its duties under this Agreement (a) with the standard of care and diligence that a professional custodian would observe in these affairs taking into account the prevailing rules, practices, procedures and circumstances in the relevant market and (b) to the extent applicable to BNY Mellon’s duties, with the care and skill required under ERISA (as applicable, the “**Standard of Care**”). **Exhibit B** to this Agreement sets forth BNY Mellon’s statement of fiduciary status.

### 14.2 Limitation of Liability

- (a) BNY Mellon’s liability arising out of or relating to this Agreement will be limited solely to those direct damages that are caused by BNY Mellon’s failure to perform its obligations under this Agreement in accordance with the Standard of Care. In no event will BNY Mellon be liable for any indirect, incidental, consequential, exemplary, punitive or special losses or damages, or for any loss of revenues, profits or business opportunity, arising out of or relating to this Agreement (whether or not foreseeable and even if BNY Mellon has been advised of the possibility of such losses or damages).
- (b) BNY Mellon is not a party to, and has no duties or responsibilities under, the Plan other than those that may be expressly contained in this Agreement. Customer acknowledges that the Plan does not impose any duties on BNY Mellon other than those contained in this Agreement.
- (c) The duties of BNY Mellon are limited to the Fund, and BNY Mellon has no duties with respect to assets held by any other Person including any other trustee for the Plan. Customer agrees that BNY Mellon will not serve as, and will not be deemed

to be, a co-trustee under any circumstances, including any circumstances under which BNY Mellon continues to hold Assets under Section 16.5.

- (d) Notwithstanding anything to the contrary set forth in this Agreement, in no event will BNY Mellon be liable for any losses or damages arising out of any of the following:
- (i) Customer's or an Authorized Person's decision to invest in or hold Assets in any particular country, including any losses or damages arising out of or relating to: (A) the financial infrastructure of a country; (B) a country's prevailing custody and settlement practices; (C) nationalization, expropriation or other governmental actions; (D) a country's regulation of the banking or securities industry; (E) currency and exchange controls, restrictions, devaluations, redenominations, fluctuations or asset freezes; (F) laws, rules, regulations or orders that at any time prohibit or impose burdens or costs on the transfer of Assets to, by or for the Fund or (G) market conditions which affect the orderly execution of securities transactions or affect the value of securities;
  - (ii) BNY Mellon's reliance on Instructions;
  - (iii) BNY Mellon's receipt or acceptance of fraudulent, forged or invalid Securities (or Securities which are otherwise not freely transferable or deliverable without encumbrance in any relevant market);
  - (iv) For any matter with respect to which BNY Mellon is required to act only upon the receipt of Instructions, (A) BNY Mellon's failure to act in the absence of such Instructions or (B) Instructions that are late or incomplete or do not otherwise satisfy the requirements of Section 3.2(e), whether or not BNY Mellon acted upon such Instructions;
  - (v) BNY Mellon receiving or transmitting any data to or from Customer or any Authorized Person via any non-secure method of transmission or communication selected by Customer;
  - (vi) Customer's or an Authorized Person's decision to invest in Securities or to hold Cash in any currency; or
  - (vii) The insolvency of any Person, including a Subcustodian that is not a BNY Mellon Affiliate, Depository, broker, bank or a counterparty to the settlement of a transaction or to a foreign exchange transaction, except as provided in Section 4.2.
- (e) If BNY Mellon is in doubt as to any action it should or should not take, either pursuant to, or in the absence of, Instructions, BNY Mellon may obtain the advice of either reputable counsel of its own choosing or counsel to Customer, and BNY Mellon will not be liable for acting in accordance with such advice.



### **14.3 Force Majeure**

BNY Mellon will not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement to the extent caused, directly or indirectly, by any event beyond its reasonable control, including acts of God, strikes or other labor disputes, work stoppages, acts of war, terrorism, general civil unrest, governmental or military actions, legal constraint or the interruption, loss or malfunction of utilities or communications or computer systems. BNY Mellon will promptly notify Customer upon the occurrence of any such event and will use commercially reasonable efforts to minimize its effect.

### **14.4 Indemnification**

Customer and, except to the extent prohibited by applicable law, the Trust will jointly and severally indemnify and hold harmless BNY Mellon from and against all losses, costs, expenses, damages and liabilities (including reasonable counsel fees and expenses) incurred by BNY Mellon, and will defend BNY Mellon against any third party claim, in each case arising out of or relating to BNY Mellon's performance under this Agreement, except to the extent resulting from BNY Mellon's failure to perform its obligations under this Agreement in accordance with the Standard of Care. The Parties agree that the foregoing will include reasonable counsel fees and expenses incurred by BNY Mellon in connection with its successful defense of claims asserted by Customer or relating to BNY Mellon's performance under this Agreement. BNY Mellon will indemnify and hold harmless Customer and the Trust from and against all losses, costs, expenses, damages and liabilities (including reasonable counsel fees and expenses) incurred by Customer and/or the Trust, and will defend them against any third party claim, in each case arising out of BNY Mellon's failure to perform its obligations under this Agreement in accordance with the Standard of Care.

## **15. CONFIDENTIALITY**

### **15.1 Confidentiality Obligations**

Each Party agrees to use the Confidential Information of the other Party solely to accomplish the purposes of this Agreement and, except in connection with such purposes or as otherwise permitted herein, not to disclose such information to any other Person without the prior written consent of the other Party. Notwithstanding the foregoing, BNY Mellon may: (a) use Customer's Confidential Information in connection with certain functions performed on a centralized basis by BNY Mellon, its Affiliates and joint ventures and their service providers (including audit, accounting, risk, legal, compliance, sales, administration, product communication, relationship management, compilation and analysis of customer-related data and storage); (b) disclose such information to its Affiliates and joint ventures and to its and their service providers who are subject to confidentiality obligations and (c) store the names and business contact information of Customer's employees and representatives relating to this Agreement on the systems or in the records of its Affiliates and joint ventures and its and their service providers. In addition, BNY Mellon may aggregate information regarding Customer and the Fund on an anonymized basis with other similar client data for BNY Mellon's and its Affiliates' reporting, research, product development and distribution, and marketing purposes.

## **15.2 Exceptions**

The Parties' respective obligations under Section 15.1 will not apply to any such information: (a) that is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than the receiving Party; (b) that was known to the receiving Party as of the time of its disclosure and was not otherwise subject to confidentiality obligations; (c) that is independently developed by the receiving Party without reference to such information; (d) that is subsequently learned from a third party not known to be under a confidentiality obligation to the disclosing Party or (e) that is required to be disclosed pursuant to applicable law, rule, regulation, requirement of any law enforcement agency, court order or other legal process or at the request of a regulatory authority including, but not limited to, the PUC or FERC.

## **16. TERM AND TERMINATION**

### **16.1 Term**

The term of this Agreement will commence on the Effective Date and will continue in effect until terminated in accordance with the provisions herein.

### **16.2 Removal or Resignation**

BNY Mellon may be removed with respect to all or part of the Fund upon receipt of 60 days' written notice (unless a shorter or longer period is agreed upon) from Customer. BNY Mellon may resign as trustee hereunder upon 120 days' written notice (unless a shorter or longer period is agreed upon) delivered to Customer.

### **16.3 Effect of Removal or Resignation**

In the event of such removal or resignation, a successor trustee will be appointed and BNY Mellon will transfer the Fund, less such amounts as may be reasonable and necessary to cover its compensation and expenses, to the successor trustee. In the event Customer fails to appoint a successor trustee within 120 days of receipt of written notice of resignation or removal, BNY Mellon reserves the right to seek the appointment of a successor trustee from a court of competent jurisdiction. This Agreement will terminate after a successor trustee has accepted its duties and BNY Mellon has transferred all Assets then held by BNY Mellon to the successor trustee. BNY Mellon will have no duties, responsibilities or liability with respect to the acts or omissions of any successor trustee.

### **16.4 Plan Termination**

Subject to Section 2 of the Welfare Schedule, if BNY Mellon receives written notice from Customer of the termination of the Plan, BNY Mellon will distribute all assets, less any fees and expenses payable from the Plan's allocable portion of the Fund, pursuant to Instructions and upon receipt of appropriate documentation. BNY Mellon is entitled to assume that such distributions are in full compliance with, and not in violation of, the terms of the Plan or any applicable law.



## 16.5 Assets Not Transferred

BNY Mellon reserves the right to retain any Assets that are not suitable for distribution or transfer at the time of the termination of the Plan or this Agreement and will hold such Assets for the benefit of those Persons entitled to such Assets until such time as BNY Mellon is able to make distribution. Upon the appointment and acceptance of a successor trustee with respect to the Assets, BNY Mellon's sole duties will be those of a custodian with respect to the Assets not transferred.

## 16.6 Survival

Any and all provisions of this Agreement which by their nature or effect are required or intended to be observed, kept or performed after the expiration or termination of this Agreement will survive the expiration or any termination of this Agreement and remain binding upon and for the Parties' benefit, including Section 13 (Representations, Warranties and Covenants); Section 14 (Liability); Section 15 (Confidentiality); Sections 16.2 through 16.6 (Removal or Resignation; Effect of Removal or Resignation; Plan Termination; Assets Not Transferred; Survival); and Section 17.5 (Governing Law/Forum).

## 17. GENERAL

### 17.1 Line Item and Non-Fund Assets

- (a) BNY Mellon may reflect on its books and records certain bookkeeping entries for Assets including, but not limited to, book-entry Securities and limited partnership interests that are selected and monitored by an Authorized Person. BNY Mellon will rely without independent verification on information provided by Customer or its designee regarding such Assets, including but not limited to positions and market valuations.
- (b) At Customer's request pursuant to Instructions, subject to BNY Mellon's approval and as an accommodation to Customer, BNY Mellon will provide consolidated recordkeeping services reflecting on statements provided to Customer securities and other assets not held by BNY Mellon ("**Non-Fund Assets**"). Non-Fund Assets will be designated on BNY Mellon's books as "assets not held in custody" or by other similar designation and will not constitute part of the Fund for purposes of this Agreement. Customer acknowledges and agrees that, notwithstanding anything contained elsewhere in this Agreement, (a) Customer will have no security entitlement against BNY Mellon with respect to Non-Fund Assets; (b) BNY Mellon will rely, without independent verification, on information provided by Customer or its designee regarding Non-Fund Assets (including positions and market valuations) and (c) BNY Mellon will have no responsibility whatsoever with respect to Non-Fund Assets or the accuracy of any information maintained on BNY Mellon's books or set forth on account statements concerning Non-Fund Assets. To the extent assets of the Plan are held outside of the Fund pursuant to Instructions, Customer will cause such assets to be held in accordance with the trust, bonding and other requirements of ERISA.

## **17.2 Assignment/U.S. Special Resolution Regime Transferability**

- (a) Neither Party may, without the other Party's prior written consent, assign any of its rights or delegate any of its duties under this Agreement (whether by change of control, operation of law or otherwise); provided, however that BNY Mellon may, without the prior written consent of Customer, assign this Agreement or any of its rights, or delegate any of its duties hereunder: (a) to any BNY Mellon Affiliate; (b) to any successor to the business of BNY Mellon to which this Agreement relates, in which event BNY Mellon agrees to provide notice of such successor to Customer or (c) as otherwise permitted in this Agreement. Any purported assignment or delegation by a Party in violation of this provision will be voidable at the option of the other Party. This Agreement will be binding upon, and inure to the benefit of, the Parties and their respective permitted successors and assigns.
- (b) Notwithstanding anything herein to the contrary, in the event BNY Mellon becomes subject to a proceeding under a U.S. special resolution regime, the transfer of the Agreement (and any interest and obligation in or under, and any property securing, the Agreement) from BNY Mellon will be effective to the same extent as the transfer would be effective under the U.S. special resolution regime if the Agreement (and any interest and obligation in or under, and any property securing, the Agreement) were governed by the laws of the United States or a state of the United States; and, in the event BNY Mellon or any affiliate becomes subject to a proceeding under a U.S. special resolution regime, default rights with respect to the Agreement that may be exercised against BNY Mellon are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regime if the Agreement were governed by the laws of the United States or a state of the United States.

## **17.3 Exclusive Benefit**

The assets of the Trust allocable to the Plan will be held for the exclusive purposes of providing benefits to Plan participants and their beneficiaries and defraying the reasonable expenses of administering the Plan and the Trust. This Agreement will be interpreted in a manner consistent with that intent and with the intention of Customer that the Trust hereunder satisfies those provisions of the Code relating to voluntary employees' beneficiary associations. Except as may be provided by law, the Fund will not be subject to any form of attachment, garnishment, sequestration or other actions of collection afforded creditors of Customer or participants or beneficiaries under the Plan, and BNY Mellon will not recognize any assignment or alienation of benefits unless an Instruction is received.

## **17.4 Amendment**

This Agreement may be amended or modified only in a written agreement signed by an authorized representative of each Party. For purposes of the foregoing, email exchanges between the Parties will not be deemed to constitute a written agreement.

### **17.5 Governing Law/Forum**

- (a) To the extent not preempted by federal law, the substantive laws of the state of New York (without regard to its conflicts of law provisions) will govern all matters arising out of or relating to this Agreement, including the establishment and maintenance of the Fund and for purposes of the Uniform Commercial Code and all issues specified in Article 2(1) of the Hague Securities Convention.
- (b) Each Party irrevocably agrees that all legal actions or proceedings brought by it against the other Party arising out of or relating to this Agreement will be brought solely and exclusively before the state or federal courts situated in New York City, New York. Each Party irrevocably submits to personal jurisdiction in such courts and waives any objection which it may now or hereafter have based on improper venue or *forum non conveniens*. The Parties hereby unconditionally waive, to the fullest extent permitted by applicable law, any right to a jury trial with respect to any such actions or proceedings.

### **17.6 Sovereign Immunity**

To the extent that in any jurisdiction Customer may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, Customer irrevocably agrees not to claim, and it hereby waives, such immunity.

### **17.7 Notices**

Other than routine communications in the ordinary course of providing or receiving services hereunder (including Instructions), notices given hereunder will be: (a) addressed to BNY Mellon or Customer at the address set forth on the signature page (or such other address as either Party may designate in writing to the other Party) and (b) sent by hand delivery, by certified mail, return receipt requested, or by overnight delivery service, in each case with postage or charges prepaid. All notices given in accordance with this Section will be effective upon receipt.

### **17.8 Entire Agreement**

This Agreement constitutes the sole and entire agreement among the Parties with respect to the matters dealt with herein, and merges, integrates and supersedes all prior and contemporaneous discussions, agreements and understandings between the Parties, whether oral or written, with respect to such matters.

### **17.9 Necessary Parties**

BNY Mellon reserves the right to seek a judicial or administrative determination as to its proper course of action under this Agreement. Nothing contained herein will be construed or interpreted to deny BNY Mellon or Customer the right to have BNY Mellon's account judicially determined. To the extent permitted by law, only BNY Mellon and Customer will be necessary parties in any application to the courts for an interpretation of this Agreement or for an accounting by BNY Mellon, and no participant under the Plan 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.

**17.10 No Third Party Beneficiaries**

This Agreement is entered into solely between, and may be enforced only by, the Parties. Each Party intends that this Agreement will not, and no provision of this Agreement will be interpreted to, benefit, or create any right or cause of action in or on behalf of, any party or entity other than the Parties, their respective successors and assigns, and participants and their beneficiaries under the Plan.

**17.11 Counterparts/Facsimile**

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and said counterparts when taken together will constitute one and the same instrument and may be sufficiently evidenced by one set of counterparts. This Agreement may also be executed and delivered by facsimile or email with confirmation of delivery and/or receipt.

**17.12 Interpretation**

The terms and conditions of this Agreement are the result of negotiations between the Parties. The Parties intend that this Agreement will not be construed in favor of or against a Party by reason of the extent to which such Party or its professional advisors participated in the preparation or drafting of this Agreement.

**17.13 No Waiver**

No failure or delay by a Party to exercise any right, remedy or power it has under this Agreement will impair or be construed as a waiver of such right, remedy or power. A waiver by a Party of any provision or any breach of any provision will not be construed to be a waiver by such Party of such provision in any other instance or any succeeding breach of such provision or a breach of any other provision. All waivers will be in writing and signed by an authorized representative of the waiving Party.

**17.14 Headings**

All section and subsection headings in this Agreement are included for convenience of reference only and will not be considered in the interpretation of the scope or intent of any provision of this Agreement.

**17.15 Severability**

If a court of competent jurisdiction determines that any provision of this Agreement is illegal or invalid for any reason, such illegality or invalidity will not affect the validity of the remainder of this Agreement. In such case, the Parties will negotiate in good faith to replace each illegal or invalid provision with a valid, legal and enforceable provision that fulfills as closely as possible the original intent of the Parties.

[Signature page follows]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**THE BANK OF NEW YORK MELLON**

**PACIFICORP**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Address for Notice:**

**Address for Notice:**

The Bank of New York Mellon

PacifiCorp

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Attention: \_\_\_\_\_

Pursuant to Section 10.1(a):

- as beneficial owner, Customer OBJECTS to disclosure
- as beneficial owner, Customer DOES NOT OBJECT to disclosure
- BNY Mellon will CONTACT THE INVESTMENT MANAGER with respect to relevant Securities to make the decision whether it objects to disclosure

IF NO BOX IS CHECKED, BNY MELLON WILL RELEASE SUCH INFORMATION UNTIL IT RECEIVES A CONTRARY INSTRUCTION FROM CUSTOMER OR INVESTMENT MANAGER, AS APPLICABLE.

## WELFARE SCHEDULE

### ADDITIONAL PROVISIONS FOR WELFARE PLANS

The following additional terms and conditions supplement the Agreement and will in all respects be considered part of the Agreement.

#### 1. Plan Establishment

- (a) The form and nature of the Plan will be established exclusively by Customer; provided, however, that the Plan will provide for the payment of life, sickness, accident or other benefits to employees or their dependents or beneficiaries. The phrase "other benefits" will not, however, include any benefit which is not permitted pursuant to Section 501(c)(9) of the Code. Customer will self-insure such welfare benefits under the terms and conditions of the Plan.
- (b) Customer will be solely responsible for the Plan's compliance with the Code and ERISA, including the nondiscrimination requirements.
- (c) It is the intent of Customer that the Trust be in the form and be in operation at all times so as to comply with the requirements of Section 501(c)(9) of the Code, and applicable provisions of ERISA. Customer has taken such action and has filed such documents, or will in a timely manner take such action and file such documents, as are required under Section 505(c) of the Code to notify the Internal Revenue Service that the Trust is applying for recognition as an organization which is exempt from tax under Section 501(c)(9) of the Code. Customer will be responsible for taking such action and filing such documents with respect to the Plan as may be required by the Code or ERISA, and Customer agrees to notify BNY Mellon promptly of any notification or determination by the Internal Revenue Service which adversely affects the Trust's status as a tax-exempt organization.
- (d) Assets will not be used for purposes other than the payment of eligible welfare benefits or the expenses incident thereto or expenses of the Trust.

#### 2. Plan Termination

Upon the Plan's termination pursuant to Section 16.4, the distributed assets will be used, in accordance with Instructions, to provide benefits described in Section 501(c)(9) of the Code to Plan participants or their dependents or beneficiaries (or used as provided in 26 C.F.R. Section 1.501(c)(9)-4(d)), except as otherwise provided in regulations of the Department of Labor promulgated under Section 403(d)(2) of ERISA. Until all assets of the Trust are distributed, the Trust shall continue.

## EXHIBIT A

### CROSS-TRADING INFORMATION

As part of the Cross-Trading Program covered by the Department of Labor Prohibited Transaction Exemption (“PTE”) 95-56 granted to Mellon Bank, N.A. and its affiliates (“**BNY Mellon**”), BNY Mellon is to provide to each affected employee benefit plan the following information:

I. The Existence of the Cross-Trading Program

BNY Mellon has developed and intends to utilize, wherever practicable, a Cross-Trading Program for Indexed Accounts and Large Accounts as those terms are defined in PTE 95-56.

II. The “Triggering Events” Creating Cross-Trade Opportunities

In accordance with PTE 95-56, three “Triggering Events” may create opportunities for Cross-Trading transactions. They are generally the following (see PTE 95-56 for more information):

1. A change in the composition or weighting of the index by the independent organization creating and maintaining the index;
2. A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals on the Indexed Account’s opening date, where the Indexed Account is a bank collective fund, or on any relevant date for non-bank collective funds; provided, however, a change in an Indexed Account resulting from investments or withdrawals of assets of BNY Mellon’s own plans (other than BNY Mellon’s defined contributions plans under which participants may direct among various investment options, including Indexed Accounts) are excluded as a “Triggering Events”; or
3. A recorded declaration by BNY Mellon that an accumulation of cash in an Indexed Account attributable to interest or dividends on, and/or tender offers for portfolio securities equal to not more than .5% of the Indexed Account’s total value has occurred.

III. The Pricing Mechanism Utilized for Securities Purchased or Sold

Securities will be valued at the current market value for the securities on the date of the crossing transaction.

Equity Securities - the current market value for the equity security will be the closing price on the day of trading as determined by an independent pricing service; unless the security was added to or deleted from an index after the close of trading, in which case the price will be the opening price for that security on the next business day after the announcement of the addition or deletion.

Debt Securities - the current market value of the debt security will be the price determined by BNY Mellon as of the close of the day of trading according to the Securities and

Exchange Commission's Rule 17a-7(b)(4) under the Investment Company Act of 1940. Debt securities that are not reported securities or traded on an exchange, will be valued based on an average of the highest current independent bids and the lowest current independent offers on the day of cross trading. BNY Mellon will use reasonable inquiry to obtain such prices from at least three independent sources that are brokers or market makers. If there are fewer than three independent sources to price a certain debt security, the closing price quotations will be obtained from all available sources.

IV. The Allocation Method and Other Procedures

Direct cross-trade opportunities will be allocated among potential buyers or sellers of debt or equity securities on a pro-rata basis. With respect to equity securities, please note BNY Mellon imposes a trivial dollar amount constraint to reduce excessive custody ticket charges to participating accounts.



## **EXHIBIT B**

### **FIDUCIARY STATUS**

As trustee, BNY Mellon reasonably expects that some of the services which it will provide under the Agreement will be as a fiduciary as defined in Section 3(21) of ERISA and some will be non-fiduciary in nature. In its role as a directed trustee, BNY Mellon does not have discretionary investment management authority, render investment advice for a fee or have discretionary authority or responsibility in the administration of the covered Plan(s). Nonetheless, as a directed trustee, BNY Mellon retains certain limited fiduciary responsibilities, such as determining that directions of a named fiduciary are proper, following processes designed to avoid non-exempt prohibited transactions, and not knowingly participating in a breach of fiduciary responsibility of another fiduciary. All of BNY Mellon's custodial duties and responsibilities, including but not limited to safekeeping of assets, processing of corporate actions, trade settlement, posting of income and other receipts, reporting of transactions and reporting of prices are expected to be performed in a non-fiduciary capacity. Ultimately, whether BNY Mellon is acting as a fiduciary is dependent upon the terms of the Agreement and the facts surrounding a particular function. With respect to foreign exchange transactions done through BNY Mellon's Global Markets FX Desk, it is acting as a principal counterparty on its own behalf and is not acting as a fiduciary or agent for Customer, any Authorized Person or the Trust.

**RABBI TRUST AGREEMENT**

**by and between**

**PACIFICORP**

**and**

**THE BANK OF NEW YORK MELLON**

**and known as the**

**PACIFICORP EXECUTIVE TRUST**

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## **RABBI TRUST AGREEMENT**

**AGREEMENT**, dated as of December \_\_, 2019 (“Agreement”) between **PACIFICORP** (the “Company”) and **THE BANK OF NEW YORK MELLON**, a bank organized under the laws of the state of New York (the “Trustee”).

### **WITNESSETH:**

**WHEREAS**, the Company has adopted the nonqualified deferred compensation plan(s), individually and collectively, listed in Appendix A, as may be amended from time to time (“Plan”);

**WHEREAS**, the Company has incurred or expects to incur liability under the terms of such Plan with respect to the individuals covered by such Plan;

**WHEREAS**, the Company previously entered into a Executive Trust with State Street Bank and Trust Company (and its predecessors), effective March 1, 1999, as subsequently amended (the “Prior Agreement”);

**WHEREAS**, the Company desires to appoint the Trustee as trustee of the Trust originally established by the Prior Agreement;

**WHEREAS**, the Company wishes to continue the trust established pursuant to the Prior Agreement and to contribute to the trust the assets that shall be held therein, subject to the claims of the Company’s creditors in the event of the Company’s Insolvency until (i) paid to Participants in such manner and at such times as are specified in the Plan and communicated to the Trustee pursuant to this Agreement, (ii) applied for the benefit of the Company’s creditors in accordance with the terms of this Agreement, and/or (iii) returned to the Company in accordance with the terms of this Agreement;

**WHEREAS**, it is the intention of the parties that this Trust shall constitute an unfunded arrangement and shall not affect the status of the Plan as an unfunded plan maintained for the purpose of providing deferred compensation for a select group of management or highly compensated employees for purposes of ERISA and/or for the purpose of providing benefits under an excess benefit plan as that term is defined in Section 3(36) of ERISA to certain employees in excess of the limitations on contributions and benefits imposed by §415 of the Internal Revenue Code of 1986, as amended (the “Code”); and

**WHEREAS**, it is the intention of the Company to make certain contributions to the Trust to provide a source of funds to assist it in meeting its liabilities under the Plan.

**NOW, THEREFORE**, the parties do hereby establish the Trust and agree that the Trust shall be comprised, held and disposed of as follows:

### **1. – ESTABLISHMENT OF TRUST; INSTRUCTIONS**

**1.1. Definitions.** Whenever used in this Agreement, the following words shall have the meanings set forth below:

“Authorized Instructions” shall have the meaning set forth in Section 1.3.

“Authorized Person” shall mean any Person authorized by the Company or an Investment Manager to give Oral or Written Instructions with respect to the Trust Fund or with respect to foreign exchange, derivative investments or information and transactional web based services provided by the Trustee or a BNY Mellon Affiliate. Authorized Persons shall include Persons authorized by an Authorized Person. Authorized Persons, their signatures and the extent of their authority shall be provided by Written Instructions. The Company shall cause the Investment Manager to furnish the Trustee with Written Instructions identifying Authorized Persons and their signatures. The Trustee may conclusively rely on the authority of Authorized Persons until it receives a Written Instruction to the contrary.

“BNY Mellon Affiliate” shall mean any direct or indirect subsidiary of The Bank of New York Mellon Corporation.

“Book-Entry System” shall mean the U.S. Federal Reserve/Treasury book-entry system for receiving and delivering securities, its successors and nominees.

“Business Day” shall mean any day on which the Trustee and relevant Depositories and Subcustodians are open for business.

“Centralized Functions” shall have the meaning set forth in Section 7.8.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Country Risk Events” shall have the meaning set forth in Section 2.1.

“Customer-Related Data” shall have the meaning set forth in Section 7.8.

“Data Providers” shall mean pricing vendors, analytics providers, brokers, dealers, investment managers, Authorized Persons, Subcustodians, Depositories and any other Person providing Market Data to the Trustee.

“Data Terms Website” shall mean <http://www.bnymellon.com/products/asset servicing/vendoragreement.pdf> or any successor website the address of which is provided by the Trustee to the Company.

“Depository” shall include the Book-Entry System, the Depository Trust Company, Euroclear, Clearstream Banking S.A., the Canadian Depository System, CLS Bank and any other securities depository, book-entry system or clearing agency (and their respective successors and nominees) authorized to act as a securities depository, book-entry system or clearing agency pursuant to applicable law.

“Designated Party” shall have the meaning set forth in Section 7.1.

“Economic Sanctions Compliance Program” shall mean those programs, policies, procedures and measures designed to ensure compliance with, and prevent violations of, Sanctions.

“Employer Securities” shall mean stock, warrants, options or other obligations issued by the Company.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“Insolvent” or “Insolvency” means (i) the Company is unable to pay its debts as they become due, or (ii) the Company is subject to a pending proceeding as a debtor under the United States Bankruptcy Code.

“Investment Manager” shall mean an investment manager, within the meaning of Section 3(38) of ERISA, with respect to the Trust Fund which has been appointed by the Company pursuant to Section 3.1.

“Losses” shall mean, collectively, losses, costs, expenses, damages, liabilities and claims.

“Market Data” shall mean pricing or other data related to Securities and other assets. Market Data includes but is not limited to security identifiers, valuations, bond ratings, classification data, and other data received from investment managers and others.

“Operational Losses” shall have the meaning set forth in Section 2.2.

“Oral Instructions” shall mean instructions expressed in spoken words received by the Trustee.

“Participant(s)” shall mean one or more individuals covered by the Plan, including the beneficiaries of a deceased Participant.

“Payment Schedule” shall mean a written direction that sets forth (i) the amount payable with respect to each Participant, or other instructions acceptable to the Trustee for determining the amount so payable; (ii) the form in which such amount is to be paid; and (iii) the timing of each such payment.

“Plan” shall mean the nonqualified deferred compensation plan(s), individually and collectively, of the Company listed in Appendix A, as may be amended from time to time.

“Person” or “Persons” shall mean any entity or individual.

“Property” shall mean any assets held by the Trustee, but shall not include Real Estate or Employer Securities.

“Real Estate” shall mean direct interests in real property, leaseholds or mineral interests and shall include assets secured by any of the foregoing.

“Required Care” shall have the meaning set forth in Section 2.2.

“Sanctions” shall mean all economic sanctions, laws, rules, regulations, executive orders and requirements administered by any governmental authority of the U.S. (including the U.S. Office of Foreign Assets Control) and the European Union (including any national jurisdiction or

member state thereof), in addition to any other applicable authority with jurisdiction over the Company.

“Securities” shall include, without limitation, any common stock and other equity securities, depository receipts, limited partnership and limited liability company interests, bonds, debentures and other debt securities, notes or other obligations, and any instruments representing rights to receive, purchase, or subscribe for the same, or representing any other rights or interests therein (whether represented by a certificate or held in a Depository, with a Subcustodian or on the books of the issuer) that are acceptable to the Trustee.

“Subcustodian” shall mean a bank or other financial institution (other than a Depository) that is utilized by the Trustee or by a BNY Mellon Affiliate, in its discretion, in connection with the purchase, sale or custody of Securities or cash hereunder.

“Tax Obligations” shall mean taxes, withholding, certification and reporting requirements, claims for exemptions or refund, interest, penalties, additions to tax and other related expenses.

“Third Party Service Provider” shall mean a service provider hired by the Trustee to provide or to assist the Trustee with providing value-added services requested by the Company.

“Trust” shall mean the trust created by this Trust Agreement, and it shall be known as the PacifiCorp Executive Trust.

“Trust Fund” means the total assets in the Trust.

“Written Instructions” shall mean written communications received by the Trustee by S.W.I.F.T., overnight delivery, postal services, facsimile transmission, email, on-line communication system or other method or system, each as specified by the Trustee as available for use in connection with the services hereunder.

## **1.2. Establishment of Trust.**

a. The Company hereby establishes the Trust with the Trustee, consisting of such sums of money and other property as from time to time shall be paid and delivered to and accepted by the Trustee from the Company. Nothing shall prevent the Company from making contributions to the Trust of cash or property acceptable to the Trustee in amounts determined by the Company, in its sole discretion, up to and including the entire amount sufficient to pay the Participants under the terms of the Plan. The Trustee shall not have any right to compel such additional deposits. The Trustee shall have no duty to determine or collect contributions to the Trust which may be required under the Plan or this Agreement and shall have no responsibility for any property until it is actually received and accepted by the Trustee. The Company shall have the sole duty and responsibility for the determination of the accuracy or sufficiency of the contributions to be made under the Plan to the Trust. All money and other property paid or delivered to and accepted by the Trustee shall become the principal of the Trust to be held, administered and disposed of by the Trustee as provided in this Agreement.

b. The Trust hereby established is irrevocable.



c. The Trust is intended to be a grantor trust, of which the Company is the grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Code, and shall be construed accordingly. The Company represents and warrants to the Trustee that: (i) the Plan for which benefits are or may become payable under this Trust is not subject to Part 4 of Subtitle B of Title I of ERISA; and (ii) the Plan covers, and will cover, only a select group of management or highly compensated employees as contemplated by Section 401(a) of ERISA and/or the Plan is an excess benefit plan as set forth in Section 3(36) of ERISA, such sections of ERISA being further defined by interpretations, opinions and rulings of the Department of Labor.

d. The principal of the Trust and any earnings thereon shall be held separate and apart from other funds of the Company and shall be used exclusively for (i) the payment of benefits to the Participants under the Plan; (ii) payments for the benefit of the general creditors of the Company in the event of its Insolvency in accordance with the terms of this Agreement; and/or (iii) payments to the Company in accordance with the provisions of this Agreement. The Participants shall have no preferred claim on, nor any beneficial ownership interest in, any assets of the Trust. Any rights created under the Plan and this Agreement shall be mere unsecured contractual rights of the Participants against the Company. Any assets held by the Trust will be subject to the claims of the Company's general creditors under federal and state law in the event of Insolvency.

e. The establishment of the Trust is intended to aid the Company in meeting its obligations to make payments to Participants under the Plan and shall not affect the Company's continuing obligation to pay benefits to Participants under the Plan except that the Company's liability under the Plan shall be offset by actual payments made on its behalf by the Trustee.

f. In no event shall the Trustee have any duty or responsibility with respect to compliance with Section 409A of the Code. The Trustee may conclusively presume that each instruction or direction it receives from the Company or an Authorized Person is in compliance with Section 409A of the Code, including any Payment Schedule.

**1.3. Authorized Instructions.** The Trustee shall be entitled to rely upon any Oral or Written Instructions actually received by the Trustee and reasonably believed by the Trustee to be from an Authorized Person ("Authorized Instructions"). The Company hereby agrees that the Authorized Person shall have the responsibility for determining that the Authorized Instructions are in accordance with the terms of the Plan and applicable law. The Company agrees that an Authorized Person shall forward to the Trustee Written Instructions confirming Oral Instructions by the close of business of the same day that such Oral Instructions are given to the Trustee. The Trustee may act on such Oral Instructions but is not obligated to do so until Written Instructions are received. The Company agrees that the fact that Written Instructions confirming Oral Instructions are not received or that contrary Written Instructions are received by the Trustee shall in no way affect the validity or enforceability of transactions authorized by such Oral Instructions and effected by the Trustee.

**1.4. Authentication.** If the Trustee receives Written Instructions that appear on their face to have been transmitted by an Authorized Person via (i) facsimile, email, or other electronic method that is not secure, or (ii) secure electronic transmission containing applicable authorization codes, passwords or authentication keys, the Company understands and agrees that the Trustee

cannot determine the identity of the actual sender of such Written Instructions and that the Trustee shall be entitled to conclusively presume that such Written Instructions have been sent by an Authorized Person and are Authorized Instructions. The Company shall be responsible for ensuring that only Authorized Persons transmit such Written Instructions to the Trustee and that all Authorized Persons treat applicable user and authorization codes, passwords and authentication keys with extreme care.

**1.5. Security Procedure.** The Company acknowledges and agrees that it is fully informed of the protections and risks associated with the various methods of transmitting Written Instructions to the Trustee and that there may be more secure methods of transmitting Written Instructions than the method selected by the sender. The Company agrees that the security procedures, if any, to be followed in connection with a transmission of Written Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

**1.6. On-Line Systems.** If an Authorized Person elects to transmit Written Instructions through an on-line communication system offered by the Trustee, the use thereof shall be subject to any terms and conditions contained in a separate written agreement. If an Authorized Person elects, with the Trustee's prior consent, to transmit Written Instructions through an on-line communications service owned or operated by a third party, the Company agrees that the Trustee shall not be responsible or liable for the reliability or availability of any such service.

**1.7. Payments to Plan Participants.**

a. The entitlement of a Participant to benefits under the Plan shall be determined by the Company or such party as it shall designate under the Plan, and any claim for such benefits shall be considered and reviewed under the procedures set out in the Plan. The Company shall notify the Trustee of such determination and shall direct payment, or commencement of payment, of such benefits. The Company shall have the sole responsibility for determining the eligibility of any Participant for benefits or for determining the amount and duration of the payment of such benefits.

b. The Company shall deliver to the Trustee a Payment Schedule upon the later of the execution of this Agreement or the commencement of payments to one or more Participants. The Company shall be responsible for notifying the Trustee in writing of any change in the information on the Payment Schedule. The Trustee shall make payments to the Participants in accordance with the Payment Schedule most recently provided to it by the Company.

c. The Company may make payment of benefits directly to the Participants as they become due under the terms of the Plan. The Company shall notify the Trustee pursuant to Authorized Instructions of its decision to make payment of benefits directly within a reasonable time prior to the time amounts are payable to Participants. The notification of the Trustee by the Company to make payments directly to a Participant shall be considered a change of the Payment Schedule affecting such Participant. The Company may direct the Trustee to reimburse it from the Trust Fund provided it supplies the Trustee with evidence acceptable to the Trustee of payments made by the Company to Participants.

d. If the principal of the Trust, together with any earnings thereon, are not sufficient to make a payment of benefits in accordance with the terms of the Payment Schedule, the Trustee shall be obligated to make a payment only to the extent that it has principal and earnings in the Trust. The Trustee shall notify the Company when principal and earnings are not sufficient to make payments as directed and there are no longer any assets in the Trust. The Company shall either (i) immediately make up the balance of each such payment as it falls due, (ii) make a contribution to cover the balance due and any future payments, as it determines in its sole discretion, or (iii) terminate the Trust, if permissible hereunder, and make future payments directly from the Company.

## 2. – TRUST SERVICES

**2.1. Holding Securities.** Subject to the terms hereof, the Company hereby authorizes the Trustee to hold any Securities in registered form in the name of the Trustee or one of its nominees. Securities held hereunder shall be segregated on the Trustee's books and records from the Trustee's own property. The Trustee shall be entitled to utilize Subcustodians and Depositories in connection with its performance hereunder. Securities and cash held through Subcustodians shall be held subject to the terms and conditions of the Trustee's or a BNY Mellon Affiliate's agreements with such Subcustodians. Securities and cash deposited by the Trustee in a Depository will be held subject to the rules, terms and conditions of such Depository. Subcustodians may hold Securities in Depositories in which such Subcustodians participate. Unless otherwise required by local law or practice or a particular subcustodian agreement, Securities deposited with Subcustodians will be held in a commingled account in the name of the Trustee or a BNY Mellon Affiliate for its clients. The Trustee shall identify on its books and records the Securities and cash belonging to the Trust Fund, whether held directly or indirectly through Depositories or Subcustodians. In no event shall the Trustee be liable for any Losses arising out of the holding of Securities or cash in any particular country, including but not limited to, Losses resulting from nationalization, expropriation or other governmental actions; regulation of the banking or securities industry; exchange or currency controls or restrictions, devaluations or fluctuations or currency redenomination; availability of Securities or cash or market conditions which prevent the transfer of property or the execution of Securities transactions or affect the value of property ("Country Risk Events").

**2.2. Subcustodians.** The Trustee shall exercise reasonable care in the selection or retention, monitoring and continued use of Subcustodians in light of prevailing rules, practices, procedures and circumstances in the relevant market (the "Required Care").

With respect to any Losses incurred by the Trust, the Company or any other person as a result of the acts or the failure to act by any Subcustodian ("Operational Losses," which specifically excludes Losses arising out of or relating to Country Risk Events), the Trustee shall be liable for:

a. Operational Losses with respect to Securities or cash held by the Trustee with or through a BNY Mellon Affiliate; and

b. Operational Losses with respect to Securities or cash held by the Trustee with or through a Subcustodian (other than a BNY Mellon Affiliate) to the extent that such Operational Losses were directly caused by failure on the part of the Trustee to exercise Required Care.

With respect to all other Operational Losses not covered by clauses (a) and (b) above, the Trustee shall take appropriate action to recover Operational Losses from such Subcustodian, and Trustee's sole liability shall be limited to amounts recovered from such Subcustodian (exclusive of costs and expenses incurred by the Trustee).

In addition, the Trustee shall be liable for repayment to the Trust of cash credited to the Trust Fund and credited to any relevant cash account at the Subcustodian that the Trustee is not able to recover from the Subcustodian (other than as a result of Country Risk Events).

**2.3. Depositories.** The Trustee shall have no liability whatsoever for the action or inaction of any Depository or for any Losses resulting from the maintenance of Securities with a Depository. The Trustee shall be liable to repay cash credited to the Trust Fund and credited to any relevant account at such Depository (other than as a result of Country Risk Events).

**2.4. Agents.** The Trustee may appoint agents, including BNY Mellon Affiliates, on such terms and conditions as it deems appropriate to perform its services hereunder. Except as otherwise specifically provided herein, no such appointment shall discharge the Trustee from its obligations hereunder.

**2.5. Trustee Responsibility for Payment of Benefits When Company Is Insolvent.**

a. At all times during the continuance of this Trust, the principal and income of the Trust shall be subject to the claims of the general creditors of the Company under federal and state law as set forth below.

i. The Board of Directors or the Chief Executive Officer of the Company shall inform the Trustee in writing of the Company's Insolvency.

ii. Unless the Trustee, in its capacity as trustee and not in its proprietary capacity, has actual knowledge of the Company's Insolvency, or has received written notice from the Company or a person claiming to be a creditor and alleging that the Company is Insolvent, the Trustee shall have no duty to inquire whether the Company is Insolvent. The Trustee may in all events rely on such evidence concerning the Company's solvency as may be furnished to the Trustee and that provides the Trustee with a reasonable basis for making a determination concerning the Company's solvency. In all cases, the Trustee shall be entitled to conclusively rely upon the written notice of the Board of Directors or the Chief Executive Officer of the Company when determining whether the Company is Insolvent.

iii. If at any time (1) the Trustee has actual knowledge of the Company's Insolvency, (2) the Board of Directors or the Chief Executive Officer of the Company has notified the Trustee that the Company is Insolvent, or (3) a person claiming to be a creditor of the Company alleges in writing to the Trustee that the Company has

become Insolvent, the Trustee shall discontinue payments to the Participants and shall hold the assets of the Trust for the benefit of the Company's general creditors. Nothing in this Agreement shall in any way diminish any rights of the Participants to pursue their rights as general creditors of the Company with respect to benefits due under the Plan or otherwise.

iv. The Trustee shall resume the payment of benefits to the Participants in accordance with Section 1.7 only after the Trustee has received written notice from the Board of Directors or the Chief Executive Officer of the Company that the Company is not Insolvent (or is no longer Insolvent).

b. Provided that there are sufficient assets, if the Trustee discontinues the payment of benefits from the Trust pursuant to this Section and subsequently resumes such payments, the first payment following such discontinuance shall include the aggregate amount of all payments due to the Participants under the terms of the Plan (as certified to the Trustee by the Company) for the period of such discontinuance, less the aggregate amount of any payments made to the Participants by the Company in lieu of the payments provided for hereunder during any such period of discontinuance.

**2.6. Payments to Company.** Except as otherwise specifically provided in this Agreement, after the Trust has become irrevocable, the Company shall not have the right or power at any time to direct the Trustee to return to the Company any or all of the Trust assets.

**2.7. Trustee Actions without Direction.** With respect to the Trust Fund, the Trustee shall:

- a. Receive income and other payments due to the Trust Fund;
- b. Carry out any exchanges of Securities or other corporate actions not requiring discretionary decisions;
- c. Facilitate access by the Company or its designee to ballots or online systems to assist in the voting of proxies received for eligible positions of Securities held in the Trust Fund (excluding bankruptcy matters);
- d. Forward to the Company or its designee information (or summaries of information) that the Trustee receives from Depositories or Subcustodians concerning Securities in the Trust Fund (excluding bankruptcy matters);
- e. Forward to the Company or its designee an initial notice of bankruptcy cases relating to Securities held in the Trust Fund and a notice of any required action related to such bankruptcy cases as may be received by the Trustee. No further action or notification related to the bankruptcy case shall be required;
- f. Endorse for collection checks, drafts or other negotiable instruments received on behalf of the Trust Fund; and
- g. Have the authority to deposit cash in accounts bearing interest at a reasonable rate in the banking department of the Trustee or an affiliated banking organization.

**2.8. Trustee Actions with Direction.** The Trustee shall take the following actions in the administration of the Trust Fund only pursuant to Authorized Instructions:

a. Settle purchases and sales of Securities and process other transactions, including, without limitation, free receipts and deliveries. In no event shall the Trustee be directed to cause the Trust to hold or invest in (i) Employer Securities (other than amounts held in pooled investment vehicles in which the Trust invests) or (ii) Real Estate;

b. Purchase or sell, write or issue, puts, calls, or other options, covered or uncovered, enter into financial futures contracts, forward placement contracts and standby contracts, swaps, synthetic GICs and other derivative investments, and in connection therewith, custody and pledge assets of the Trust Fund;

c. Settle transactions in foreign exchange or foreign exchange contracts, provided that the Trustee may establish rules or limitations concerning any foreign exchange facility made available;

d. Enter into insurance contracts for the purposes of investment or otherwise and take such other actions with respect to insurance contracts as directed. The Trust shall be the beneficiary of any life insurance policy that is an asset of the Trust. The Trustee shall not be directed to loan to any person the proceeds of any borrowing against a life insurance policy;

e. Deliver Securities in the Trust Fund if an Authorized Person advises the Trustee that the Company has entered into a separate securities lending agreement, provided that the Company executes such agreements as the Trustee may require in connection with such arrangements;

f. Institute suits or legal proceedings subject to the Trustee's receipt of satisfactory indemnity for fees and expenses; and

g. Take any other action as necessary to perform hereunder as directed pursuant to Authorized Instructions.

No such actions shall give this Trust the objective of carrying on a business and dividing the profits therefrom, within the meaning of Section 301.7701-1 of the Procedure and Administrative Regulations promulgated pursuant to the Code.

**2.9. Foreign Exchange Transactions.** Any foreign exchange transaction effected by the Trustee in connection with this Agreement may be entered with the Trustee or a BNY Mellon Affiliate acting as a principal or otherwise through customary channels. The Company or the Investment Manager may issue standing Written Instructions with respect to foreign exchange transactions, but the Trustee may establish rules or limitations concerning any foreign exchange facility made available to the Trust Fund. With respect to foreign exchange transactions done through The Bank of New York Mellon's Global Markets FX Desk, it is acting as a principal counterparty on its own behalf and is not acting as a fiduciary or agent for, or in connection with, the Company, the Trust, or an Investment Manager.



### 3. – INVESTMENT OF THE TRUST FUND

#### 3.1. Investment and Administrative Authority.

a. The Company may appoint (and remove) one or more Investment Managers, which may include the Trustee or an affiliate of the Trustee, provided such appointment of the Trustee or its affiliate is set forth and governed by a separate investment management agreement. To the extent that assets of the Trust Fund are not so managed by an Investment Manager, the Company shall manage all such assets. The Company and each Investment Manager shall designate in writing the Authorized Parties who shall represent such party in dealing with the Trustee. All rights associated with assets of the Trust shall be exercised by the Company or an Investment Manager, whichever has investment discretion over a particular asset, and shall in no event be exercisable by, or at the discretion of, the Participants.

b. The Trustee, in its capacity as trustee of the Trust Fund, shall have no discretionary investment duties with respect to the Trust Fund. The Trustee shall have no duty to inquire whether Authorized Instructions received from the Company or an Investment Manager are in accordance with the Plan or investment guidelines, or to review the assets purchased, retained or sold. The Trustee shall not be responsible or liable for any diminution of value of any securities or other property held by the Trustee (or its subcustodians).

c. The Company shall have the right at any time, and from time to time, in its sole discretion to substitute assets of equal fair market value, as determined by the Company, for any asset held by the Trust. The Trustee shall have no obligation to determine or verify the fair market value of such assets.

### 4. – CORPORATE ACTIONS

4.1. Notification. The Trustee shall notify the Company or its designee of rights or discretionary corporate actions as promptly as practicable under the circumstances, provided that the Trustee has actually received notice of such right or discretionary corporate action from the relevant Subcustodian or Depository. Without actual receipt of such notice, the Trustee shall have no liability for failing to so notify the Company.

4.2. Direction. Whenever there are voluntary rights that may be exercised or alternate courses of action that may be taken by reason of the Trust Fund's ownership of Securities, the Company or its designee shall be responsible for making any decisions relating thereto and for directing the Trustee to act. In order for the Trustee to act, it must receive Authorized Instructions using the Trustee generated form or clearly marked as instructions, addressed as the Trustee may from time to time request, by such time as the Trustee shall advise the Company or its designee. If the Trustee does not receive Authorized Instructions by such deadline, the Trustee shall not be liable for failure to take any action relating to or to exercise any rights conferred by such Securities.

4.3. Partial Redemptions, Payments, Etc. The Trustee shall promptly advise the Company or its designee upon its notification of a partial redemption, partial payment or other action with respect to a Security affecting fewer than all such Securities held within the Trust Fund. If the Trustee, any Subcustodian or Depository holds any Securities affected by one of the events described, the Trustee, the Subcustodian or Depository may select the Securities to participate in

such partial redemption, partial payment or other action in any non-discriminatory manner that it customarily uses to make such selection.

## 5. – SETTLEMENT OF TRADES

**5.1. Trading Instructions.** An Authorized Person shall deliver or cause to be delivered to the Trustee all information necessary for the Trustee to settle purchases or sales. For the purpose of settling purchases of Securities, an Authorized Person shall cause the Trustee to be provided with sufficient immediately available funds for all such transactions by such time and date as conditions in the relevant market dictate.

**5.2. Contractual Settlement and Income.** The Trustee may, as a matter of bookkeeping convenience, credit the Trust Fund with the proceeds from the sale, redemption or other disposition of Securities or interest, dividends or other distributions payable on Securities prior to its actual receipt of final payment therefor. All such credits shall be conditional until the Trustee's actual receipt of final payment and may be reversed by the Trustee to the extent that final payment is not received. Payment with respect to a transaction will not be "final" until the Trustee shall have received immediately available funds that under applicable local law, rule or practice are irreversible and not subject to any security interest, levy or other encumbrance, and that are specifically applicable to such transaction.

**5.3. Trade Settlement.** Transactions will be settled using practices customary in the jurisdiction or market where the transaction occurs. The Company understands that when the Trustee is instructed to deliver Securities against payment, delivery of such Securities and receipt of payment therefor may not be completed simultaneously. The Company assumes, on behalf of the Trust, full responsibility for all risks involved in connection with the Trustee's delivery of Securities pursuant to Authorized Instructions in accordance with local market practice.

## 6. – DEPOSITS AND ADVANCES

**6.1. Deposits.** The Trustee may hold cash in the Trust Fund or may arrange to have such cash held by a BNY Mellon Affiliate or Subcustodian, or with a Depository. Where cash is on deposit with the Trustee, a Subcustodian, a BNY Mellon Affiliate or a Depository, it will be subject to the terms of this Agreement and such deposit terms and conditions as may be issued by such entity from time to time.

**6.2. Sweep.** Cash may be swept as directed by the Company or an Investment Manager to investment vehicles offered by the Trustee or to other investment vehicles. Cash may be uninvested when it is received or reconciled to an account in the Trust Fund after the deadline to be swept into a target vehicle, or when held for short periods of time related to transaction settlements. The Company acknowledges that, as part of the Trustee's compensation, the Trustee will earn interest on cash balances held by the Trustee, including disbursement balances and balances arising from purchase and sale transactions, as provided in the Trustee's indirect compensation disclosures.



**6.3. Overdrafts and Indebtedness.** The Trustee may, in its sole discretion, advance funds in any currency hereunder. If an overdraft occurs in the Trust Fund (including, without limitation, overdrafts incurred in connection with the settlement of securities transactions, funds transfers or foreign exchange transactions) or if the Trust is for any other reason indebted to the Trustee, the Trustee shall be entitled, and the Company authorizes the Trustee, to collect from the Trust the amount of the advance, overdraft or indebtedness, plus accrued interest at a rate then charged by the Trustee to its institutional trust clients in the relevant currency.

**6.4. Securing Repayment.** In order to secure repayment of the Trust's obligations (whether or not matured) to the Trustee, the Company on behalf of the Trust hereby pledges and grants to the Trustee a continuing first lien and security interest in, and right of setoff against, all of the Plan and Trust's right, title and interest in and to the Trust Fund and the Securities, money and other Property now or hereafter held in the Trust Fund (including proceeds thereof); provided, that the Company does not grant the Trustee a security interest in any Securities issued by an affiliate of the Trustee (as defined in Section 23A of the Federal Reserve Act). The Company represents that the Trust owns the Securities in the Trust Fund free and clear of all liens, claims, security interests, and the first lien and security interest granted therein shall be subject to no setoffs, counterclaims, or other liens prior to or on a parity with it in favor of any other party (other than specific liens granted preferred status by statute). The Company shall take any additional steps required to assure the Trustee of such priority security interest, including notifying third parties or obtaining their consent. The Trustee shall be entitled to collect from the Trust Fund sufficient cash for reimbursement, and if such cash is insufficient, to sell the Securities in the Trust Fund to the extent necessary to obtain reimbursement. In this regard, the Trustee shall be entitled to all the rights and remedies of a pledgee and secured creditor as if the Trust is in default under applicable laws, rules or regulations as then in effect.

**6.5. Disposition of Income.** During the term of this Trust, all income received by the Trust, net of expenses and taxes, shall be accumulated and reinvested except as otherwise specifically provided herein.

## **7. – TAXES, REPORTS, RECORDS AND OTHER MATTERS**

### **7.1. General Tax Responsibilities.**

a. The Trustee shall prepare and file any U.S. federal tax return or report and pay any amounts due with respect to such U.S. return or report (based on information in the Trustee's possession and to the extent funded) as required by law for a trustee, unless the Company otherwise directs in writing. In addition to the foregoing, the Trustee shall provide such other services with respect to Tax Obligations as requested by the Company and agreed to by the Trustee in writing. Except as otherwise provided in this Section, the Trustee shall have no obligation or liability with respect to Tax Obligations, including, without limitation, any obligation to file or submit returns or reports with any state, foreign or other taxing authorities.

b. The Trustee may consult with and rely upon the Company in all matters pertaining to Tax Obligations. The Company shall provide and/or shall cause any party it designates ("Designated Party") to provide information necessary for the Trustee to fulfill its obligations with respect to Tax Obligations in a timely manner. The Trustee shall be fully

protected in relying upon its consultations with the Company and on any information provided by the Company or a Designated Party.

c. To the extent the Company desires a Designated Party to undertake responsibilities with respect to Tax Obligations, including those Tax Obligations imposed on the Trustee under any law, the Company shall inform the Trustee in writing as to which Designated Party or Parties have been delegated such responsibilities and should receive information from the Trustee. The Trustee shall provide to the Company or a Designated Party on a timely basis any information in the Trustee's possession requested by the Company or a Designated Party to fulfill its responsibilities with respect to a Tax Obligation. The Company shall be solely responsible to cause the Designated Party to fulfill such responsibilities. The Company shall indemnify the Trustee with respect to any liability concerning Tax Obligations resulting from the actions or failures to act of the Company or the Designated Party.

## **7.2. Specific Tax Responsibilities.**

a. Upon receipt of sufficient information, the Trustee shall make reasonable efforts to file claims for exemptions or refunds with respect to withheld foreign (non-United States) taxes in instances in which such claims are appropriate.

b. The Trustee shall provide the Company or a Designated Party any data or materials received by the Trustee concerning potential unrelated business taxable income. However, the Trustee shall have no responsibility to independently collect data or informational materials with respect to unrelated business taxable income received by the Trust or to prepare and file any forms to report unrelated business taxable income to the Trust. Pursuant to Authorized Instructions, the Trustee shall pay from the Trust the amount of any unrelated business income tax due, as determined by the Company or a Designated Party.

**7.3. Pricing and Other Data.** In providing Market Data related to the Trust Fund in connection with this Agreement, the Trustee is authorized to use Data Providers. The Trustee may follow Authorized Instructions in providing pricing or other Market Data, even if such instructions direct the Trustee to override its usual procedures and Market Data sources. The Trustee shall be entitled to rely without inquiry on all Market Data (and all Authorized Instructions related to Market Data) provided to it, and the Trustee shall not be liable for any Losses incurred as a result of Market Data that contains errors or that is inaccurate or incomplete. The Company acknowledges that certain pricing or valuation information may be based on calculated amounts rather than actual market transactions and may not reflect actual market values, and that the variance between such calculated amounts and actual market values may be material. The Trustee shall not be required to inquire into the pricing of any Securities or other assets even though the Trustee may receive different prices for the same Securities or assets. Market Data may be the intellectual property of the Data Providers, which may impose additional terms and conditions upon the Company's use of the Market Data. The additional terms and conditions can be found on the Data Terms Website. The Company agrees to those terms as they are posted in the Data Terms Website from time to time. Certain Third Party Service Providers may not utilize an Authorized Person's directed price due to system constraints or differing data sources. Performance measurement and analytic services may use different data sources than those used by

the Trustee to provide Market Data for the Trust Fund, which may result in differences between custodial reports and performance measurement and analytic reports.

**7.4. Statements and Reports.** The Trustee shall make available to the Company a monthly report of all transfers to or from the Trust Fund and a statement of all holdings in the Trust Fund as of the last Business Day of each month. The Company may elect to receive certain information electronically through the Internet to an email address specified by it for such purpose. By electing to use the Internet for this purpose, the Company acknowledges that such transmissions are not encrypted and therefore are not secure. The Company further acknowledges that there are other risks inherent in communicating through the Internet such as the possibility of virus contamination and disruptions in service, and agrees that the Trustee shall not be responsible for any loss, damage or expense suffered or incurred by the Company or any person claiming by or through the Company as a result of the use of such methods.

**7.5. Review of Reports.** If, within ninety (90) days after the Trustee makes available to the Company a statement with respect to the Trust Fund, the Company has not given the Trustee written notice of any exception or objection thereto, the statement shall be deemed to have been approved, and in such case, the Trustee shall not be liable for any claims concerning such statements.

**7.6. Inspection of Books and Records.** The Company shall have the right, at its own expense and with reasonable prior written notice to the Trustee, to inspect the Trustee's books and records directly relating to the Trust Fund during normal business hours or to designate an accountant to make such inspection.

**7.7. Required Disclosure.** With respect to Securities that are registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act") or that are issued by an issuer registered under the Investment Company Act of 1940, as amended, Section 14(b) of the Exchange Act and Rule 14b-2 promulgated thereunder require the Trustee to disclose to issuers of such Securities, upon their request, the name, address and securities position of the Trustee's clients who are "beneficial owners" (as defined in the Exchange Act) of the issuer's Securities, unless the beneficial owner objects to such disclosure. The Exchange Act defines a "beneficial owner" as any person who has or shares the power to vote a security (pursuant to an agreement or otherwise) or who directs the voting of a security. The Company has designated on the signature page hereof, whether: (1) as beneficial owner, it objects to the disclosure of its name, address and securities position to any U.S. issuer that requests such information pursuant to the Exchange Act for the specific purpose of direct communications between such issuer and the Company; or (2) the Trustee shall contact the Company's investment manager with respect to relevant Securities to make the decision whether it objects to the disclosure of the beneficial owner's name, address and securities position to any U.S. issuer that requests such information pursuant to the Exchange Act.

With respect to Securities issued outside the United States, the Trustee shall disclose information required by any Depository, the laws and regulations of the relevant jurisdiction, rules of the relevant stock exchange or organizational documents of an issuer. The Trustee is also authorized to supply any information regarding the Trust Fund that is required by any law,

regulation or rules now or hereafter in effect. The Company agrees to supply the Trustee with any required information if it is not otherwise reasonably available to the Trustee.

**7.8. Centralized Functions.** The Bank of New York Mellon Corporation is a global financial organization that provides services to clients through its affiliates and subsidiaries in multiple jurisdictions (the “BNY Mellon Group”). The BNY Mellon Group may centralize functions, including audit, accounting, risk, legal, compliance, sales, administration, product communication, relationship management, storage, compilation and analysis of customer-related data, and other functions (the “Centralized Functions”) in one or more affiliates, subsidiaries and third-party service providers. Solely in connection with the Centralized Functions, (i) the Company consents to the disclosure of, and authorizes the Trustee to disclose, information regarding the Company and its accounts (“Customer-Related Data”) to the BNY Mellon Group and to its third-party service providers who are subject to confidentiality obligations with respect to such information and (ii) the Trustee may store the names and business addresses of the Company’s employees on the systems or in the records of the BNY Mellon Group or its service providers. In addition, the BNY Mellon Group may aggregate Customer-Related Data with other data collected and/or calculated by the BNY Mellon Group, and the BNY Mellon Group will own all such aggregated data, provided that the BNY Mellon Group shall not distribute the aggregated data in a format that identifies Customer-Related Data with the Company. In addition, the Trustee may disclose Customer-Related Data as required by law or at the request of any governmental or regulatory authority.

**7.9. Sanctions.**

a. Throughout the term of this Agreement, the Company: (i) shall maintain, and comply with, an Economic Sanctions Compliance Program which includes measures to accomplish effective and timely scanning of all relevant data with respect to Participants and with respect to incoming or outgoing Property or transactions; (ii) shall ensure that neither the Company nor any of its affiliates, directors, officers, employees or Participants (to the extent such Participants are covered by this Agreement) is an individual or entity that is, or is owned or controlled by an individual or entity that is: (A) the target of Sanctions, or (B) located, organized or resident in a country or territory that is, or whose government is, the target of Sanctions; and (iii) shall not, directly or indirectly, use the Fund in any manner that would result in a violation of Sanctions.

b. The Company will promptly provide to the Trustee such information as the Trustee reasonably requests in connection with the matters referenced in this Section 7.9, including information regarding the Trust Fund, the Property held or to be held in the Trust Fund, the source thereof, and the identity of any individual or entity having or claiming an interest therein. The Trustee may decline to act or provide services in respect of any Trust Fund, and take such other actions as it, in its reasonable discretion, deems necessary or advisable, in connection with the matters referenced in this Section 7.9. If the Trustee declines to act or provide services as provided in the preceding sentence, except as otherwise prohibited by applicable law or official request, the Trustee will inform the Company as soon as reasonably practicable.

## 8. – PROVISIONS REGARDING TRUSTEE

**8.1. Standard of Care.** The Trustee shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

**8.2. Duties.** The duties of the Trustee shall only be those specifically undertaken pursuant to this Agreement and shall be subject to such other limits on liability as are set out herein.

**8.3. Limitation on Liability.** Notwithstanding anything contained elsewhere in this Agreement, the Trustee's liability hereunder is limited as follows:

a. The Trustee shall not be liable for Losses except to the extent that such Losses are a direct result of the Trustee's negligence or willful misconduct.

b. The Trustee shall not be liable to the Company or the Trust for indirect, consequential or special damages arising in connection with this Agreement even if the Trustee has been advised of the possibility of such damages.

c. The Trustee is not a party to, and has no duties or responsibilities under, the Plan other than those that may be expressly contained in this Agreement. The Company acknowledges that the Plan does not impose any duties on the Trustee other than those contained in this Agreement. Notwithstanding anything to the contrary contained elsewhere in this Agreement, any reference to the Plan or Plan provisions which requires knowledge or interpretation of the Plan shall impose a duty upon the Company to communicate such knowledge or interpretation to the Trustee. The Trustee shall have no obligation to know or interpret any portion of the Plan and shall in no way be liable for any proper action taken under this Agreement contrary to the Plan. Possession of a copy of all or a portion of the Plan document shall not constitute knowledge on the part of the Trustee;

d. The duties of the Trustee shall be limited to the assets held in the Trust Fund, and the Trustee shall have no duties with respect to assets held by any other person including, without limitation, any other trustee for the Plan. The Company hereby agrees that the Trustee shall not serve as, and shall not be deemed to be, a co-trustee under any circumstances;

e. The Trustee shall not be responsible for the title, validity or genuineness of any Securities or evidence of title thereto received by it or delivered by it pursuant to this Agreement or for Securities held hereunder being freely transferable or deliverable without encumbrance in any relevant market;

f. The Trustee shall not be responsible for the failure to receive payment of, or the late payment of, income or other payments due to the Trust Fund;

g. The Trustee shall have no duty to take any action to collect any amount payable on Securities in default or if payment is refused after due demand and presentment;

h. The Trustee may obtain the advice of counsel and shall be fully protected with respect to anything done or omitted by it in good faith in conformity with such advice;

i. If the Trustee undertakes or defends any litigation or other legal proceedings arising in connection with this Trust, the Company agrees to indemnify the Trustee against the Trustee's costs, expenses and liabilities (including, without limitation, attorneys' fees and expenses) relating thereto and to be primarily liable for such payments except to the extent such litigation or other legal proceedings are caused by the negligence or willful misconduct of Trustee. If the Company does not pay such costs, expenses and liabilities in a reasonably timely manner, the Trustee may obtain payment from the Trust Fund. The Trustee shall have no responsibility or obligation to use its own proprietary funds to cover such costs, expenses and liabilities;

j. The Trustee shall have no duty or responsibility to inquire into, make recommendations, supervise, or determine the suitability of any transactions affecting the Trust Fund and shall have no liability with respect to the Company's or an Authorized Person's decision to invest in Securities or to hold cash in any currency;

k. The Trustee shall have no responsibility if the rules or procedures imposed by Depositories, exchange controls, asset freezes or other laws, rules, regulations or orders at any time prohibit or impose burdens or costs on the transfer of Securities or cash to, by or for the Trust Fund; and

l. The Trustee shall have no liability for any Losses arising from the insolvency of any Person, including but not limited to a Subcustodian, Depository, broker, bank, and a counterparty to the settlement of a transaction or to a foreign exchange transaction, except as provided in Sections 2.2 and 2.3 above.

**8.4. Force Majeure.** Notwithstanding anything in this Agreement to the contrary, the Trustee shall not be responsible or liable for any failure to perform under this Agreement or for any Losses to the Trust Fund resulting from any event beyond the reasonable control of the Trustee.

**8.5. Fees.** The Trustee shall be paid the fees and charges as may be specifically agreed upon from time to time and such other fees and charges at the Trustee's standard rates for such services as may be applicable. The Trustee shall be reimbursed for out-of-pocket expenses that are a normal incident of the services provided herein. The Trustee is authorized to charge and collect from the Trust Fund its fees and expenses unless such fees and expenses are paid directly by the Company.

**8.6. Indemnification.** The Trust and the Company shall jointly and severally indemnify and hold harmless the Trustee from and against all Losses, including reasonable counsel fees and expenses in connection with third party claims and/or in connection with a successful defense of claims asserted by the Company and/or on behalf of the Trust, relating to or arising out of the performance of the Trustee's obligations under this Agreement, except to the extent resulting from the Trustee's negligence or willful misconduct. The Trustee shall indemnify and hold harmless the Company and the Trust from and against all Losses, including reasonable counsel fees, relating to or arising out of the Trustee's negligence or willful misconduct. This provision shall survive the termination of this Agreement.



**9. – AMENDMENT OR TERMINATION; REMOVAL OR RESIGNATION;  
APPOINTMENT OF SUCCESSOR; ASSIGNMENT**

**9.1. Amendment or Termination.**

a. This Agreement may be amended only by written agreement between the Company and the Trustee. The Company shall be responsible for ensuring that no such amendment conflicts with the terms of the Plan or makes the Trust revocable after it has become irrevocable in accordance with Section 1.2(b). At the request of the Trustee, the Company shall provide written confirmation to that effect.

b. The Company may terminate the Trust prior to making all benefit payments if all Participants entitled to benefits under the Plan have approved the termination in writing. The Company shall certify to the Trustee that it has obtained such written approvals and upon request provide copies to the Trustee. Upon termination of the Trust any assets remaining in the Trust shall be returned to the Company.

**9.2. Removal or Resignation.** The Trustee may be removed with respect to all or part of the Trust Fund upon receipt of sixty (60) days' written notice (unless a shorter or longer period is agreed upon) from the Company. The Trustee may resign as Trustee hereunder upon sixty (60) days' written notice (unless a shorter or longer period is agreed upon) delivered to the Company. In the event of such removal or resignation, a successor trustee will be appointed and the Trustee shall transfer the Trust Fund, less such amounts as may be reasonable and necessary to cover its compensation and expenses.

**9.3. Appointment of Successor.**

a. In the event the Company fails to appoint a successor trustee within sixty (60) days of receipt of written notice of resignation, the Trustee reserves the right to seek the appointment of a successor trustee from a court of competent jurisdiction. The Trust account established by the Trustee shall terminate after a successor trustee has accepted its duties and the Trustee has transferred all assets then held by the Trustee to the successor trustee. Thereafter the Trustee shall have no duties, responsibilities or liability with respect to this Agreement or the acts or omissions of any successor trustee.

b. Any successor trustee must be a bank, a trust company or other party that may be granted corporate trustee powers under federal or state law. The appointment shall be effective when accepted in writing by the new trustee, who shall have all of the rights and powers of the former trustee, including ownership rights in the Trust assets. The former trustee shall execute any instrument necessary or reasonably requested by the Company or the successor trustee to evidence the transfer. The Trustee shall not be responsible for any action or inaction of any successor trustee.

c. The Trustee need not examine the records and acts of any prior trustee. The Trustee shall not be responsible for, and the Company shall indemnify and defend the Trustee from, any claim or liability resulting from any action or inaction of any prior trustee or from any other past event, or any condition existing at the time it becomes Trustee.

**9.4. Successors and Assigns/U.S. Special Resolution Regime Transferability.**

a. This Agreement is not assignable by either the Trustee or the Company without the prior written consent of the other, except that (i) the Trustee may assign this Agreement to any BNY Mellon Affiliate, and (ii) any entity, that shall by merger, consolidation, purchase, or otherwise, succeed to substantially all the trust business of the Trustee shall, upon such succession and without any appointment or other action by the Company, be and become successor trustee hereunder. The Trustee agrees to provide notice of such successor trustee to the Company. Any assignment in violation of this provision shall be voidable at the option of the non-assigning party. This Agreement shall be binding upon, and inure to the benefit of, the Company and the Trustee and their respective successors and permitted assigns.

b. Notwithstanding anything herein to the contrary, in the event the Trustee becomes subject to a proceeding under a U.S. special resolution regime, the transfer of the Agreement (and any interest and obligation in or under, and any property securing, the Agreement) from the Trustee will be effective to the same extent as the transfer would be effective under the U.S. special resolution regime if the Agreement (and any interest and obligation in or under, and any property securing, the Agreement) were governed by the laws of the United States or a state of the United States; and, in the event the Trustee or any affiliate becomes subject to a proceeding under a U.S. special resolution regime, default rights with respect to the Agreement that may be exercised against the Trustee are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regime if the Agreement were governed by the laws of the United States or a state of the United States.

**9.5. Assignment or Alienation.** Benefits payable to Participants under this Agreement may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subjected to attachment, garnishment, levy, execution or other legal or equitable process.

**10. – ADDITIONAL PROVISIONS**

**10.1. Line Item Assets.** The Trustee may reflect on its books and records certain bookkeeping entries for Trust Property including, but not limited to, mutual funds, book-entry securities and limited partnership interests that are selected and monitored by an Authorized Person. The Trustee shall rely without independent verification on information provided by the Company or its designee regarding such Trust Property, including but not limited to positions and market valuations.

**10.2. Appropriate Action.** The Trustee is hereby authorized and empowered to take any action with respect to the Trust Fund that it deems necessary or appropriate to perform its obligations specifically set forth in this Agreement.

**10.3. Governing Law.** This Agreement shall be construed in accordance with and governed by the substantive laws of the state of New York without regard to its conflict of laws provisions. The parties consent to the jurisdiction of a state or federal court situated in New York City, New York in connection with any dispute hereunder. The Company irrevocably waives any objection it may now or hereafter have to venue in such court and any claim that a proceeding brought in such court has been brought in an inconvenient forum. The parties hereby expressly



waive, to the full extent permitted by applicable law, any right to trial by jury with respect to any judicial proceeding arising from or related to this Agreement.

**10.4. Sovereign Immunity.** To the extent that in any jurisdiction the Company may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, the Company irrevocably agrees not to claim, and hereby waives, such immunity.

**10.5. Representations.** Each party represents and warrants to the other that it has full authority to enter into this Agreement upon the terms and conditions hereof and that the individual executing this Agreement on its behalf has the requisite authority to bind such party to this Agreement, and that the Agreement constitutes a binding obligation of such party enforceable in accordance with its terms.

**10.6. USA PATRIOT Act.** The Company hereby acknowledges that the Trustee is subject to federal laws, including the Customer Identification Program (“CIP”) requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which the Trustee must obtain, verify and record information that allows the Trustee to identify the Company. Accordingly, prior to opening an account hereunder, the Trustee will ask the Company to provide certain information including, but not limited to, the Company’s name, physical address, tax identification number and other information that will help the Trustee to identify and verify the Company’s identity such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information. The Company agrees that the Trustee cannot open an account hereunder unless and until the Trustee verifies the Company’s identity in accordance with the Trustee’s CIP.

**10.7. Notices.** Notices shall be in writing and shall be addressed to the Trustee or the Company at the address set forth on the signature page or such other address as any party may designate in writing to the others. All notices shall be effective upon receipt.

**10.8. Entire Agreement.** This Agreement and any related fee agreement constitute the entire agreement with respect to the matters dealt with herein, and supersede all previous agreements, whether oral or written, and documents with respect to such matters.

**10.9. Necessary Parties.** The Trustee reserves the right to seek a judicial or administrative determination as to its proper course of action under this Agreement. Nothing contained herein will be construed or interpreted to deny the Trustee or the Company the right to have the Trustee’s account judicially determined. To the extent permitted by law, only the Trustee and the Company shall be necessary parties in any application to the courts for an interpretation of this Agreement or for an accounting by the Trustee, and no Participant under the Plan or other person having an interest in the Trust Fund shall be entitled to any notice or service of process. Any final judgment entered in such an action or proceeding shall, to the extent permitted by law, be conclusive upon all persons.

**10.10. No Third Party Beneficiaries.** The provisions of this Agreement are intended to benefit only the parties hereto, their respective successors and assigns, and Participants under the Plan. There are no other third party beneficiaries.

**10.11. Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and said counterparts when taken together shall constitute but one and the same instrument and may be sufficiently evidenced by one set of counterparts.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

**Authorized Signer of:**  
**PACIFICORP**

**Authorized Officer of:**  
**THE BANK OF NEW YORK MELLON**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**Address for Notice:**

PacifiCorp.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

**Address for Notice:**

The Bank of New York Mellon  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Pursuant to Section 7.7:

as beneficial owner, Company OBJECTS to disclosure

as beneficial owner, Company DOES NOT OBJECT to disclosure

Trustee shall CONTACT THE COMPANY'S INVESTMENT MANAGER with respect relevant Securities to make the decision whether it objects to disclosure

IF NO BOX IS CHECKED, TRUSTEE SHALL RELEASE SUCH INFORMATION UNTIL IT RECEIVES A CONTRARY WRITTEN INSTRUCTION FROM THE COMPANY.

BNY Mellon Non-COC Rabbi Trust (revised 12-07-18)

## **APPENDIX A**

### List of Covered Plans

PacifiCorp Supplemental Executive Retirement Plan

PacifiCorp Compensation Reduction Plan

PacifiCorp Deferred Compensation Payment Plan



**BNY MELLON**

**TRUST AGREEMENT**

**By and Between**

**THE BANK OF NEW YORK MELLON**

**And**

**BRIDGER COAL COMPANY**

**For the**

**BRIDGER RECLAMATION TRUST**

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## TRUST AGREEMENT

This Agreement is made and entered into as of the latest date set forth on the signature page hereto (the “**Effective Date**”) by and between **THE BANK OF NEW YORK MELLON**, a bank organized under the laws of the state of New York (“**BNY Mellon**”), and **BRIDGER COAL COMPANY**, a joint venture between Pacific Minerals, Inc. and Idaho Energy Resources Co. (“**Customer**”). BNY Mellon and Customer are collectively referred to as the “**Parties**” and individually as a “**Party**”.

### RECITALS

WHEREAS, Customer and its subsidiaries or affiliates have certain obligations to reclaim mining sites pursuant to the Reclamation Fund Agreement dated as of January 1, 1989 among Customer, Pacific Minerals, Inc., and Idaho Energy Resources Co. as Sellers, and Pacificorp, and Idaho Power Company as Buyers (the “**Reclamation Fund Agreement**”);

WHEREAS, Customer has established or desires to establish a trust, pursuant to which assets will be held to provide a source of funds to assist Customer in meeting its liabilities under the Reclamation Fund Agreement;

WHEREAS, Customer and State Street Bank and Trust Company, as successor to Bankers Trust Company of California, N.A. entered into a Trust Agreement dated January 1, 2000 (the “**Prior Agreement**”), which restated the Trust Agreement between Customer and First Security Bank of Rock Springs dated January 1, 1989 (the “**Original Agreement**”); and

WHEREAS, Customer wishes to appoint BNY Mellon as the trustee of the trust established by the Original Agreement and currently existing under the Prior Agreement, and BNY Mellon is willing to provide such services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and intending to be legally bound, the Parties agree to amend and restate the Prior Agreement as follows.

### 1. DEFINITIONS

Whenever used in this Agreement, the following words have the meanings set forth below:

“**Act**” has the meaning set forth in Section 10.1(a).

“**Affiliate**” means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by or under common control with such entity.

“**Agreement**” means, collectively, this Trust Agreement, the Grantor Trust Schedule and any Exhibits hereto and any other documents incorporated herein by reference.

“**Assets**” means any assets acceptable to BNY Mellon, excluding any stock, warrants, options or other obligations issued by Customer or direct interest in real property,



leaseholds or mineral interests, which Customer may transfer to BNY Mellon's care, to be held in trust in accordance with this Agreement.

**"Authorized Person"** has the meaning set forth in Section 3.1.

**"BNY Mellon"** has the meaning set forth in the introductory paragraph.

**"Cash"** means the money and currency of any jurisdiction which BNY Mellon accepts for deposit in the Fund.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Confidential Information"** means, with respect to a Party, the terms of this Agreement and all non-public business and financial information of such Party (including, with respect to Customer, information regarding the Fund and including, with respect to BNY Mellon, information regarding its practices and procedures related to the services provided hereunder) disclosed to the other Party in connection with this Agreement.

**"Customer"** has the meaning set forth in the introductory paragraph.

**"Data Terms Website"** means <http://www.bnymellon.com/products/assetservicing/vendoragreement.pdf> or any successor website the address of which is provided by BNY Mellon to Customer.

**"Depository"** means the Depository Trust Company, Euroclear, Clearstream Banking S.A., the Canadian Depository System, CLS Bank and any other securities depository, book-entry system or clearing agency authorized to act as a system for the central handling of securities pursuant to the laws of the applicable jurisdiction, and any successors to, and/or nominees of, any of the foregoing.

**"Effective Date"** has the meaning set forth in the introductory paragraph.

**"Electronic Access Services"** means such services made available by BNY Mellon or a BNY Mellon Affiliate to Customer to electronically access information relating to the Fund and/or transmit Instructions.

**"Fund"** means the total Assets in the Trust established pursuant to this Agreement.

**"Grantor Trust Schedule"** means the Grantor Trust Schedule attached hereto that contains additional provisions for non-ERISA grantor trusts.

**"Instructions"** means, with respect to this Agreement, instructions issued to BNY Mellon by way of (a) one of the following methods (each as and to the extent specified by BNY Mellon as available for use in connection with the services hereunder): (i) the Electronic Access Services; (ii) third-party electronic communication services containing, where applicable, appropriate authorization codes, passwords or authentication keys, or otherwise appearing on their face to have been transmitted by an Authorized Person or (iii) third-party institutional trade matching utilities used to effect transactions in accordance with such utility's customary procedures or (b) such other method as may be agreed upon by the Parties and that appear on their face to have been transmitted by an Authorized Person.

**“Investment Manager”** means an investment manager with respect to the Fund that has been appointed pursuant to Section 2.2(b).

**“Market Data”** means pricing, valuations or other commercially sourced data applicable to any Security. Market Data also includes security identifiers, bond ratings and classification data.

**“Market Data Providers”** means vendors and analytics providers and any other Person providing Market Data to BNY Mellon.

**“Oral Instructions”** means, with respect to this Agreement, spoken instructions issued to BNY Mellon and reasonably believed by BNY Mellon to be from an Authorized Person.

**“Party”** or **“Parties”** has the meaning set forth in the introductory paragraph.

**“Person”** or **“Persons”** means any entity or individual.

**“Sanctions”** means all economic sanctions laws, rules, regulations, executive orders and requirements administered by any governmental authority of the United States (including the United States Office of Foreign Assets Control) or any other applicable domestic or foreign authority with jurisdiction over Customer.

**“Securities”** means all (a) debt and equity securities and (b) instruments representing rights or interests therein, including rights to receive, subscribe to or purchase the foregoing; in each case as may be agreed upon from time to time by BNY Mellon and Customer and which are from time to time delivered to or received by BNY Mellon and/or any Subcustodian for deposit in the Fund.

**“Standard of Care”** has the meaning set forth in Section 14.1.

**“Subcustodian”** means a bank or other financial institution (other than a Depository) that is selected and used by BNY Mellon or a BNY Mellon Affiliate in connection with the settlement of transactions and/or custody of Assets hereunder, and any successors to, and/or nominees of, any of the foregoing.

**“Tax Obligations”** means taxes, withholding, certification and reporting requirements, claims for exemptions or refund, interest, penalties, additions to tax and other related expenses.

**“Third Party Data”** has the meaning set forth in Section 9.3(a).

**“Trust”** means the trust created by this Agreement, known as the Bridger Reclamation Trust.

## **2. APPOINTMENT OF TRUSTEE; THE FUND**

### **2.1 Appointment of Trustee**

- (a) The Trust is intended to be a grantor trust, of which Customer is the grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the

Code, and will be construed accordingly. No action of BNY Mellon will give this Trust the objective of carrying on a business and dividing the profits therefrom, within the meaning of Treasury Regulation Section 301.7701-1.

- (b) Customer hereby appoints BNY Mellon as trustee for the Assets and BNY Mellon hereby accepts such appointment. The Parties acknowledge and agree that BNY Mellon's duties pursuant to such appointment will be limited solely to those duties expressly undertaken pursuant to this Agreement.
- (c) Notwithstanding the foregoing, BNY Mellon has no obligation:
  - (i) With respect to any Assets until they are actually received and accepted by BNY Mellon in the Fund;
  - (ii) To inquire into, make recommendations, supervise or determine the suitability of any transactions affecting the Fund; or
  - (iii) To determine the adequacy of title to, or the validity or genuineness of, any Assets received by it or delivered by it pursuant to this Agreement.
- (d) Cash held hereunder may be subject to additional deposit terms and conditions issued by BNY Mellon or the applicable Subcustodian from time to time, including rates of interest and deposit account access.
- (e) If Customer engages in securities lending activities, such activities will be subject to certain additional and/or modified terms to be set forth in a separate written agreement between Customer and BNY Mellon or a BNY Mellon Affiliate.

## **2.2 Contributions; Investment of the Fund**

- (a) BNY Mellon will accept contributions that are paid to it by Customer in accordance with this Agreement. Such contributions will be in Cash or in such other form as may be acceptable to BNY Mellon. BNY Mellon will have no duty to determine the amount or sufficiency of contributions, nor to collect contributions due, under Reclamation Fund Agreement or this Agreement. Customer represents that Customer has the sole duty and responsibility for the determination of the accuracy or sufficiency of the contributions to be made to the Fund, whether due under the Reclamation Fund Agreement or under any governing laws, agreements, court orders or otherwise.
- (b) Customer has the authority and responsibility to manage the assets of the Fund. In carrying out this responsibility, Customer may appoint (and remove) one or more Investment Managers, which may include BNY Mellon or a BNY Mellon Affiliate, if and to the extent set forth in a separate agreement executed by BNY Mellon or such Affiliate. BNY Mellon will not be responsible under this Agreement, directly or indirectly, for the investment or reinvestment of the assets of the Fund. If Customer appoints an Investment Manager, BNY Mellon will place in a separate subaccount those assets over which the Investment Manager has discretion and control.

### 3. AUTHORIZED PERSONS AND INSTRUCTIONS; ELECTRONIC ACCESS

#### 3.1 Authorized Persons

Promptly following the Effective Date, Customer and/or its designee (including any of Customer's Investment Managers) will furnish BNY Mellon with one or more written lists or other documentation acceptable to BNY Mellon specifying the names and titles of, or otherwise identifying, all Persons authorized to act on behalf of Customer with respect to this Agreement (each, an "**Authorized Person**"). Customer will be responsible for keeping such lists and/or other documentation current, and will update such lists and/or other documentation, as necessary from time to time, pursuant to Instructions.

#### 3.2 Instructions

- (a) Except as otherwise expressly provided in this Agreement, BNY Mellon will have no obligation to take any action hereunder unless and until it receives Instructions issued in accordance with this Agreement.
- (b) Customer will be responsible for ensuring that (i) only Authorized Persons issue Instructions to BNY Mellon and (ii) all Authorized Persons safeguard and treat with extreme care any user and authorization codes, passwords and authentication keys used in connection with the issuance of Instructions.
- (c) Where Customer may or is required to issue Instructions, such Instructions will be issued by an Authorized Person. The Authorized Person (and not BNY Mellon) will be responsible for determining that Instructions are in accordance with the terms of all governing agreements, court orders, and applicable law.
- (d) BNY Mellon will be entitled to deal with any Authorized Person until notified otherwise pursuant to Instructions, and will be entitled to act and rely upon any Instruction received by BNY Mellon.
- (e) All Instructions must include all information necessary, and must be delivered using such methods and in such format as BNY Mellon may require and be received within BNY Mellon's established cut-off times and otherwise in sufficient time, to enable BNY Mellon to act upon such Instructions.
- (f) BNY Mellon may in its sole discretion decline to act upon any Instructions that do not comply with requirements set forth in Section 3.2(e) or that conflict with applicable law or regulations or BNY Mellon's operating policies and practices, in which event BNY Mellon will promptly notify Customer.
- (g) Customer acknowledges that while it is not part of BNY Mellon's normal practices and procedures to accept Oral Instructions, BNY Mellon may in certain limited circumstances accept Oral Instructions. In such event, such Oral Instructions will be deemed to be Instructions for purposes of this Agreement. An Authorized Person issuing such an Oral Instruction will promptly confirm such Oral Instruction to BNY Mellon in writing. Notwithstanding the foregoing, Customer agrees that the fact that such written confirmation is not received by BNY Mellon, or that such written confirmation contradicts the Oral Instruction, will in no way

affect (i) BNY Mellon's reliance on such Oral Instruction or (ii) the validity or enforceability of transactions authorized by such Oral Instruction and effected by BNY Mellon.

- (h) Customer acknowledges and agrees that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to BNY Mellon and that there may be more secure methods of transmitting Instructions than the method selected by the sender. Customer agrees that the security procedures, if any, to be followed by Customer and BNY Mellon with respect to the transmission and authentication of Instructions provide to Customer a commercially reasonable degree of protection in light of the Fund's particular needs and circumstances.

### **3.3 BNY Mellon Actions Without Instructions**

Notwithstanding anything to the contrary set forth in this Agreement, Customer hereby authorizes BNY Mellon, without Instructions, to take any administrative or ministerial actions with respect to the Fund that it deems reasonably necessary or appropriate to perform its obligations under this Agreement, including the following:

- (a) Receive income and other payments due to the Fund; provided, however, that BNY Mellon will have no duty to pursue collection of any amount due to the Fund, including for Securities in default, if such amount is not paid when due;
- (b) Carry out any exchanges of Securities or other corporate actions not requiring discretionary decisions;
- (c) Facilitate access by Customer or its designee to ballots or online systems to assist it in the voting of proxies received by BNY Mellon (in its capacity as custodian) for eligible positions of Securities held in the Fund (excluding bankruptcy matters), all of which will be exercised by Customer or its designee and not by BNY Mellon;
- (d) Forward to Customer or its designee information (or summaries of information) that BNY Mellon receives (in its capacity as custodian) from Depositories or Subcustodians concerning Securities in the Fund (excluding bankruptcy matters);
- (e) Forward to Customer or its designee an initial notice of bankruptcy cases relating to Securities held in the Fund and a notice of any required action related to such bankruptcy cases as may be received by BNY Mellon (in its capacity as custodian). BNY Mellon will take no further action nor provide further notification related to the bankruptcy case;
- (f) Unless otherwise elected by Customer, and in accordance with BNY Mellon's standard terms and conditions, provide class action filing services for settled claims related to Securities with industry recognized identifiers;
- (g) Endorse for collection checks, drafts or other negotiable instruments received on behalf of the Fund;

- (h) Deposit Cash in accounts bearing interest at a reasonable rate in the banking department of BNY Mellon or an affiliated banking organization; and
- (i) Execute and deliver, solely in its capacity as custodian, certificates, documents or instruments incidental to BNY Mellon's performance under this Agreement.

### **3.4 Funds Transfers**

With respect to each Instruction for a Cash transfer, when the Instruction is to credit or pay a party by both a name and a unique numeric or alpha-numeric identifier (e.g., IBAN or ABA or account number), BNY Mellon and any other bank participating in the Cash transfer will be entitled to rely solely on such numeric or alpha-numeric identifier, even if it identifies a party different from the party named. Such reliance on an identifier will apply to beneficiaries named in the Instruction, as well as any financial institution that is designated in the Instruction to act as an intermediary in such Cash transfer. To the extent permitted by applicable law, the parties will be bound by the rules of any transfer system used to effect a Cash transfer under this Agreement.

### **3.5 Electronic Access**

If Customer elects to use the Electronic Access Services in connection with this Agreement, the use thereof will be subject to any terms and conditions contained in a separate written agreement between the Parties or their Affiliates. If an Authorized Person elects, with BNY Mellon's prior consent, to transmit Instructions through a third-party electronic communications service, BNY Mellon will not be responsible or liable for the reliability or availability of any such service.

## **4. SUBCUSTODIANS, DEPOSITORIES AND AGENTS**

### **4.1 Use of Subcustodians and Depositories**

- (a) BNY Mellon will be entitled to utilize Subcustodians and Depositories in connection with its performance hereunder.
- (b) BNY Mellon will only utilize Subcustodians that have entered into an agreement with BNY Mellon or a BNY Mellon Affiliate, and Assets held through a Subcustodian will be held subject to the terms and conditions of such Subcustodian's respective agreement.
- (c) Assets deposited in a Depository will be held subject to the rules, procedures, terms and conditions of such Depository. Subcustodians may hold Assets in Depositories in which such Subcustodians participate.
- (d) Unless otherwise required by local law or practice or a particular Subcustodian agreement, Assets deposited with Subcustodians or Depositories may be held in a commingled account in the name of, as applicable, BNY Mellon, a BNY Mellon Affiliate or the applicable Subcustodian, for its clients.

## 4.2 Liability for Subcustodians

- (a) BNY Mellon will exercise the Standard of Care in selecting, retaining and monitoring Subcustodians.
- (b) With respect to Assets held by a Subcustodian, BNY Mellon will be liable to Customer for the activities of such Subcustodian under this Agreement to the extent that BNY Mellon would have been liable to Customer under this Agreement if BNY Mellon had performed such activities itself in the relevant market in which such Subcustodian is located; provided, however, that with respect to Securities held by a Subcustodian that is not a BNY Mellon Affiliate:
  - (i) BNY Mellon's liability will be limited solely to the extent resulting directly from BNY Mellon's failure to exercise the Standard of Care in selecting, retaining and monitoring such Subcustodian; and
  - (ii) To the extent that BNY Mellon is not liable pursuant to Section 4.2(b)(i), BNY Mellon's sole responsibility to Customer will be to: (A) take reasonable and appropriate action to recover from such Subcustodian, and (B) forward to the Trust any amounts so recovered (exclusive of costs and expenses incurred by BNY Mellon in connection therewith).

## 4.3 Liability for Depositories

BNY Mellon will have no responsibility or liability for the activities of any Depository arising out of or relating to this Agreement or any cost or burden imposed on the transfer or holding of Assets held with such Depository.

## 4.4 Use of Agents

BNY Mellon may appoint agents, including BNY Mellon Affiliates, on such terms and conditions as it deems appropriate to perform its obligations hereunder. Except as otherwise specifically provided herein, no such appointment will discharge BNY Mellon from its obligations hereunder.

## 5. CORPORATE ACTIONS

### 5.1 Notification

BNY Mellon will notify Customer or its designee of rights or discretionary corporate actions as promptly as practicable under the circumstances, provided that BNY Mellon has actually received, in its capacity as custodian, notice of such right or discretionary corporate action from the relevant issuer, or from a Subcustodian, Depository or third party vendor. Without actual receipt of such notice by BNY Mellon, BNY Mellon will have no responsibility or liability for failing to so notify Customer.

### 5.2 Exercise of Rights

Whenever there are voluntary rights that may be exercised or alternate courses of action that may be taken with respect to Securities in the Fund, Customer or its designee will be responsible for making any decisions relating thereto and for instructing BNY Mellon



to act. In order for BNY Mellon to act, Customer must issue Instructions either: (a) using the BNY Mellon-generated form provided along with BNY Mellon's notice under Section 5.1 or (b) if Customer is not using such BNY Mellon-generated form, clearly indicating, by reference to the options provided on such BNY Mellon-generated form, which action Customer is electing. Each such Instruction will be addressed as BNY Mellon may from time to time request and issued by such time as BNY Mellon will advise Customer or its designee.

### **5.3 Partial Redemptions, Payments, Etc.**

BNY Mellon will advise Customer or its designee upon its notification, in its capacity as custodian, of a partial redemption, partial payment or other action with respect to a Security affecting fewer than all such Securities held within the Fund. If BNY Mellon or any Subcustodian or Depository holds any Securities affected by one of the events described, BNY Mellon or such Subcustodian or Depository may select the Securities to participate in such partial redemption, partial payment or other action in any non-discriminatory manner that it customarily uses to make such selection.

## **6. SETTLEMENT**

### **6.1 Settlement Instructions**

Promptly after the execution of each Securities transaction, Customer will issue to BNY Mellon Instructions to settle such transaction. Unless otherwise agreed by BNY Mellon and subject to Section 8.1, Assets will be credited to the Fund only when actually received by BNY Mellon.

### **6.2 Settlement Funds**

For the purpose of settling a Securities transaction, Customer will provide BNY Mellon with sufficient immediately available funds or Securities, as applicable, by such time and date as is required to enable BNY Mellon to settle such transaction in the country of settlement and in the currency to be used to settle such transaction.

### **6.3 Settlement Practices**

Securities transactions will be settled using practices customary in the jurisdiction or market where the transaction occurs, which may include the delivery of Securities or Cash to a counterparty or its agents against, as applicable, the receipt of Securities or Cash in the future. Customer assumes, on behalf of the Trust, full responsibility for all risks involved in connection with BNY Mellon's delivery of Securities or Cash in accordance with such practices.

## **7. TAX MATTERS**

### **7.1 Tax Obligations**

Customer assumes the duty to file any and all tax reports and returns, as well as full responsibility for the payment of all taxes assessed on or with respect to the Fund, and all taxes due on the income collected for Customer for any and all such transactions with



respect to the Assets. For purposes of IRS Form 1099, which BNY Mellon may be required to file, all reportable income shall be reported as attributable to Customer.

## **7.2 Responsibility for Taxes**

Customer will be responsible and liable for all Tax Obligations with respect to any Assets held on behalf of Customer and any transaction related thereto. Customer acknowledges and agrees that BNY Mellon and its Affiliates are not tax advisers and will not under any circumstances provide tax advice to Customer. Customer will obtain its own independent tax advice for any tax-related matters.

## **7.3 Payments**

Where BNY Mellon receives Instructions to make distributions or transfers out of the Fund in order to pay Customer's third party service providers, Customer acknowledges that in making such payments BNY Mellon is acting in an administrative or ministerial capacity, and not as the payor, for tax information reporting and withholding purposes.

## **8. CREDITS AND ADVANCES**

### **8.1 Contractual Settlement and Income**

BNY Mellon may, in its sole discretion, as a matter of bookkeeping convenience, credit the Fund with the proceeds resulting from the purchase, sale, redemption or other delivery or receipt of Securities, or interest, dividends or other distributions payable on Securities, or any foreign exchange transaction effected in connection with this Agreement, prior to its actual receipt thereof. All such credits will be conditional until BNY Mellon's actual receipt of such proceeds and may be reversed by BNY Mellon to the extent that such proceeds are not received. Actual receipt of proceeds with respect to a transaction will not be deemed to have occurred, and the transaction will not be considered final, until BNY Mellon has received sufficient immediately available funds or Securities specifically applicable to such transaction that, under applicable local law, rule or practice, are irreversible and not subject to any security interest, levy or other encumbrance.

### **8.2 Advances**

If BNY Mellon receives an Instruction that, if processed, would result in an overdraft in the Fund, BNY Mellon may, in its sole discretion, advance funds in any currency hereunder.

### **8.3 Repayment**

If: (a) BNY Mellon has advanced funds to the Fund; (b) an overdraft has occurred in the Fund (including overdrafts incurred in connection with the settlement of securities transactions, funds transfers or foreign exchange transactions) or (c) the Trust is for any other reason indebted to BNY Mellon, Customer on behalf of the Trust agrees to repay BNY Mellon (on demand or upon becoming aware thereof) the amount of such advance, overdraft or indebtedness, plus accrued interest at a rate then charged by BNY Mellon to its institutional custody clients in the relevant currency.

#### **8.4 Securing Repayment**

In order to secure repayment of the Trust's obligations and liabilities (whether or not matured) to BNY Mellon or any BNY Mellon Affiliate, arising under or related to this Agreement, and without limiting BNY Mellon's or such BNY Mellon Affiliate's rights under applicable law or any other agreement, Customer on behalf of the Trust hereby pledges and grants to BNY Mellon and such BNY Mellon Affiliate, and agrees BNY Mellon and such BNY Mellon Affiliate will have to the maximum extent permitted by law, a continuing first lien and security interest in all of the Trust's right, title and interest in and to the Fund and the Assets now or hereafter held in the Fund (including proceeds thereof); provided that Customer does not hereby grant a security interest in any Securities issued by an affiliate (as defined in Section 23A of the U.S. Federal Reserve Act) of BNY Mellon. Customer represents, warrants and covenants that the Trust owns the Assets in the Fund free and clear of all liens, claims and security interests (except as otherwise acknowledged in writing by BNY Mellon), and that the first lien and security interest granted herein will be subject to no setoffs, counterclaims or other liens prior to or on a parity with it in favor of any third party (other than specific liens granted preferred status by statute). Customer will take any additional steps required to assure BNY Mellon of such priority security interest, including notifying third parties or obtaining their consent. BNY Mellon will be entitled to collect from the Fund sufficient Cash for reimbursement, and if such Cash is insufficient, to sell Securities to the extent necessary to obtain reimbursement. In this regard, BNY Mellon will be entitled to all the rights and remedies of a pledgee, secured creditor and/or securities intermediary under applicable laws, rules and regulations as then in effect as if the Trust is in default.

### **9. STATEMENTS; BOOKS AND RECORDS; THIRD PARTY DATA**

#### **9.1 Statements**

BNY Mellon will make available to Customer, through the Electronic Access Services or such other method as may be agreed upon by the Parties, a monthly statement reflecting all transfers to or from the Fund during such month and all holdings in the Fund as of the last business day of such month. Customer will promptly review each such statement and, within ninety (90) days of when such statement is made available by BNY Mellon, notify BNY Mellon of any exception or objection thereto. Notwithstanding the foregoing, Customer may notify BNY Mellon of any such exceptions or objections at any time; provided, however, that BNY Mellon will not be responsible or liable for any losses reasonably evident from review of such statement that could have been mitigated had such notice been provided during such ninety (90) day period.

#### **9.2 Books and Records**

BNY Mellon will identify on its books and records the Assets belonging to the Fund, whether held directly or indirectly through Subcustodians or Depositories. Securities held in the Fund will be held in registered form in the name of BNY Mellon or one of its nominees and will be segregated on BNY Mellon's books and records from BNY Mellon's own property. Customer and its authorized representatives will have the right, at Customer's own expense and with reasonable prior written notice to BNY Mellon, to have reasonable access to those books and records directly pertaining to the Fund. Any

such access will occur during BNY Mellon's normal business hours and will be subject to BNY Mellon's applicable security policies and procedures.

### 9.3 Third Party Data

- (a) Customer acknowledges that BNY Mellon will be receiving, utilizing and relying on Market Data and other data provided by Customer and/or by third parties in connection with its performance of the services hereunder (collectively, "**Third Party Data**"). BNY Mellon is entitled to rely without inquiry on all Third Party Data provided to BNY Mellon hereunder (and all Instructions related to Third Party Data), and BNY Mellon makes no assurances or warranties in relation to the accuracy or completeness of Third Party Data and will not be responsible or liable for any losses or damages incurred as a result of any Third Party Data that is inaccurate or incomplete. BNY Mellon may follow Instructions with respect to Third Party Data, even if such Instructions direct BNY Mellon to override its usual procedures and data sources or if BNY Mellon, in performing services for itself or others (including services similar to those performed for Customer), receives different Third Party Data for the same or similar Securities.
- (b) To the extent that BNY Mellon provides values of, and pricing information in relation to, Securities, Customer acknowledges and agrees that:
  - (i) BNY Mellon is authorized to use generally recognized pricing services including Market Data Providers, brokers, dealers and other market makers. In the event that such pricing services are unable to provide a value of or pricing information in respect of Securities and BNY Mellon provides values and pricing information, BNY Mellon will so advise Customer, but will have no other responsibility or liability in respect of such valuation or pricing information;
  - (ii) Certain pricing or valuation information may be based on calculated amounts rather than actual market transactions and may not reflect actual market values, and the variance between such calculated amounts and actual market values may be material;
  - (iii) Certain third party service providers may not permit Customer's directed price to be used, which may result in differences between third party service provider reports and custodial reports;
  - (iv) Performance measurement and analytic services may use different data sources than those used by BNY Mellon to provide Market Data for the Fund, which may result in differences between custodial reports and performance measurement and analytic reports; and
  - (v) BNY Mellon may require Customer to execute supplemental documentation prior to providing pricing for certain Securities.
- (c) Certain Market Data may be the intellectual property of Market Data Providers, which impose additional terms and conditions upon Customer's use of such Market Data. Such additional terms and conditions can be found on the Data

Terms Website. Customer agrees to those terms and conditions as they are posted on the Data Terms Website from time to time.

## 10. DISCLOSURES

### 10.1 Required Disclosure

- (a) With respect to Securities that are registered under the U.S. Securities Exchange Act of 1934, as amended, or that are issued by an issuer registered under the U.S. Investment Company Act of 1940, as amended, the U.S. Shareholder Communications Act of 1985 (the “**Act**”) requires BNY Mellon to disclose to issuers of such Securities, upon their request, the name, address and securities position of BNY Mellon’s clients who are “beneficial owners” (as defined in the Act) of the issuer’s Securities, unless the beneficial owner objects to such disclosure. The Act defines a “beneficial owner” as any person who has or shares the power to vote a security (pursuant to an agreement or otherwise) or who directs the voting of a security. Customer has designated on the signature page hereof whether (i) as beneficial owner, it objects to the disclosure of its name, address and securities position to any U.S. issuer that requests such information pursuant to the Act for the specific purpose of direct communications between such issuer and Customer or (ii) it requires BNY Mellon to contact the Investment Manager with respect to relevant Securities to make the decision as to whether it objects to the disclosure of the beneficial owner’s name, address and securities position to any U.S. issuer that requests such information pursuant to the Act.
- (b) With respect to certain Securities issued outside the United States, BNY Mellon may disclose information to issuers of Securities as required by the organizational documents of the relevant issuer or in accordance with local market practice.
- (c) In connection with any disclosure contemplated by this Section 10.1, Customer agrees to supply BNY Mellon with any required information.

### 10.2 Foreign Exchange Transactions

In connection with this Agreement, Customer may enter into foreign exchange transactions (including foreign exchange hedging transactions) with BNY Mellon or a BNY Mellon Affiliate acting as a principal or otherwise through customary channels. Customer may issue standing Instructions with respect to any such foreign exchange transactions, subject to any rules or limitations that may apply to any foreign exchange facility made available to the Fund. With respect to any such foreign exchange transactions, BNY Mellon or such BNY Mellon Affiliate is acting as a principal counterparty on its own behalf and is not acting as a fiduciary or agent for, or on behalf of, Customer, its Investment Manager or the Trust. Any such foreign exchange transactions will be governed by the relevant master netting agreement (e.g., an ISDA Master Agreement) in place between Customer and BNY Mellon or such BNY Mellon Affiliate, and such transactions will be secured by the Fund and the Assets therein pursuant to Section 8.4. In the event there is no such master netting agreement in place and Customer fails to settle or otherwise meet its obligations in respect of such foreign

exchange transactions, BNY Mellon has the right to net all such outstanding foreign exchange transactions between the Trust and BNY Mellon or such BNY Mellon Affiliate for the purpose of ascertaining a single net obligation between the Trust and BNY Mellon, and to the extent such obligation is owed by the Trust to BNY Mellon or a BNY Mellon Affiliate, such obligation will be secured by the Fund and the Assets therein pursuant to Section 8.4.

### **10.3 Investment of Cash**

In connection with this Agreement, Customer may issue standing Instructions to invest Cash in one or more sweep investment vehicles. Such investment vehicles may be offered by a BNY Mellon Affiliate or by a client of BNY Mellon, and BNY Mellon may receive compensation therefrom. By making investment vehicles available, BNY Mellon and its Affiliates will not be deemed to have recommended, endorsed or guaranteed any such investment vehicle in any way or otherwise to have acted as a fiduciary or agent for, or on behalf of, Customer, any Investment Manager or the Fund. BNY Mellon will have no liability for any loss incurred on any such investments. Customer understands that Cash may be uninvested if it is received or reconciled to an account in the Fund after the applicable deadline to be swept into the selected investment vehicle.

## **11. REGULATORY MATTERS**

### **11.1 USA PATRIOT Act**

Section 326 of the U.S. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (including its implementing regulations) requires BNY Mellon to implement a customer identification program pursuant to which BNY Mellon must obtain certain information from Customer in order to verify Customer's identity prior to establishing an account. Accordingly, prior to establishing the Fund, Customer will be required to provide BNY Mellon with certain information, including Customer's name, physical address, tax identification number and other pertinent identifying information, to enable BNY Mellon to verify Customer's identity. Customer acknowledges that BNY Mellon cannot establish an account unless and until BNY Mellon has successfully performed such verification.

### **11.2 Sanctions**

- (a) Throughout the term of this Agreement, Customer: (i) will have in place and will implement policies and procedures designed to prevent violations of Sanctions, including measures to accomplish effective and timely scanning of all relevant data with respect to incoming or outgoing Assets or transactions relating to this Agreement; (ii) will ensure that neither Customer nor any of its Affiliates, directors, officers or employees is an individual or entity that is, or is owned or controlled by an individual or entity that is: (A) the target of Sanctions or (B) located, organized or resident in a country or territory that is, or whose government is, the target of Sanctions and (iii) will not, directly or indirectly, use the Fund in any manner that would result in a violation by Customer or BNY Mellon of Sanctions.

- (b) Customer will promptly provide to BNY Mellon such information as BNY Mellon reasonably requests in connection with the matters referenced in this Section 11.2, including information regarding the Fund, the Assets and the source thereof, and the identity of any individual or entity having or claiming an interest therein. BNY Mellon may decline to act or provide services in respect of the Fund, and take such other actions as it, in its reasonable discretion, deems necessary or advisable, in connection with the matters referenced in this Section 11.2. If BNY Mellon declines to act or provide services as provided in the preceding sentence, except as otherwise prohibited by applicable law or official request, BNY Mellon will inform Customer as soon as reasonably practicable.

## **12. COMPENSATION**

### **12.1 Fees and Expenses**

In consideration of BNY Mellon's services provided hereunder, BNY Mellon will be (a) paid the fees set forth in the agreed upon fee schedule (as such fee schedule may be amended by BNY Mellon from time to time upon 45 days' prior written notice to Customer) and (b) reimbursed for any out-of-pocket and incidental expenses incurred by BNY Mellon in connection therewith. Unless otherwise agreed by the Parties, such amounts will be payable to BNY Mellon within 45 days of Customer's receipt of the relevant invoice. Without limiting BNY Mellon's other rights set forth in this Agreement, BNY Mellon may charge interest on overdue amounts at a rate then charged by BNY Mellon to its institutional trust clients in the relevant currency. BNY Mellon is authorized to charge and collect from the Fund its fees and expenses unless such fees and expenses are paid directly by Customer.

### **12.2 Other Compensation**

Customer acknowledges that, as part of BNY Mellon's compensation, BNY Mellon will earn interest on Cash balances held by BNY Mellon (including disbursement balances, balances arising from purchase and sale transactions and when Cash otherwise remains uninvested) as provided in BNY Mellon's compensation disclosures.

## **13. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **13.1 BNY Mellon**

BNY Mellon represents and warrants that: (a) it is duly organized, validly existing and in good standing in its jurisdiction of organization; (b) it has the requisite corporate power and authority to enter into and to carry out the transactions contemplated by this Agreement and (c) the individual executing this Agreement on its behalf has the requisite authority to bind BNY Mellon to this Agreement.

### **13.2 Customer**

Customer represents and warrants that: (i) it is duly organized, validly existing and in good standing in its jurisdiction of organization; (ii) it has the requisite corporate power and authority to enter into and to carry out the transactions contemplated by this



Agreement and (iii) the individual executing this Agreement on its behalf has the requisite authority to bind Customer to this Agreement.

## 14. LIABILITY

### 14.1 Standard of Care

BNY Mellon will discharge its duties under this Agreement with the standard of care and diligence that a professional custodian would observe in these affairs taking into account the prevailing rules, practices, procedures and circumstances in the relevant market, or such other standard of care required by applicable law (the “**Standard of Care**”).

### 14.2 Limitation of Liability

- (a) BNY Mellon’s liability arising out of or relating to this Agreement will be limited solely to those direct damages that are caused by BNY Mellon’s failure to perform its obligations under this Agreement in accordance with the Standard of Care. In no event will BNY Mellon be liable for any indirect, incidental, consequential, exemplary, punitive or special losses or damages, or for any loss of revenues, profits or business opportunity, arising out of or relating to this Agreement (whether or not foreseeable and even if BNY Mellon has been advised of the possibility of such losses or damages).
- (b) The duties of BNY Mellon are limited to the Fund, and BNY Mellon has no duties with respect to assets held by any other Person including any other trustee. Customer agrees that BNY Mellon will not serve as, and will not be deemed to be, a co-trustee under any circumstances.
- (c) Notwithstanding anything to the contrary set forth in this Agreement, in no event will BNY Mellon be liable for any losses or damages arising out of any of the following:
  - (i) Customer’s or an Authorized Person’s decision to invest in or hold Assets in any particular country, including any losses or damages arising out of or relating to: (A) the financial infrastructure of a country; (B) a country’s prevailing custody and settlement practices; (C) nationalization, expropriation or other governmental actions; (D) a country’s regulation of the banking or securities industry; (E) currency and exchange controls, restrictions, devaluations, redenominations, fluctuations or asset freezes; (F) laws, rules, regulations or orders that at any time prohibit or impose burdens or costs on the transfer of Assets to, by or for the Fund or (G) market conditions which affect the orderly execution of securities transactions or affect the value of securities;
  - (ii) BNY Mellon’s reliance on Instructions;
  - (iii) BNY Mellon’s receipt or acceptance of fraudulent, forged or invalid Securities (or Securities which are otherwise not freely transferable or deliverable without encumbrance in any relevant market);

- (iv) For any matter with respect to which BNY Mellon is required to act only upon the receipt of Instructions, (A) BNY Mellon's failure to act in the absence of such Instructions or (B) Instructions that are late or incomplete or do not otherwise satisfy the requirements of Section 3.2(e), whether or not BNY Mellon acted upon such Instructions;
  - (v) BNY Mellon receiving or transmitting any data to or from Customer or any Authorized Person via any non-secure method of transmission or communication selected by Customer;
  - (vi) Customer's or an Authorized Person's decision to invest in Securities or to hold Cash in any currency; or
  - (vii) The insolvency of any Person, including a Subcustodian that is not a BNY Mellon Affiliate, Depository, broker, bank or a counterparty to the settlement of a transaction or to a foreign exchange transaction, except as provided in Section 4.2.
- (d) If BNY Mellon is in doubt as to any action it should or should not take, either pursuant to, or in the absence of, Instructions, BNY Mellon may obtain the advice of either reputable counsel of its own choosing or counsel to Customer, and BNY Mellon will not be liable for acting in accordance with such advice.

### **14.3 Force Majeure**

BNY Mellon will not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement to the extent caused, directly or indirectly, by any event beyond its reasonable control, including acts of God, strikes or other labor disputes, work stoppages, acts of war, terrorism, general civil unrest, governmental or military actions, legal constraint or the interruption, loss or malfunction of utilities or communications or computer systems. BNY Mellon will promptly notify Customer upon the occurrence of any such event and will use commercially reasonable efforts to minimize its effect.

### **14.4 Indemnification**

Customer and the Trust will jointly and severally indemnify and hold harmless BNY Mellon from and against all losses, costs, expenses, damages and liabilities (including reasonable counsel fees and expenses) incurred by BNY Mellon, and will defend BNY Mellon against any third party claim, in each case arising out of or relating to BNY Mellon's performance under this Agreement, except to the extent resulting from BNY Mellon's failure to perform its obligations under this Agreement in accordance with the Standard of Care. The Parties agree that the foregoing will include reasonable counsel fees and expenses incurred by BNY Mellon in connection with its successful defense of claims asserted by Customer or relating to BNY Mellon's performance under this Agreement. BNY Mellon will indemnify and hold harmless Customer and the Trust from and against all losses, costs, expenses, damages and liabilities (including reasonable counsel fees and expenses) incurred by Customer and/or the Trust, and will defend them against any third party claim, in each case arising out of BNY Mellon's failure to perform its obligations under this Agreement in accordance with the Standard of Care.



## **15. CONFIDENTIALITY**

### **15.1 Confidentiality Obligations**

Each Party agrees to use the Confidential Information of the other Party solely to accomplish the purposes of this Agreement and, except in connection with such purposes or as otherwise permitted herein, not to disclose such information to any other Person without the prior written consent of the other Party. Notwithstanding the foregoing, BNY Mellon may: (a) use Customer's Confidential Information in connection with certain functions performed on a centralized basis by BNY Mellon, its Affiliates and joint ventures and their service providers (including audit, accounting, risk, legal, compliance, sales, administration, product communication, relationship management, compilation and analysis of customer-related data and storage); (b) disclose such information to its Affiliates and joint ventures and to its and their service providers who are subject to confidentiality obligations and (c) store the names and business contact information of Customer's employees and representatives relating to this Agreement on the systems or in the records of its Affiliates and joint ventures and its and their service providers. In addition, BNY Mellon may aggregate information regarding Customer and the Fund on an anonymized basis with other similar client data for BNY Mellon's and its Affiliates' reporting, research, product development and distribution, and marketing purposes.

### **15.2 Exceptions**

The Parties' respective obligations under Section 15.1 will not apply to any such information: (a) that is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than the receiving Party; (b) that was known to the receiving Party as of the time of its disclosure and was not otherwise subject to confidentiality obligations; (c) that is independently developed by the receiving Party without reference to such information; (d) that is subsequently learned from a third party not known to be under a confidentiality obligation to the disclosing Party or (e) that is required to be disclosed pursuant to applicable law, rule, regulation, requirement of any law enforcement agency, court order or other legal process or at the request of a regulatory authority, including, but not limited to, the PUC or FERC.

## **16. TERM AND TERMINATION**

### **16.1 Term**

The term of this Agreement will commence on the Effective Date and will continue in effect until terminated in accordance with the provisions herein.

### **16.2 Removal or Resignation**

BNY Mellon may be removed with respect to all or part of the Fund upon receipt of sixty (60) days' written notice (unless a shorter or longer period is agreed upon) from Customer. BNY Mellon may resign as trustee hereunder upon 120 days' written notice (unless a shorter or longer period is agreed upon) delivered to Customer.

### **16.3 Effect of Removal or Resignation**

In the event of such removal or resignation, a successor trustee will be appointed and BNY Mellon will transfer the Fund, less such amounts as may be reasonable and necessary to cover its compensation and expenses, to the successor trustee. In the event Customer fails to appoint a successor trustee within 120 days of receipt of written notice of resignation or removal, BNY Mellon reserves the right to seek the appointment of a successor trustee from a court of competent jurisdiction. This Agreement will terminate after a successor trustee has accepted its duties and BNY Mellon has transferred all Assets then held by BNY Mellon to the successor trustee. BNY Mellon will have no duties, responsibilities or liability with respect to the acts or omissions of any successor trustee.

### **16.4 Survival**

Any and all provisions of this Agreement which by their nature or effect are required or intended to be observed, kept or performed after the expiration or termination of this Agreement will survive the expiration or any termination of this Agreement and remain binding upon and for the Parties' benefit, including Section 13 (Representations, Warranties and Covenants); Section 14 (Liability); Section 15 (Confidentiality); Sections 16.2 through 16.4 (Removal or Resignation; Effect of Removal or Resignation; Survival); and Section 17.4 (Governing Law/Forum).

## **17. GENERAL**

### **17.1 Line Item Assets**

BNY Mellon may reflect on its books and records certain bookkeeping entries for Assets including, but not limited to, book entry Securities and limited partnership interests that are selected and monitored by an Authorized Person. BNY Mellon will rely without independent verification on information provided by Customer or its designee regarding such Assets, including but not limited to positions and market valuations.

### **17.2 Assignment/U.S. Special Resolution Regime Transferability**

- (a) Neither Party may, without the other Party's prior written consent, assign any of its rights or delegate any of its duties under this Agreement (whether by change of control, operation of law or otherwise); provided, however that BNY Mellon may, without the prior written consent of Customer, assign this Agreement or any of its rights, or delegate any of its duties hereunder: (a) to any BNY Mellon Affiliate; (b) to any successor to the business of BNY Mellon to which this Agreement relates, in which event BNY Mellon agrees to provide notice of such successor to Customer or (c) as otherwise permitted in this Agreement. Any purported assignment or delegation by a Party in violation of this provision will be voidable at the option of the other Party. This Agreement will be binding upon, and inure to the benefit of, the Parties and their respective permitted successors and assigns.
- (b) Notwithstanding anything herein to the contrary, in the event BNY Mellon becomes subject to a proceeding under a U.S. special resolution regime, the

transfer of the Agreement (and any interest and obligation in or under, and any property securing, the Agreement) from BNY Mellon will be effective to the same extent as the transfer would be effective under the U.S. special resolution regime if the Agreement (and any interest and obligation in or under, and any property securing, the Agreement) were governed by the laws of the United States or a state of the United States; and, in the event BNY Mellon or any affiliate becomes subject to a proceeding under a U.S. special resolution regime, default rights with respect to the Agreement that may be exercised against BNY Mellon are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regime if the Agreement were governed by the laws of the United States or a state of the United States.

### **17.3 Amendment**

This Agreement may be amended or modified only in a written agreement signed by an authorized representative of each Party. For purposes of the foregoing, email exchanges between the Parties will not be deemed to constitute a written agreement.

### **17.4 Governing Law/Forum**

- (a) The substantive laws of the state of New York (without regard to its conflicts of law provisions) will govern all matters arising out of or relating to this Agreement, including the establishment and maintenance of the Fund and for purposes of the Uniform Commercial Code and all issues specified in Article 2(1) of the Hague Securities Convention.
- (b) Each Party irrevocably agrees that all legal actions or proceedings brought by it against the other Party arising out of or relating to this Agreement will be brought solely and exclusively before the state or federal courts situated in New York City, New York. Each Party irrevocably submits to personal jurisdiction in such courts and waives any objection which it may now or hereafter have based on improper venue or *forum non conveniens*. The Parties hereby unconditionally waive, to the fullest extent permitted by applicable law, any right to a jury trial with respect to any such actions or proceedings.

### **17.5 Sovereign Immunity**

To the extent that in any jurisdiction Customer may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, Customer irrevocably agrees not to claim, and it hereby waives, such immunity.

### **17.6 Notices**

Other than routine communications in the ordinary course of providing or receiving services hereunder (including Instructions), notices given hereunder will be: (a) addressed to BNY Mellon or Customer at the address set forth on the signature page (or such other address as either Party may designate in writing to the other Party) and (b) sent by hand delivery, by certified mail, return receipt requested, or by overnight

delivery service, in each case with postage or charges prepaid. All notices given in accordance with this Section will be effective upon receipt.

#### **17.7 Entire Agreement**

This Agreement constitutes the sole and entire agreement among the Parties with respect to the matters dealt with herein, and merges, integrates and supersedes all prior and contemporaneous discussions, agreements and understandings between the Parties, whether oral or written, with respect to such matters.

#### **17.8 Necessary Parties**

BNY Mellon reserves the right to seek a judicial or administrative determination as to its proper course of action under this Agreement. Nothing contained herein will be construed or interpreted to deny BNY Mellon or Customer the right to have BNY Mellon's account judicially determined. To the extent permitted by law, only BNY Mellon and Customer will be necessary parties in any application to the courts for an interpretation of this Agreement or for an accounting by BNY Mellon, and no 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.

#### **17.9 No Third Party Beneficiaries**

This Agreement is entered into solely between, and may be enforced only by, the Parties. Each Party intends that this Agreement will not, and no provision of this Agreement will be interpreted to, benefit, or create any right or cause of action in or on behalf of, any party or entity other than the Parties, their respective successors and assigns.

#### **17.10 Counterparts/Facsimile**

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and said counterparts when taken together will constitute one and the same instrument and may be sufficiently evidenced by one set of counterparts. This Agreement may also be executed and delivered by facsimile or email with confirmation of delivery and/or receipt.

#### **17.11 Interpretation**

The terms and conditions of this Agreement are the result of negotiations between the Parties. The Parties intend that this Agreement will not be construed in favor of or against a Party by reason of the extent to which such Party or its professional advisors participated in the preparation or drafting of this Agreement.

#### **17.12 No Waiver**

No failure or delay by a Party to exercise any right, remedy or power it has under this Agreement will impair or be construed as a waiver of such right, remedy or power. A waiver by a Party of any provision or any breach of any provision will not be construed to be a waiver by such Party of such provision in any other instance or any succeeding

breach of such provision or a breach of any other provision. All waivers will be in writing and signed by an authorized representative of the waiving Party.

**17.13 Headings**

All section and subsection headings in this Agreement are included for convenience of reference only and will not be considered in the interpretation of the scope or intent of any provision of this Agreement.

**17.14 Severability**

If a court of competent jurisdiction determines that any provision of this Agreement is illegal or invalid for any reason, such illegality or invalidity will not affect the validity of the remainder of this Agreement. In such case, the Parties will negotiate in good faith to replace each illegal or invalid provision with a valid, legal and enforceable provision that fulfills as closely as possible the original intent of the Parties.

[Signature page follows]

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**THE BANK OF NEW YORK MELLON**

**BRIDGER COAL COMPANY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Address for Notice:**

**Address for Notice:**

The Bank of New York Mellon

Bridger Coal Company

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Attention: \_\_\_\_\_

Pursuant to Section 10.1(a):

- as beneficial owner, Customer OBJECTS to disclosure
- as beneficial owner, Customer DOES NOT OBJECT to disclosure
- BNY Mellon will CONTACT THE INVESTMENT MANAGER with respect to relevant Securities to make the decision whether it objects to disclosure

IF NO BOX IS CHECKED, BNY MELLON WILL RELEASE SUCH INFORMATION UNTIL IT RECEIVES A CONTRARY INSTRUCTION FROM CUSTOMER OR INVESTMENT MANAGER, AS APPLICABLE.

## GRANTOR TRUST SCHEDULE

### ADDITIONAL PROVISIONS FOR NON-ERISA GRANTOR TRUSTS

The following additional terms and conditions supplement the Agreement and will in all respects be considered part of the Agreement.

#### 1. Trust Type; Representations and Warranties

- (a) This Trust is established to receive and disburse money pursuant to the Reclamation Fund Agreement.
- (b) Customer represents that, prior to the Effective Date, the Trust has operated in a manner consistent with the Reclamation Fund Agreement and the Prior Agreement.

#### 2. Establishment and Operation of the Trust

- (a) The principal of the Trust and any earnings thereon will be held separate and apart from other funds of Customer and will be used exclusively, as determined by Customer, as provided in the Reclamation Fund Agreement and this Agreement.
- (b) In no event will BNY Mellon have any duty or responsibility with respect to compliance with any requirement of the Reclamation Fund Agreement or any order, regulation or guideline of any regulator or other applicable law. BNY Mellon may conclusively presume that Instructions are in full compliance with such requirements.
- (c) Upon termination of the Trust, any Assets remaining in the Trust will be returned to Customer.

#### 3. Additional Limitation of Liability; Predecessor Trustees

- (a) Notwithstanding anything to the contrary contained elsewhere in this Agreement, any reference to the Reclamation Fund Agreement or requirements or provisions of laws or agreements governing this Trust will impose a duty upon Customer to communicate such knowledge or interpretation to BNY Mellon. BNY Mellon will have no obligation to know or interpret any such provision and will not be liable for any action taken in accordance with this Agreement contrary to such requirements. Possession of a copy of all or a portion of any such document will not constitute knowledge on the part of BNY Mellon.
- (b) BNY Mellon need not examine the records and acts of any prior trustee. BNY Mellon will not be responsible for, and Customer and the Trust will jointly and severally indemnify and defend BNY Mellon from, any claim or liability resulting from any action or inaction of any prior trustee or from any other action or inaction or condition with respect to the Trust prior to the Effective Date, including

without limitation the removal of the prior trustee and the appointment of BNY Mellon.

- (c) Customer represents and warrants that:
  - (i) Any and all corporate or other actions necessary or appropriate to effect the removal of a prior trustee, if any, and the appointment of BNY Mellon have been taken, including without limitation obtaining any necessary approvals;
  - (ii) The removal of any prior trustee and the appointment of BNY Mellon did not, and execution of this Agreement will not, constitute a violation of any prior trust agreement (including the Original Agreement and/or the Prior Agreement) or applicable law; and
  - (iii) It has reviewed the Prior Agreement and included any provisions required to be preserved in this Agreement. Customer acknowledges and agrees that the Prior Agreement is superseded in its entirety by this Agreement.
- (d) Customer acknowledges and agrees that by entering into this Agreement, BNY Mellon makes no representation and provides no advice as to the compliance of this Agreement with any prior trust agreement (including the Prior Agreement) or any consequences, including tax consequences, thereof.



AMENDED AND RESTATED  
MASTER NUCLEAR DECOMMISSIONING TRUST AGREEMENT

THIS AMENDED AND RESTATED MASTER NUCLEAR DECOMMISSIONING TRUST AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 2020 between PACIFICORP, a corporation duly organized and existing under the laws of the State of Oregon, having its principal office at 825 NE Multnomah Street, Suite 200, Portland OR 97232 (the "Company"), and The Bank of New York Mellon, as Trustee, having its principal office at 240 Greenwich Street, New York, NY 10286 (the "Trustee");

WITNESSETH:

WHEREAS, the Company has a partial ownership interest in the nuclear generating facility known as the Trojan Nuclear Generating Plant located near Rainer, Oregon (the "Unit"), which Unit will require decommissioning in the future;

WHEREAS, the Company previously established the Pacific Power-Trojan Nuclear Decommissioning Trust (the "Master Trust") to maintain a fund(s) which qualifies as a Nuclear Decommissioning Reserve Fund under section 468A of the Internal Revenue Code of 1986, as amended, or any corresponding section or sections of any future United States internal revenue statute (the "Code") and the regulations thereunder (the "Qualified Funds"), and a fund(s) which does not so qualify (the "Nonqualified Funds"; collectively, the "Funds"), under the laws of the state of New York;

WHEREAS, the Master Trust was originally established pursuant to that certain Master Nuclear Decommissioning Trust Agreement dated July 16, 1990 between PacifiCorp Electronic Operations (an assumed business name of the Company) and Bankers Trust Company, and later assigned to State Street Bank and Trust Company (the "Original Agreement");

WHEREAS, the Original Agreement was amended and restated in its entirety pursuant to that certain Amended and Restated Master Agreement and Declaration of Trust dated December 11, 2012 between the Company and State Street Bank and Trust Agreement (the "Prior Agreement");

WHEREAS, the Company desires to appoint the Trustee as trustee of the Master Trust and to amend the Prior Agreement in certain respects and to otherwise restate the Prior Trust Agreement in its entirety all as set forth herein; and

WHEREAS, the execution and delivery of this Agreement have been duly authorized by the Company and the Trustee and all things necessary to make this Agreement a valid and binding agreement by the Company and the Trustee have been done.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that to provide for (and continue to provide for) the continuation of the Master Trust and the maintenance of the Funds and the making of payments therefrom and the performance of the covenants of the Company and the Trustee set forth herein, the Company does hereby sell, assign, transfer, set over and pledge unto the Trustee, and to its successors in the trust and its assigns forever, all of the Company's right, title and interest in and to any and all cash and property herewith and hereafter contributed to the Funds, subject to the provisions of

Article V hereof and Section 4 of the Special Terms of the Qualified Nuclear Decommissioning Reserve Fund, attached hereto as Exhibit A (the “Special Terms”).

TO HAVE AND TO HOLD THE SAME IN TRUST for the exclusive purpose of providing funds for the decommissioning of the Funds’ respective Units in order to satisfy the Company’s liability in connection therewith, to pay the administrative costs and other incidental expenses of the Funds, and to make certain investments, all as hereinafter provided.

ARTICLE I  
Purposes of the Funds; Contributions

Section 1.01 Establishment of the Funds. The Master Trust shall be divided by the Trustee into Funds to be identified as follows:

The Funds shall continue to be maintained separately at all times in the United States as the Nonqualified Funds and the Qualified Fund pursuant to this Agreement and as separate trusts under this Master Trust Agreement in accordance with the laws of the State of New York. The Company intends that the Qualified Fund shall qualify as a Nuclear Decommissioning Reserve Fund under section 468A of the Code. The assets of the Qualified Fund may be used only in a manner authorized by section 468A of the Code and the regulations thereunder and this Agreement cannot be amended to violate section 468A of the Code or the regulations thereunder. The Trustee shall maintain such records as are necessary to reflect each Fund separately on its books from each other Fund and shall create and maintain such subaccounts within each Fund as the Company shall direct. The Trustee shall establish such separate accounts under the Funds as directed by the Company.

Section 1.02 Purposes of the Funds. The Funds are established for the exclusive purpose of providing funds for the decommissioning of the Units identified in their respective titles. The Nonqualified Funds shall accumulate all contributions (whether from the Company or others) which do not satisfy the requirements for contributions to the Qualified Fund pursuant to Section 2 of the Special Terms. The Nonqualified Fund includes a separate sub-account called the ISFSI Radiological Decommissioning Fund, which shall be maintained by the Trustee as a separate sub-account of the Nonqualified Fund. The Qualified Fund shall accumulate all contributions (whether from the Company or others) which satisfy the requirements of Section 2 of the Special Terms. The Qualified Fund shall also be governed by the provisions of the Special Terms, which provisions shall take precedence over any provisions of this Agreement construed to be in conflict therewith. None of the assets of the Funds shall be subject to attachment, garnishment, execution or levy in any manner for the benefit of creditors of the Company.

Section 1.03 Contributions to the Funds. The assets of the Funds shall be contributed by the Company (or by others approved in writing by the Company) from time to time. Cash contributions for a Unit shall be allocated to its Qualified Fund unless the Company designates in writing at the time of payment to which of the Unit’s two Funds the payment is allocated. The Company shall have sole discretion as to whether cash payments are allocated to a Qualified Fund or a Nonqualified Fund. Contributions of property other than cash shall be allocated to the Nonqualified Funds.

ARTICLE II  
Payments by the Trustee

Section 2.01 Limitation on Use of Assets. The assets of the Funds shall be used exclusively (a) to satisfy, in whole or in part, any expenses or liabilities incurred by or on behalf of the Company with

respect to the decommissioning of the respective Units, including expenses incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all expenses incurred after the actual decommissioning occurs, such as physical security and radiation monitoring expenses (the “Decommissioning Costs”), (b) to pay the administrative costs and other incidental expenses of each Fund separately from the assets of such Fund, and (c) to invest in investments as directed by the Investment Manager(s) pursuant to Section 3.07(a) or the Trustee pursuant to Section 3.07(b), except that all assets of a Qualified Fund must be invested in Permissible Assets as defined in the Special Terms. Use of the assets of a Qualified Fund shall be further limited by the provisions of the Special Terms.

Section 2.02 Certification for Decommissioning Costs. If assets of the Funds are required to satisfy Decommissioning Costs, the Company shall present a certificate substantially in the form attached hereto as Exhibit B to the Trustee signed by its Chairman of the Board, its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer, requesting payment from the Funds. Any certificate requesting payment by the Trustee to a third party or to the Company from the Funds for Decommissioning Costs shall include the following:

(a) a statement of the amount of the payment to be made from the Funds and whether the payment is to be made from a Nonqualified Fund, a Qualified Fund or in part from both Funds;

(b) a statement that the payment is requested to pay Decommissioning Costs which have been incurred, and if payment is to be made from a Qualified Fund, a statement that the Decommissioning Costs to be paid constitute Qualified Decommissioning Costs, as defined in the Special Terms;

(c) the nature of the Decommissioning Costs to be paid;

(d) the payee, which may be the Company in the case of reimbursement for payments previously made or expenses previously incurred by the Company for Decommissioning Costs;

(e) a statement that the Decommissioning Costs for which payment is requested have not theretofore been paid out of funds of the Funds; and

(f) a statement that any necessary authorizations of the applicable Public Utility Commission (the “PUC”) and/or any other governmental agencies having jurisdiction with respect to the decommissioning have been obtained.

The Trustee shall retain at least one counterpart of all copies of such certificates (including attachments) and related documents received by it pursuant to this Article II.

The Company shall have the right to enforce payments from the Funds upon compliance with the procedures set forth in this Section 2.02.

Section 2.03 Except for (i) payments of ordinary administrative costs (including taxes) and other incidental expenses of the Fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the Fund, (ii) withdrawals being made under 10 CFR 50.82(a)(8), and (iii) permissible transfers between Qualified and Nonqualified Funds, no disbursement or payment may be made from the Master Trust until written notice of the intention to make a disbursement or payment has been given to the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the date of the intended

disbursement or payment. The disbursement or payment from the Master Trust may be made following the 30-working day notice period if no written notice of objection from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, is received by the Trustee or the Company within the notice period. The required notice may be made by the Trustee or on the Trustee's behalf. No such notice is required for withdrawals being made pursuant to 10 CFR 50.82(a)(8)(ii), including withdrawals made during the operating life of the plant to be used for decommissioning planning. In addition, no such notice is required to be made to the NRC after decommissioning has begun and withdrawals are being made under 10 CFR 50.82(a)(8).

Section 2.04 Administrative Costs. The Trustee shall pay, as directed by the Company, the administrative costs and other incidental expenses of a Nonqualified Fund, including all federal, state, and local taxes, if any, imposed directly on the Nonqualified Fund, legal expenses, accounting expenses, actuarial expenses and trustee expenses, from the assets of the Nonqualified Fund and shall pay, as directed by the Company, the administrative costs and other incidental expenses of a Qualified Fund, as defined in the Special Terms, from the assets of the Qualified Fund.

Section 2.05 Payments between the Funds. The Trustee shall make payments (i) from a Qualified Fund to a Nonqualified Fund provided such payments are in cash and are in accordance with Section 4 of the Special Terms or (ii) from a Nonqualified Fund to a Qualified Fund provided such payments are in accordance with the contribution limitations set forth in Section 2 of the Special Terms, as the case may be, upon presentation by the Company of a certificate substantially in the form of Exhibit C hereto executed by the Company instructing the Trustee to make any such payments. The Trustee shall be fully protected in relying upon such certificate.

### ARTICLE III Concerning the Trustee

Section 3.01 Authority of Trustee. The Trustee hereby accepts the Master Trust created under this Agreement. The Trustee shall have the authority and discretion to manage and control the Funds to the extent provided in this Agreement but does not guarantee the Funds in any manner against investment loss or depreciation in asset value or guarantee the adequacy of the Funds to satisfy the Decommissioning Costs. The Trustee shall not be liable for the making, retention or sale of any asset of a Qualified Fund which qualifies as a Permissible Asset, as defined in the Special Terms, nor shall the Trustee be responsible for any other loss to or diminution of the Funds, or for any other loss or damage which may result from the discharge of its duties hereunder except for any action not taken in good faith.

Section 3.02 "Authorized Person" shall mean any Person authorized by the Company or an Investment Manager to give oral or written Instructions with respect to the Fund or with respect to foreign exchange, derivative investments or information and transactional web based services provided by the Trustee or a BNY Mellon Affiliate. "Oral Instructions" shall mean instructions expressed in spoken words received by the Trustee and "Written Instructions" shall mean written communications received by the Trustee by S.W.I.F.T., overnight delivery, postal services, facsimile transmission, email, on-line communication system or other method or system, each as specified by the Trustee as available for use in connection with the services hereunder. Authorized Persons shall include Persons authorized by an Authorized Person. Authorized Persons, their signatures and the extent of their authority shall be provided by Written Instructions. The Company shall cause the Investment Manager to furnish the Trustee with Written Instructions identifying Authorized Persons and their signatures. The Trustee may conclusively rely on the authority of such Authorized Persons until it receives a Written Instruction to the contrary.

Section 3.03 Authorized Instructions. The Trustee shall be entitled to rely upon any Oral or Written Instructions actually received by the Trustee and reasonably believed by the Trustee to be from an Authorized Person (“Authorized Instructions”). The Company agrees that an Authorized Person shall forward to the Trustee Written Instructions confirming Oral Instructions by the close of business of the same day that such Oral Instructions are given to the Trustee. The Trustee may act on such Oral Instructions but is not obligated to do so until Written Instructions are received. The Company agrees that the fact that Written Instructions confirming Oral Instructions are not received or that contrary Written Instructions are received by the Trustee shall in no way affect the validity or enforceability of transactions authorized by such Oral Instructions and effected by the Trustee.

Section 3.04 Authentication. If the Trustee receives Written Instructions that appear on their face to have been transmitted by an Authorized Person via (i) facsimile, email, or other electronic method that is not secure, or (ii) secure electronic transmission containing applicable authorization codes, passwords or authentication keys, the Company understands and agrees that the Trustee cannot determine the identity of the actual sender of such Written Instructions and that the Trustee shall be entitled to conclusively presume that such Written Instructions have been sent by an Authorized Person and are Authorized Instructions. The Company shall be responsible for ensuring that only Authorized Persons transmit such Written Instructions to the Trustee and that all Authorized Persons treat applicable user and authorization codes, passwords and authentication keys with extreme care.

Section 3.05 Security Procedure. The Company acknowledges and agrees that it is fully informed of the protections and risks associated with the various methods of transmitting Written Instructions to the Trustee and that there may be more secure methods of transmitting Written Instructions than the method selected by the sender. The Company agrees that the security procedures, if any, to be followed in connection with a transmission of Written Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

Section 3.06 On-Line Systems. If an Authorized Person elects to transmit Written Instructions through an on-line communication system offered by the Trustee, the use thereof shall be subject to any terms and conditions contained in a separate written agreement. If an Authorized Person elects, with the Trustee’s prior consent, to transmit Written Instructions through an on-line communications service owned or operated by a third party, the Company agrees that the Trustee shall not be responsible or liable for the reliability or availability of any such service.

Section 3.07 Investment of Funds. (a) The Company shall have the authority to appoint one or more investment managers (which may include the Company, each an “Investment Manager”) who shall have the power to direct the Trustee in investing the assets of the Funds; provided, however, that the Trustee shall not follow any direction which would result in assets of a Qualified Fund being invested in assets other than Permissible Assets as defined in the Special Terms. To the extent that the Company chooses to exercise this authority, it shall so notify the Trustee and instruct the Trustee in writing to separate into a separate account those assets the investment of which will be directed by each Investment Manager. Upon the separation of the assets in accordance with Authorized Instructions, the Trustee, as to those assets while so separated, shall be released and relieved of all investment duties, investment responsibilities and investment liabilities normally or statutorily incident to a trustee; provided, however, that the Trustee shall not be relieved of the responsibility of ensuring that assets of a Qualified Fund are invested solely in Permissible Assets, as defined in the Special Terms. The Trustee shall retain all other fiduciary duties with respect to assets the investment of which is directed by Investment Managers.

(b) To the extent that the investment of assets of the Funds are not being directed by one or more Investment Managers under Section 3.07(a), and only to the extent agreed upon by the Trustee in

a separate writing, the Trustee shall hold, invest, and reinvest the funds delivered to it hereunder as it in its sole discretion deems advisable, subject to the restrictions set forth herein for investment of the assets of a Qualified Fund.

(c) Regardless of the person directing investments, any assets of a Qualified Fund shall be invested solely in Permissible Assets as defined in, and required by, the Special Terms, and shall be accumulated, invested, and reinvested in like manner. Upon the written consent of the Company, the assets of a Qualified Fund relating to a Unit may be pooled, but only with the assets of any other Qualified Fund relating to any other Unit; provided that the book and tax allocations of the Qualified Fund Pool are made in proportion to each Qualified Fund's relative book capital accounts. Upon the written consent of the Company, the assets of a Nonqualified Fund relating to a Unit may be pooled, but only with the assets of another Nonqualified Fund relating to any other Unit.

(d) Notwithstanding any other provision of this Agreement, with respect to the pooling of investments authorized by subparagraph (c) no part of any Fund's (or any subsequent holder's) interest in such pool, nor any right pertaining to such interest (including any right to substitute another entity for the Fund or for any subsequent holder, as holder of investments pooled pursuant to subparagraph (c)) may be sold, assigned, transferred or otherwise alienated or disposed of by any holder of an interest in the pool unless the written consent to the transfer of every other holder of interests in such pool is obtained in advance of any such transfer.

(e) Notwithstanding the provisions of subparagraph (d) of this Section, a Fund's investment in a pooled arrangement may be withdrawn from the pool (but not from the Master Trust, except as otherwise permitted by this Agreement) at any time upon 7 days written notice to the Trustee by the Fund. If the Fund withdraws its entire interest in a pool, the pooled arrangement shall terminate 30 days after notice of final withdrawal has been given by any withdrawing Fund unless a majority in interest of the remaining Funds give their written consent to continue the pool within such 30 day period. If the pooled arrangement terminates, each Fund's assets will be segregated into a separate account under the Master Trust, and no further commingling may occur for a period of at least one year after such termination.

(f) Subparagraphs (c), (d) and (e) apply to transfers of interests within, and withdrawals from, the pooling arrangement. Nothing within these sections shall be interpreted to permit or to limit transfer of interests in, or withdrawals from, a fund, which transfers and withdrawals are governed by other provisions of this Agreement. In addition, the provisions of subparagraphs (c), (d) and (e) shall not limit the Trustee's authority to invest in permissible common or collective trust funds

(g) For the purposes of this section 3.07(g), the Trustee, Investment Manager, or other person directing investment of the Funds is referred to as the "Investment Director."

(1) The Investment Director is prohibited from investing the Funds in securities or other obligations of the Company or any other owner or operator of any nuclear power reactor or their affiliates, subsidiaries, successors or assigns. The Investment Director is prohibited from investing the Funds in a mutual fund in which at least 50 percent of the fund is invested in the securities of a licensee or parent company whose subsidiary is an owner of an interest in a foreign or domestic nuclear power plant or an operator of a foreign or domestic nuclear power plant. However, the Funds may be invested in securities tied to market indices or other non-nuclear sector collective, commingled, or mutual funds. Provided further that this subsection shall not operate in such a way as to require the sale or transfer either in whole or in part, or other disposition of any such

prohibited investment that was made before December 24, 2002. And provided further that no more than 10 percent of the Funds may be indirectly invested in securities of any entity owning or operating one or more nuclear power plants.

(2) As provided above, the Investment Director is obligated at all times, whether in investing or otherwise, to adhere to the standard of care provided in herein however, in the absence of s such standard of care no longer be required, the Investment Director will adhere to the standard of care that a prudent investor would use in the same circumstances. For this purpose, the term “prudent investor,” shall have the same meaning as set forth in the Federal Energy Regulatory Commission’s “Regulations Governing Nuclear Plant Decommissioning Trust Funds” at 18 C.F.R. 35.32(a)(3), or any successor regulation.

(h) The Company, its affiliates, and its subsidiaries are prohibited from being engaged as Investment Manager for the Funds or from giving day-to-day management direction of the Funds’ investments or direction on individual investments by the Funds, except in the case of passive fund management of the Funds where management is limited to investments tracking market indices.

Section 3.08 Prohibition Against Self-Dealing. Notwithstanding any other provision in this Agreement, the Trustee shall not engage in any act of self-dealing as defined in section 468A(e)(5) of the Code and Treas. Reg. §1.468A-5(b) or any corresponding future law or Treasury Regulation.

Section 3.09 Holding Securities. “Securities” shall include, without limitation, any common stock and other equity securities, depository receipts, limited partnership and limited liability company interests, bonds, debentures and other debt securities, notes or other obligations, and any instruments representing rights to receive, purchase, or subscribe for the same, or representing any other rights or interests therein (whether represented by a certificate or held in a Depository (as defined below), with a Subcustodian (as defined below) or on the books of the issuer) that are acceptable to the Trustee. Subject to the terms hereof, the Company hereby authorizes the Trustee to hold any Securities in registered form in the name of the Trustee or one of its nominees. Securities held hereunder shall be segregated on the Trustee’s books and records from the Trustee’s own property. The Trustee shall be entitled to utilize Subcustodians and Depositories in connection with its performance hereunder. Securities and cash held through Subcustodians shall be held subject to the terms and conditions of the Trustee’s or a BNY Mellon Affiliate’s agreements with such Subcustodians. Securities and cash deposited by the Trustee in a Depository will be held subject to the rules, terms and conditions of such Depository. Subcustodians may hold Securities in Depositories in which such Subcustodians participate. Unless otherwise required by local law or practice or a particular subcustodian agreement, Securities deposited with Subcustodians will be held in a commingled account in the name of the Trustee or a BNY Mellon Affiliate for its clients. The Trustee shall identify on its books and records the Securities and cash belonging to the Fund, whether held directly or indirectly through Depositories or Subcustodians. In no event shall the Trustee be liable for any losses, costs, expenses, damages, liabilities and claims (“Losses”) arising out of the holding of Securities or cash in any particular country, including but not limited to, Losses resulting from nationalization, expropriation or other governmental actions; regulation of the banking or securities industry; exchange or currency controls or restrictions, devaluations or fluctuations or currency redenomination; availability of Securities or cash or market conditions which prevent the transfer of property or the execution of Securities transactions or affect the value of property (“Country Risk Events”).

Section 3.10 Subcustodians. “Subcustodian” shall mean a bank or other financial institution (other than a Depository) that is utilized by the Trustee or by a BNY Mellon Affiliate, in its discretion, in

connection with the purchase, sale or custody of Securities or cash hereunder. The Trustee shall exercise reasonable care in the selection or retention, monitoring and continued use of Subcustodians in light of prevailing rules, practices, procedures and circumstances in the relevant market (the “Required Care”).

With respect to any Losses incurred by the Trust, the Company or any other person as a result of the acts or the failure to act by any Subcustodian (“Operational Losses,” which specifically excludes Losses arising out of or relating to Country Risk Events), the Trustee shall be liable for:

a. Operational Losses with respect to Securities or cash held by the Trustee with or through a BNY Mellon Affiliate; and

b. Operational Losses with respect to Securities or cash held by the Trustee with or through a Subcustodian (other than a BNY Mellon Affiliate) to the extent that such Operational Losses were directly caused by failure on the part of the Trustee to exercise Required Care.

With respect to all other Operational Losses not covered by clauses (a) and (b) above, the Trustee shall take appropriate action to recover Operational Losses from such Subcustodian, and Trustee’s sole liability shall be limited to amounts recovered from such Subcustodian (exclusive of costs and expenses incurred by the Trustee).

In addition, the Trustee shall be liable for repayment to the Master Trust of cash credited to the Fund and credited to any relevant cash account at the Subcustodian that the Trustee is not able to recover from the Subcustodian (other than as a result of Country Risk Events).

Section 3.11 Deposits. The Trustee may hold cash in accounts or may arrange to have such cash held by any direct or indirect subsidiary of The Bank of New York Mellon Corporation (a “BNY Mellon Affiliate”), Subcustodian, or with a Depository (defined below). Where cash is on deposit with the Trustee, a Subcustodian, a BNY Mellon Affiliate or a Depository, it will be subject to the terms of this Agreement and such deposit terms and conditions as may be issued by such entity from time to time.

Section 3.12 Depositories. “Depository” shall include the Book-Entry System, the Depository Trust Company, Euroclear, Clearstream Banking S.A., the Canadian Depository System, CLS Bank and any other securities depository, book-entry system or clearing agency (and their respective successors and nominees) authorized to act as a securities depository, book-entry system or clearing agency pursuant to applicable law. “Book-Entry System” shall mean the U.S. Federal Reserve/Treasury book-entry system for receiving and delivering securities, its successors and nominees. The Trustee shall have no liability whatsoever for the action or inaction of any Depository or for any Losses resulting from the maintenance of Securities with a Depository. The Trustee shall be liable to repay cash credited to the Fund and credited to any relevant account at such Depository (other than as a result of Country Risk Events).

Section 3.13 Compensation. The Trustee shall be entitled to receive out of the Funds reasonable compensation for services rendered by it, as well as expenses necessarily incurred by it in the execution of the trust hereunder, provided such compensation and expenses qualify as administrative costs and other incidental expenses of a Qualified Fund, as defined in the Special Terms, with respect to any payment of compensation and expenses from a Qualified Fund. The Company acknowledges that, as part of the Trustee’s compensation, the Trustee will earn interest on balances, including disbursement balances and balances arising from purchase and sale transactions.

Section 3.14 Overdrafts and Indebtedness. The Trustee may, in its sole discretion, advance funds in any currency hereunder. If an overdraft occurs in a Fund (including, without limitation, overdrafts incurred in connection with the settlement of securities transactions, funds transfers or foreign



exchange transactions) or if the Company is for any other reason indebted to the Trustee, the Company agrees to repay the Trustee on demand or upon becoming aware of the amount of the advance, overdraft or indebtedness, plus accrued interest at a rate then charged by the Trustee to its institutional custody clients in the relevant currency.

Section 3.15 Securing Repayment. In order to secure repayment of the Master Trust's obligations (whether or not matured) to the Trustee, the Company on behalf of the Master Trust hereby pledges and grants to the Trustee a continuing first lien and security interest in, and right of setoff against all of the Trust's right, title and interest in the Fund, and the Securities, money and other property now or hereafter held in such accounts (including proceeds thereof); provided that the Company does not grant the Trustee a security interest in any Securities issued by an affiliate of the Trustee (as defined in Section 23A of the Federal Reserve Act). The Company represents that the Master Trust owns the Securities in the Funds free and clear of all liens, claims, security interests, and the first lien and security interest granted herein shall be subject to no setoffs, counterclaims, or other liens prior to or on a parity with it in favor of any other party (other than specific liens granted preferred status by statute). The Company shall take any additional steps required to assure the Trustee of such priority security interest, including notifying third parties or obtaining their consent. The Trustee shall be entitled to collect from the Fund sufficient cash for reimbursement, and if such cash is insufficient, to sell the Securities in the Fund to the extent necessary to obtain reimbursement. In this regard, the Trustee shall be entitled to all the rights and remedies of a pledgee and secured creditor as if the Master Trust is in default under applicable laws, rules or regulations as then in effect.

Section 3.16 Pricing and Other Data. For purposes of this Section, "Market Data" shall mean pricing or other data related to securities and other assets. Market Data includes but is not limited to security identifiers, valuations, bond ratings, classification data, and other data received from investment managers and others. In providing Market Data related to the Fund in connection with this Agreement, the Trustee is authorized to use pricing vendors, brokers, dealers, investment managers, Authorized Parties, Subcustodians, Depositories and any other person providing Market Data to the Trustee ("Data Providers"). The Trustee may follow Authorized Instructions in providing pricing or other Market Data, even if such instructions direct the Trustee to override its usual procedures and Market Data sources. The Trustee shall be entitled to rely without inquiry on all Market Data (and all Authorized Instructions related to Market Data) provided to it, and the Trustee shall not be liable for any losses incurred as a result of Market Data that contains errors or that is incomplete. The Company acknowledges that certain pricing or valuation information may be based on calculated amounts rather than actual market transactions and may not reflect actual market values, and that the variance between such calculated amounts and actual market values may be material. The Trustee shall not be required to inquire into the pricing or any securities or other assets even though the Trustee may receive different prices for the same securities or assets. Market Data may be the intellectual property of the Data Providers, which may impose additional terms and conditions upon the Company's use of the Market Data. The additional terms and conditions can be found on the Data Terms Website, at <http://bnymellon.com/products/asset servicing/vendoragreement.pdf> ("Data Terms Website"), or any successor website the address of which is provided by the Trustee to the Company. The Company agrees to those terms as they are posted in the Data Terms Website from time to time. Certain service providers hired by the Trustee to provide or to assist the Trustee with providing value-added services requested by the Company ("Third Party Service Providers") may not utilize the Company's directed price due to system constraints or differing data sources. Performance measurement and analytic services may use different data sources than those used by the Trustee to provide Market Data for the Fund, which may result in differences between custodial reports and performance measurement and analytic reports.

Section 3.17 Books of Account. The Trustee shall keep separate true and correct books of account with respect to each of the Funds, which books of account shall at all reasonable times be open to inspection by the Company or its duly appointed representatives. The Trustee shall, upon written request of the Company, permit government agencies, such as the PUC or the Internal Revenue Service, to inspect the books of account of the Funds. The Trustee shall furnish to the Company by the tenth business day of each month a statement for each Fund showing, with respect to the preceding calendar month, the balance of assets on hand at the beginning of such month, all receipts, investment transactions, and disbursements which took place during such month and the balance of assets on hand at the end of such month. The Trustee agrees to provide on a timely basis any information deemed necessary by the Company to file the Company's federal, state and local tax returns.

Section 3.18 Centralized Functions. The Bank of New York Mellon Corporation is a global financial organization that provides services to clients through its affiliates and subsidiaries in multiple jurisdictions (the "BNY Mellon Group"). The BNY Mellon Group may centralize functions, including audit, accounting, risk, legal, compliance, sales, administration, product communication, relationship management, storage, compilation and analysis of customer-related data, and other functions (the "Centralized Functions") in one or more affiliates, subsidiaries and third-party service providers. Solely in connection with the Centralized Functions, (i) the Company consents to the disclosure of, and authorizes the Trustee to disclose, information regarding the Company and its accounts ("Customer-Related Data") to the BNY Mellon Group and to its third-party service providers who are subject to confidentiality obligations with respect to such information and (ii) the Trustee may store the names and business addresses of the Company's employees on the systems or in the records of the BNY Mellon Group or its service providers. In addition, the BNY Mellon Group may aggregate Customer-Related Data with other data collected and/or calculated by the BNY Mellon Group, and the BNY Mellon Group will own all such aggregated data, provided that the BNY Mellon Group shall not distribute the aggregated data in a format that identifies Customer-Related Data with the Company. The Company is authorized to consent to the foregoing and confirms that the disclosure to and storage by the BNY Mellon Group of such information does not violate any relevant data protection legislation. In addition, the Trustee may disclose Customer-Related Data as required by law or at the request of any governmental or regulatory authority.

Section 3.19 Standard of Care/Limitation on Liability. In performing its duties under this Agreement, the Trustee shall exercise the same care and diligence that it would devote to its own property in like circumstances.

The Trustee shall not be liable for Losses except to the extent that such Losses are a direct result of the Trustee's negligence or willful misconduct.

The Trustee shall not be liable to the Company or the Master Trust for indirect, consequential or special damages arising in connection with this Agreement even if the Trustee has been advised of the possibility of such damages.

The Trustee shall not be responsible for the title, validity or genuineness of any Securities or evidence of title thereto received by it or delivered by it pursuant to this Agreement or for Securities held hereunder being freely transferable or deliverable without encumbrance in any relevant market.

The Trustee shall not be responsible for the failure to receive payment of, or the late payment of, income or other payments due to the Fund.

The Trustee shall have no duty to take any action to collect any amount payable on Securities in default or if payment is refused after due demand and presentment.

The Trustee may obtain the advice of counsel and shall be fully protected with respect to anything done or omitted by it in good faith in conformity with such advice.

The Trustee shall have no duty or responsibility to inquire into, make recommendations, supervise, or determine the suitability of any transactions affecting the Fund and shall have no liability with respect to the Company's or an Authorized Person's decision to invest in Securities or to hold cash in any currency.

The Trustee shall have no responsibility if the rules or procedures imposed by Depositories, exchange controls, asset freezes or other laws, rules, regulations or orders at any time prohibit or impose burdens or costs on the transfer of Securities or cash to, by or for the Fund.

The Trustee shall have no liability for any Losses arising from the insolvency of any Person, including but not limited to a Subcustodian, Depository, broker, bank, and a counterparty to the settlement of a transaction or to a foreign exchange transaction, except as provided in Sections 3.10 and 3.12 above.

Section 3.20 Liability and Indemnification. The Company hereby agrees to indemnify the Trustee for, and to hold it harmless against, all losses, costs, expenses, damages, liabilities and claims arising out of or in connection with its entering into this Agreement and carrying out its duties hereunder, including reasonable counsel fees and expenses in third party suits and in a successful defense of claims asserted by the Company, other than to the extent resulting directly from the Trustee's negligence or willful misconduct. This provision shall survive the termination of this Agreement.

Section 3.21 Foreign Exchange. Any foreign exchange transaction effected by the Trustee in connection with this Agreement may be entered with the Trustee or a BNY Mellon Affiliate acting as a principal or otherwise through customary channels. The Company, the Investment Manager or other fiduciary may issue standing Written Instructions with respect to foreign exchange transactions, but the Trustee may establish rules or limitations concerning any foreign exchange facility made available to the Fund. With respect to foreign exchange transactions done through The Bank of New York Mellon's Global Markets FX Desk, it is acting as a principal counterparty on its own behalf and is not acting as a fiduciary or agent for, or in connection with, the Company, the Trust, or an Investment Manager.

Section 3.22 Force Majeure. Notwithstanding anything in this Agreement to the contrary, the Trustee shall not be responsible or liable for any failure to perform under this Agreement or for any Losses to the Fund resulting from any event beyond the reasonable control of the Trustee.

Section 3.23 Resignation, Removal and Successor Trustees. (a) The Trustee may resign at any time upon 120 days written notification to the Company. The Company may remove the Trustee for any reason at any time upon 60 days written notification to the Trustee. If a successor Trustee shall not have been appointed within 120 days after the giving of written notice of such resignation or removal, the Trustee or Company may apply to any court of competent jurisdiction to appoint a successor Trustee to act until such time, if any, as a successor shall have been appointed and shall have accepted its appointment as provided below. If the Trustee shall be adjudged bankrupt or insolvent, a vacancy shall thereupon be deemed to exist in the office of Trustee and a successor shall thereupon be appointed by the Company. Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company an appropriate written instrument accepting such appointment hereunder, subject to all the terms and conditions hereof, and thereupon such successor Trustee shall become fully vested with all the rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as Trustee hereunder. The predecessor Trustee shall upon written request of the Company, and payment of all fees and expenses, deliver to the successor Trustee the corpus of the Funds

and perform such other acts as may be required or be desirable to vest and confirm in said successor Trustee all right, title and interest in the corpus of the Fund to which it succeeds.

Notwithstanding anything herein to the contrary, in the event Trustee becomes subject to a proceeding under a U.S. special resolution regime, the transfer of the Agreement (and any interest and obligation in or under, and any property securing, the Agreement) from Trustee will be effective to the same extent as the transfer would be effective under the U.S. special resolution regime if the Agreement (and any interest and obligation in or under, and any property securing, the Agreement) were governed by the laws of the United States or a state of the United States; and, in the event the Trustee or any affiliate becomes subject to a proceeding under a U.S. special resolution regime, default rights with respect to the Agreement that may be exercised against Trustee are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regime if the Agreement were governed by the laws of the United States or a state of the United States.

Section 3.24 Merger of Trustee. Any corporation into which the Trustee may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Trustee shall be a party, or any corporation to which the corporate trust functions of the Trustee may be transferred, shall be the successor Trustee under this Agreement without the necessity of executing or filing any additional acceptance of this Agreement or the performance of any further act on the part of any other parties hereto.

Section 3.25 Required Disclosure. With respect to Securities that are registered under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) or that are issued by an issuer registered under the Investment Company Act of 1940, as amended, Section 14(b) of the Exchange Act and Rule 14b-2 promulgated thereunder require the Trustee to disclose to issuers of such Securities, upon their request, the name, address and securities position of the Trustee’s clients who are “beneficial owners” (as defined in the Exchange Act) of the issuer’s Securities, unless the beneficial owner objects to such disclosure. The Exchange Act defines a “beneficial owner” as any person who has or shares the power to vote a security (pursuant to an agreement or otherwise) or who directs the voting of a security. The Company has designated on the signature page hereof, whether: (1) as beneficial owner, it objects to the disclosure of its name, address and securities position to any U.S. issuer that requests such information pursuant to the Exchange Act for the specific purpose of direct communications between such issuer and the Company; or (2) the Trustee shall contact the Investment Manager with respect to relevant Securities to make the decision whether it objects to the disclosure of the beneficial owner’s name, address and securities position to any U.S. issuer that requests such information pursuant to the Exchange Act.

With respect to Securities issued outside the United States, the Trustee shall disclose information required by any Depository, the laws or regulations of the relevant jurisdiction, rules of the relevant stock exchange or organizational documents of an issuer. The Trustee is also authorized to supply any information regarding the Fund that is required by any law, regulation or rules now or hereafter in effect. The Company agrees to supply the Trustee with any required information if it is not otherwise reasonably available to the Trustee.

Section 3.26 Sanctions.

(a) Throughout the term of this Master Trust Agreement, the Company agrees it (i) shall maintain, and comply with, an Economic Sanctions Compliance Program which includes measures to accomplish effective and timely scanning of all relevant data with respect to incoming or outgoing assets or transactions; (ii) shall ensure that neither the Company nor any of its affiliates, directors, or officers, or

Investment Managers is an individual or entity that is, or is owned or controlled by an individual or entity that is: (A) the target of Sanctions, or (B) located, organized or resident in a country or territory that is, or whose government is, the target of Sanctions; and (iii) shall not, directly or indirectly, cause or permit the use of the Funds in any manner that would result in a violation of Sanctions.

(b) The Company will promptly provide to the Trustee such information as the Trustee reasonably requests in connection with the matters referenced in this Section 3.26, including information regarding the accounts hereunder, the assets held or to be held in the accounts, the source thereof, and the identity of any individual or entity having or claiming an interest therein. The Trustee may decline to act or provide services in respect of any account, and take such other actions as it, in its reasonable discretion, deems necessary or advisable, in connection with the matters referenced in this Section 3.26. If the Trustee declines to act or provide services as provided in the preceding sentence, except as otherwise prohibited by applicable law or official request, the Trustee will inform the Company thereof as soon as reasonably practicable.

(c) As used herein:

“Economic Sanctions Compliance Program” shall mean those programs, policies, procedures and measures designed to ensure compliance with, and prevent violations of, Sanctions.

“Sanctions” shall mean all economic sanctions, laws, rules, regulations, executive orders and requirements administered by any governmental authority of the U.S. (including the U.S. Office of Foreign Assets Control) and the European Union (including any national jurisdiction or member state thereof), in addition to any other applicable authority with jurisdiction over the Company.

#### ARTICLE IV Amendments

Section 4.01 The Company may amend this Agreement from time to time, provided such amendment does not cause a Qualified Fund to fail to qualify as a Nuclear Decommissioning Reserve Fund under section 468A of the Code and the regulations thereunder. The Qualified Fund is established and shall be maintained for the sole purpose of qualifying as a Nuclear Decommissioning Reserve Fund under section 468A of the Code and the regulations thereunder. If a Qualified Fund would fail to so qualify because of any provision contained in this Agreement, this Agreement shall be deemed to be amended as necessary to conform with the requirements of section 468A and the regulations thereunder. If a proposed amendment shall affect the responsibility of the Trustee, such amendment shall not be considered valid and binding until such time as the amendment is executed by the Trustee. [Notwithstanding any provision herein to the contrary, this Agreement cannot be amended in any material respect without first providing 30 working days prior written notice to the NRC’s Director of the Office of Nuclear Reactor Regulation or the Director of the Office of Nuclear Material Safety and Safeguards, as applicable].

#### ARTICLE V Powers of the Trustee and Investment Manager

Section 5.01 General Powers. The Trustee shall have and exercise the following powers and authority in the administration of the Fund only on the direction of an Investment Manager where such powers and authority relate to a separate account established for an Investment Manager, and in its sole discretion where such powers and authority relate to investments made by the Trustee in accordance with Section 3.02(b):

(a) to purchase, receive or subscribe for any securities or other property and to retain in trust such securities or other property;

(b) to sell, exchange, convey, transfer, or otherwise dispose of any property held in the Fund and to make any sale by private contract or public auction; and no person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency or propriety of any such sale or other disposition;

(c) to forward to the Authorized Person designated by the Company proxies or ballots for any stocks, bonds or other securities held in the Funds in a form to enable the Authorized Person to effect the voting of proxies, excluding bankruptcy matters to which the Trustee's duties are set forth in (e) below;

(d) to submit or cause to be submitted to the Company or the Investment Manager, as designated by the Company, information received by the Trustee, or summaries of information, regarding ownership rights pertaining to property held in the Funds, in accordance with the Trustee's practices, excluding bankruptcy matters to which the Trustee's duties are set forth in Section (e) below;

(e) to forward to the Authorized Person designated by the Company an initial notice of bankruptcy cases relating to securities held in the Funds and a notice of any required action related to such bankruptcy cases as may be actually received by the Trustee. No further action or notification related to the bankruptcy case shall be required absent the specific agreement of the parties hereto;

(f) to exercise any rights appurtenant to any such stocks, bonds or other securities for the conversion thereof into other stocks, bonds or securities, or to exercise rights or options to subscribe for or purchase additional stocks, bonds or other securities, and to make any and all necessary payments with respect to any such conversion or exercise, as well as to write options with respect to such stocks and to enter into any transactions in other forms of options with respect to any options which the Fund has outstanding at any time;

(g) to join in, dissent from or oppose the reorganization, recapitalization, consolidation, sale or merger of corporations or properties of which the Fund may hold stocks, bonds or other securities or in which it may be interested, upon such terms and conditions as deemed wise, to pay any expenses, assessments or subscriptions in connection therewith, and to accept any securities or property, whether or not trustees would be authorized to invest in such securities or property, which may be issued upon any such reorganization, recapitalization, consolidation, sale or merger and thereafter to hold the same, without any duty to sell;

(h) to enter into any type of contract with any insurance company or companies, either for the purposes of investment or otherwise; provided that no insurance company dealing with the Trustee shall be considered to be a party to this Agreement and shall only be bound by and held accountable to the extent of its contract with the Trustee. Except as otherwise provided by any contract, the insurance company need only look to the Trustee with regard to any instructions issued and shall make disbursements or payments to any person, including the Trustee, as shall be directed by the Trustee. Where applicable, the Trustee shall be the sole owner of any and all insurance policies or contracts issued. Such contracts or policies, unless otherwise determined, shall be held as an asset of the Fund for safekeeping or custodian purposes only;

(i) to lend the assets of the Fund in accordance with the terms and conditions of a separate securities lending agreement; and

(j) to purchase, enter, sell, hold, and generally deal in any manner in futures and/or options contracts, short-selling programs, foreign exchange or foreign exchange contracts, swaps, synthetic GICs, BICs and similar instruments and other derivative investments or of any other property; to grant, purchase, sell, exercise, permit to expire, permit to be held in escrow, and otherwise to acquire, dispose of, hold and generally deal in any manner with and in all forms of options in any combination.

Settlements of transactions may be effected in trading and processing practices customary in the jurisdiction or market where the transaction occurs. The Company acknowledges that this may, in certain circumstances, require the delivery of cash or securities (or other property) without the concurrent receipt of securities (or other property) or cash and, in such circumstances, the Company shall have sole responsibility for nonreceipt of payment (or late payment) by the counterparty.

Notwithstanding anything in this Agreement to the contrary, the Trustee shall not be responsible or liable for any failure to perform under this Agreement or for any losses to the Fund resulting from any event beyond the reasonable control of the Trustee.

Section 5.02 Specific Powers of the Trustee. The Trustee shall have the following powers and authority, to be exercised in its sole discretion with respect to the Fund:

(a) to appoint agents, Subcustodians, subtrustees, or counsel, domestic or foreign, as to part or all of the Fund and functions incident thereto where, in the sole discretion of the Trustee, such delegation is necessary in order to facilitate the operations of the Fund and such delegation is not inconsistent with the purposes of the Fund or in contravention of any applicable law. To the extent that the appointment of any such person or entity may be deemed to be the appointment of a fiduciary, the Trustee may exercise the powers granted hereby to appoint as such a fiduciary any person or entity. Upon such delegation, the Trustee may require such reports, bonds or written agreements as it deems necessary to properly monitor the actions of its delegate;

(b) to cause any investment, either in whole or in part, in the Fund to be registered in, or transferred into, the Trustee's name or the names of a nominee or nominees, including but not limited to that of the Trustee or an affiliate of the Trustee, a clearing corporation, or a Depository, or in book entry form, or to retain any such investment unregistered or in a form permitting transfer by delivery, provided that the books and records of the Trustee shall at all times show that such investments are a part of the Fund; and to cause any such investment, or the evidence thereof, to be held by the Trustee, in a Depository, in a clearing corporation, in book entry form, or by any other entity or in any other manner permitted by law;

(c) to make, execute and deliver, as trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers;

(d) to defend against or participate in any legal actions involving the Fund or the Trustee in its capacity stated herein, in the manner and to the extent it deems advisable;

(e) to form corporations and to create trusts, to hold title to any security or other property, to enter into agreements creating partnerships or joint ventures for any purpose or purposes determined by the Trustee to be in the best interests of the Fund;

(f) to establish and maintain such separate accounts in accordance with the instructions of the as the Company deems necessary for the proper administration of the Plans, or as determined to be necessary by the Trustee;

(g) to hold uninvested cash in its commercial bank or that of an affiliate, as it shall deem reasonable or necessary;

(h) to invest in any collective, common or pooled trust fund operated or maintained exclusively for the commingling and collective investment of monies or other assets including any such fund operated or maintained by the Trustee or an affiliate. The Company expressly understands and agrees that any such collective fund may provide for the lending of its securities by the collective fund trustee and that such collective fund's trustee will receive compensation for the lending of securities that is separate from any compensation of the Trustee hereunder, or any compensation of the collective fund trustee for the management of such collective fund. The Trustee is authorized to invest in a collective fund which invests in Mellon Financial Corporation stock in accordance with the terms and conditions of the Department of Labor Prohibited Transaction Exemption 95-56 (the "Exemption") granted to Mellon Bank, N.A. and its affiliates and to use a cross-trading program in accordance with the Exemption. The Company acknowledges receipt of the notice entitled "Cross-Trading Information", a copy of which is attached to this Agreement as Exhibit D;

(i) to invest in open-end and closed-end investment companies, including those for which the Trustee or an affiliate provides services for a fee, regardless of the purposes for which such fund or funds were created, and any partnership, limited or unlimited, joint venture and other forms of joint enterprise created for any lawful purpose; and

(j) to generally take all action, whether or not expressly authorized, which the Trustee may deem necessary or desirable for the protection of the Fund.

Notwithstanding anything else in this Agreement to the contrary, including, without limitation, any specific or general power granted to the Trustee and to the Investment Managers, including the power to invest in real property, no portion of the Fund shall be invested in real estate. For this purpose "real estate" includes, but is not limited to, real property, leaseholds or mineral interests.

The powers described in this Article V may be exercised by the Trustee with or without instructions, from the Company or a party authorized by the Company to act on its behalf, but where the Trustee acts on Authorized Instructions, the Trustee shall be fully protected as described in Section 3.03. Without limiting the generality of the foregoing, the Trustee shall not be liable for the acts or omissions of any person appointed under paragraph (a) of this Section 5.02 pursuant to Authorized Instructions.

## ARTICLE VI Termination

Section 6.01 The Qualified Fund shall terminate upon the later of (A) the earlier of either (i) substantial completion of decommissioning of their respective Unit, as defined in the Special Terms, or (ii) disqualification of a Qualified Fund by the Internal Revenue Service as provided in Treas. Reg. §1.468A-5(c) or any corresponding future Treasury Regulation or (B) termination by the U.S. Nuclear Regulatory Commission of the Company's operating license with respect to the Unit. The Nonqualified Funds shall terminate upon termination by the U.S. Nuclear Regulatory Commission of the Company's operating license with respect to their respective Unit. Upon termination of any Fund, the assets of the terminated Fund shall be distributed in accordance with any written directive of the applicable PUC concerning termination of such Fund. Absent a written directive of the applicable PUC within thirty (30)



days after it is notified of the termination, all of the assets shall be distributed to the Company. The Company shall provide the Trustee with notification that a Qualified Fund or the Nonqualified Fund, as the case may be, has terminated and with either (i) the written directive of the applicable PUC or (ii) a certificate signed by its Chairman of the Board, its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer stating that there is no PUC written directive and that thirty (30) days have elapsed since notification to the applicable PUC of termination, as the case may be, prior to distribution of the assets of the terminated Fund.

ARTICLE VII  
Miscellaneous

Section 7.01 Binding Agreement. All covenants and agreements in this Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their successors and assigns.

Section 7.02 Notices. All notices and communications hereunder shall be in writing and shall be deemed to be duly given on the date mailed if sent by registered mail, return receipt requested, as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Bank of New York Mellon  
Attn: \_\_\_\_\_  
Room \_\_\_\_\_  
BNY Mellon Center  
Pittsburgh, PA 15258

or at such other address as any of the above may have furnished to the other parties in writing by registered mail, return receipt requested.

Section 7.03 Governing Law. The Funds have been established pursuant to this Agreement in accordance with the requirements for a trust under the laws of the state of New York, and this Agreement shall be governed by and construed and enforced in accordance with the substantive laws of the state of New York without regard to its conflicts of law provisions. The parties consent to the jurisdiction of a state or federal court situated in New York City, New York in connection with any dispute hereunder. The Company irrevocably waives any objection it may now or hereafter have to venue in such court and any claim that a proceeding brought in such court has been brought in an inconvenient forum. The parties hereby expressly waive, to the full extent permitted by applicable law, any right to trial by jury with respect to any judicial proceeding arising from or related to this Agreement.

Section 7.04 (a) Contractual Income. The Trustee shall credit the Fund with income and maturity proceeds on securities on contractual payment date net of any taxes or upon actual receipt as agreed between the Trustee and the Company. To the extent the Company and the Trustee have agreed to credit income on contractual payment date, the Trustee may reverse such accounting entries with back value to the contractual payment date if the Trustee reasonably believes that such amount will not be received by it.

(b) Contractual Settlement. The Trustee will attend to the settlement of securities transactions on the basis of either contractual settlement date accounting or actual settlement date accounting as agreed between the Company and the Trustee. To the extent the Company and the Trustee have agreed to settle certain securities transactions on the basis of contractual settlement date accounting, the Trustee may reverse with back value to the contractual settlement date any entry relating to such contractual settlement where the related transaction remains unsettled according to established procedures.

Section 7.05 Representations. The Company and the Trustee hereby each represent and warrant to the other that it has full authority to enter into this Agreement upon the terms and conditions hereof and that the individual executing this Agreement on its behalf has the requisite authority to bind the Company and the Trustee to this Agreement.

Section 7.06 USA PATRIOT Act. The Company hereby acknowledges that the Trustee is subject to federal laws, including the Customer Identification Program (“CIP”) requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which the Trustee must obtain, verify and record information that allows the Trustee to identify the Company. Accordingly, prior to opening an account hereunder, the Trustee will ask the Company to provide certain information including, but not limited to, the Company’s name, physical address, tax identification number and other information that will help the Trustee to identify and verify the Company’s identity such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information. The Company agrees that the Trustee cannot open an account hereunder unless and until the Trustee verifies the Company’s identity in accordance with the Trustee’s CIP.

Section 7.07 Counterparts. This Agreement may be executed in several counterparts, and all such counterparts executed and delivered, each an original, shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound hereby, have hereunto set their hands and seals as of the day and year first above written.

PACIFICORP

By: \_\_\_\_\_  
Name:  
Title:

THE BANK OF NEW YORK MELLON

By: \_\_\_\_\_  
Name:  
Title:

Pursuant to Section 3.25, as Beneficial Owner:

Company OBJECTS to disclosure

Company DOES NOT OBJECT to disclosure

Trustee shall CONTACT THE INVESTMENT MANAGER with respect to relevant Securities to make the decision whether it objects to disclosure

IF NO BOX IS CHECKED, TRUSTEE SHALL RELEASE SUCH INFORMATION UNTIL IT RECEIVES A CONTRARY WRITTEN INSTRUCTION FROM THE COMPANY.

**ATTACHMENT B**

## Proposed Custody Fees

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	Current	BNY Mellon
Consolidated Pension Trust	\$850,495	\$314,341
NVE VEBA	\$11,118	\$4,692
NVE Union VEBA	\$23,532	\$9,325
NVE TRED	\$5,000	\$860
NVE Rabbi Trust	\$11,805	\$2,315
PacifiCorp Union VEBA	\$85,251	\$55,607
PacifiCorp VEBA	\$5,785	\$2,637
PacifiCorp Executive Trust	\$27,738	\$34,496
PacifiCorp Bridger	\$44,218	\$24,804
PacifiCorp NDT	\$0	\$1,024
PacifiCorp Foundation	\$4,511	\$5,436
MidAmerican VEBA	\$44,659	\$34,868
MidAmerican Union VEBA	\$52,514	\$45,110
MidAmerican SERP	\$6,000	\$12,953
MidAmerican Rabbi Trusts	\$14,000	\$49,161
LTIPs	\$38,580	\$46,704
<b>Total</b>	<b>\$1,225,206</b>	<b>\$ 644,335</b>
<i>% Savings</i>		<i>47%</i>

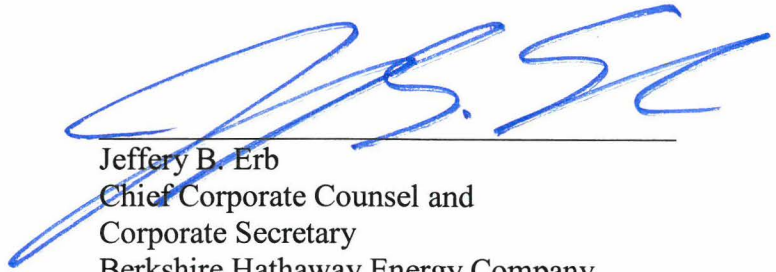
## **VERIFICATION**

**VERIFICATION**

I, Jeffery B. Erb, duly elected Chief Corporate Counsel and Corporate Secretary of Berkshire Hathaway Energy Company, an Iowa corporation, have personal knowledge of this affiliated interest transaction. Attached to this filing are true and accurate copies of the original agreements between PacifiCorp and The Bank of New York Mellon Trust Company, N.A.

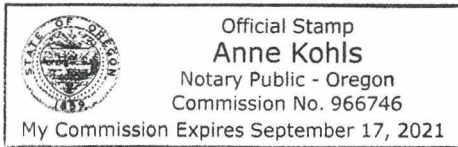
I declare upon the penalty of perjury, that the foregoing is true and correct.


Executed on December 20<sup>th</sup>, 2019 at Portland, Oregon.

  
\_\_\_\_\_  
Jeffery B. Erb  
Chief Corporate Counsel and  
Corporate Secretary  
Berkshire Hathaway Energy Company

State of OREGON  
County of Multnomah

Signed and attested before me on this 20<sup>th</sup> day of December, 2019 by Jeffery B. Erb.



  
\_\_\_\_\_  
Notary Public – State of Oregon

My Commission expires: September 17, 2021

**CERTIFICATE OF SERVICE**

Docket No. 05-035-54

I hereby certify that on December 24, 2019, a true and correct copy of the foregoing was served by electronic mail to the following:

**Utah Office of Consumer Services**

Michele Beck            [mbeck@utah.gov](mailto:mbeck@utah.gov)

**Division of Public Utilities**

Chris Parker            [chrisparker@utah.gov](mailto:chrisparker@utah.gov)



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Mary Penfield  
Adviser, Regulatory Operations