

PO Box 2760 ■ Omaha, NE 68103-2760

Fax: 866-468-6268

IMPORTANT NOTE:

TD Ameritrade has been acquired by Charles Schwab Corporation (“Schwab”) and will begin using Schwab plan documents for clients ahead of our conversion process. It is currently estimated that TD Ameritrade accounts will convert to Schwab in 2023. Schwab is the Prototype Plan Sponsor of this plan document; thus, we will refer to this plan as the Schwab Individual 401(k) Plan or the Individual 401(k) Plan throughout. TD Ameritrade continues to be your plan Custodian until conversion.

- If you maintain or want to offer an Individual 401(k) plan that has/allows Roth Elective Deferrals, please do NOT use this Adoption Agreement. Effective December 1, 2022, this plan does NOT permit Roth Elective Deferrals to be made, nor are existing Roth Elective Deferrals supported.

New Plan Clients: Please open your Individual 401(k) plan with a service provider that does accept Roth 401(k) Elective deferrals and offers a plan document allowing Roth Deferrals.

Existing TD Ameritrade Plan Client: If you have Roth Elective Deferrals under your Individual 401(k) plan at TD Ameritrade, please transfer your entire plan to a new plan provider immediately. You will also need to sign a new plan document with your service provider that allows Roth Elective Deferrals.

While your plan was permitted to use the TD Ameritrade Individual 401(k) plan document to meet IRS Cycle 3 restatement¹ requirements, Roth Elective Deferrals are not permitted under this updated plan beginning December 1, 2022.

- If you maintain or choose to offer an Individual 401(k) plan without Roth deferral contributions (Adoption Agreement Section 3), you may use this Adoption Agreement to open an Individual 401(k) plan. Your plan account(s) may remain at TD Ameritrade until converted to Schwab (estimated to be in 2023), or until you transfer them out. No action to move or transfer your account is required at this time. More information on when and how your accounts will be converted to Schwab is expected starting in 2023. Until then please complete these documents as outlined below.

Reminder: To use this document and have TD Ameritrade as Custodian, plans may no longer offer participant loans, nor have outstanding loans after July 31, 2022. If you have outstanding participant loans, please contact us before using this Adoption Agreement.

¹A plan restatement is an IRS required process whereby employers must complete new plan documents, for example, an “Adoption Agreement”. Restatements are required by the IRS every 6 years to maintain compliance with new tax laws and regulations. This current restatement is called “Cycle 3” and ends on July 31, 2022. You must complete Cycle 3 restatement documents no later than July 31, 2022.

GETTING STARTED

The Individual 401(k) Plan is designed for Self-Employed Individuals; owner-only businesses or owner-spouse businesses, including sole proprietors; C corporations; S corporations; partnerships; and limited-liability corporations.

These instructions are designed to help you, the Adopting Employer, along with your attorney and/or tax advisor, complete the Adoption Agreement for the Individual 401(k) Plan. The instructions are to be used only as a general guide and are not intended as a substitute for qualified legal and tax advice. We recommend that you obtain the advice of your legal or tax advisor before you sign the Adoption Agreement. The words and phrases that are capitalized are defined terms that may be found in the Basic Plan Document.

COMPLETING THE ADOPTION AGREEMENT

If you fail to select an option or complete an election for an elective provision, default provisions will apply. Each applicable default is detailed below each option or election on the Adoption Agreement. Certain options are prechecked based on the Individual 401(k) Plan features.

Employer Information

Fill in the requested information.

The Name of the Adopting Employer is the business (the “Employer”) that sponsors the Plan.

The Adopting Employer’s Federal Tax Identification Number is the tax identification number assigned to your business. Do not use your Social Security Number. If your business does not have a Federal Tax Identification Number, you or your tax advisor may obtain one immediately online or by telephone; the instructions for IRS Form SS-4 (available on the IRS website at www.irs.gov) explain how to proceed.

Plan Information

Fill in the requested information.

The three-digit Plan Sequence Number is used to identify your Plan in annual reporting to the IRS. Your business determines the number, beginning with 001 for the first Plan the business established. For example, if this is the fourth Plan your business maintains or has maintained, the Plan Sequence Number would be 004.

Fill in the Plan Identification Number (if applicable). This is the tax identification number assigned to your Individual 401(k) Plan for reporting purposes. Do not use your Social Security Number or the tax identification number assigned to your business. If your Plan does not have a Plan Identification Number, you or your tax advisor may obtain one immediately online or by telephone; the instructions for IRS Form SS-4 (available on the IRS website at www.irs.gov) explain how to proceed.

If the Adopting Employer will not be responsible for administering the Plan, the Plan Administrator is the individual who will be responsible for administering the Plan for the Adopting Employer, unless another person is designated by the Adopting Employer as Trustee in the Adoption Agreement.

SECTION ONE. EFFECTIVE DATES

Part A. New Plan Effective Date

Complete this if this is a new Plan, if you have an existing Plan of the same Plan type, complete Part B.

Part B. Existing Plan Amendment or Restatement Date

Fill in the requested information. The existing qualified plan to be replaced is called a "Prior Plan." You will need to know the Effective Date of the Prior Plan. The best way to determine its Effective Date is to refer to the Prior Plan Adoption Agreement.

The amendment or restatement Effective Date is generally the first day of the Plan Year in which this Adoption Agreement is signed.

SECTION TWO. ELIGIBILITY

Part A. Age and Years of Eligibility Service

Age Requirement

Fill in the age that an Employee must attain (no more than 21) to be eligible to receive Employer Profit Sharing Contributions and to make Elective Deferrals.

Eligibility Service Requirement

Fill in one option to indicate the service requirement that an Employee must complete to be eligible to receive Employer Profit Sharing Contributions and to be eligible to make Elective Deferrals.

Part B. Employees Employed as of Specified Date

This provision only applies to an initial adoption of a Plan as defined in Section One, Part A of the Adoption Agreement.

The age and service requirements may be waived for those Employees who are employed as of the Effective Date of this Plan. If the eligibility requirements are waived, then only those Employees hired after the original Effective Date will have to meet the eligibility requirements as defined in Part A in this section of the Adoption Agreement.

SECTION THREE. CONTRIBUTIONS

- Pre-tax Elective Deferrals are permitted under this Plan.
- Effective December 1, 2022, Roth Elective Deferrals are NOT permitted to be made under this plan document.
If your current Individual 401(k) plan with TD Ameritrade has Roth Elective Deferrals, please transfer to a new plan provider that allows Roth 401(k) deferrals. You must transfer out all your Individual 401(k) plan assets. You will also need to sign a new plan document with your new plan provider.
- After-tax employee contributions are NOT permitted under this Plan.
- In-Plan Roth Conversions are NOT permitted under this Plan.

SECTION FOUR. VESTING AND FORFEITURES

There are no elections required for Section Four.

SECTION FIVE. DISTRIBUTION AND LOANS

Loans

Loans are not permitted under this Plan.

SECTION SIX. DEFINITIONS

There are no elections required for Section Six.

SECTION SEVEN. MISCELLANEOUS

Life Insurance

Life insurance investments are not permitted investments under this Plan.

SECTION EIGHT. EMPLOYER SIGNATURE

Prototype Document Sponsor

Charles Schwab & Co., Inc. is the entity that makes this prototype plan available to employers for adoption.

Attachments: In rare cases in which the Adopting Employer also maintains (or has maintained) another qualified plan, an attachment is required to coordinate the plans' compliance with contribution limits or top-heavy plan requirements. Consult your tax advisor if you think you may be in this situation.

Authorized Employer Signature An authorized representative of the Employer must sign and date the Adoption Agreement.

Note: For most qualified retirement plans, an IRS favorable opinion letter is the only IRS approval letter needed. Under certain circumstances, the IRS opinion letter covering this Plan may not apply. If you wish to obtain assurance that this Plan meets the requirements for qualification under the tax laws and regulations, this can be done by requesting an additional approval letter called an IRS determination letter from the Employee Plans Determinations Office of the IRS. Your attorney or tax advisor can help you obtain an additional IRS determination letter if your plan will require this type of approval.

ACTION REQUIRED

1. After you complete all the elective section of the Adoption Agreement, sign and date it in Section Eight.
2. Also complete the attached Trust Agreement and sign and date that as well.
3. Make a copy of the Adoption Agreement and the Trust Agreement and return it to TD Ameritrade. Retain the originals in your permanent plan files in case of IRS/DOL audit.

TD Ameritrade, Inc., member FINRA/SIPC, a subsidiary of The Charles Schwab Corporation.
TD Ameritrade is a trademark jointly owned by TD Ameritrade IP Company, Inc. and The Toronto-Dominion Bank.
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INDIVIDUAL 401(k) PLAN ADOPTION AGREEMENT

PO Box 2760 ■ Omaha, NE 68103-2760
Fax: 866-468-6268

EMPLOYER INFORMATION		
Name of Adopting Employer:		
Address:		
City:	State:	ZIP Code:
Telephone Number:	Adopting Employer's Federal Tax Identification Number:	
Adopting Employer's Tax Year End (specify month and day):		
Type of Business (select one): <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Other (specify a legal entity recognized under federal income tax laws): _____		
Name of Plan:	Plan Sequence Number:	
Trust Identification Number (if applicable):	Account Number:	
<p>Related Employers – If the Adopting Employer is part of a controlled group of corporations (as defined in Code section 414(b) as modified by Code section 415(h)), a group of commonly controlled trades or businesses (as defined in Code section 414(c) as modified by Code section 415(h)) or an affiliated service group (as defined in Code section 414(m)) of which the Adopting Employer is a part, or any other entity required to be aggregated with the Adopting Employer pursuant to Code section 414(o), then all Related Employers of the Adopting Employer will participate in this Plan.</p>		
SECTION ONE: EFFECTIVE DATES (Complete Part A or B)		
<input type="checkbox"/> Part A: New Plan Effective Date This is the initial adoption of a 401(k) profit sharing plan by the Adopting Employer. The Effective Date of this Plan is _____. (Must be no earlier than the first day of the Plan Year in which the Plan is adopted.) If different from the Effective Date above, Elective Deferrals can be made under this Plan effective (select one): <input type="checkbox"/> Option 1: The next payroll date coinciding with or following the later of the date this Adoption Agreement is signed or the Effective Date. <input type="checkbox"/> Option 2: _____ (Must be on or after the later of the date this Adoption Agreement is signed or the Effective Date.) NOTE: If no option is selected, Option 1 will apply. NOTE: The Effective Date is usually the first day of the Plan Year in which this Adoption Agreement is signed and may not be earlier than such date. Elective Deferrals, however, cannot be made available before the later of the date this Adoption Agreement is signed or the date specified above for Elective Deferrals.		
<input type="checkbox"/> Part B. Existing Plan Amendment or Restatement Date This is an amendment or restatement of an existing qualified plan. The Initial Plan Document was effective on _____. <input type="checkbox"/> This Plan is a frozen Plan effective on _____. <i>If this Plan is a frozen Plan, no Employer Contributions may be made to the Plan with respect to Compensation earned on or after the Effective Date that the Plan is frozen. In addition, no additional contributions (e.g., rollover, transfer) may be accepted by the Plan on or after the date that the Plan is frozen. Depending on the facts and circumstances surrounding the freezing of the Plan, other Plan provisions may be affected (e.g., availability of loans.)</i> The Effective Date of this amendment or restatement is _____. (Must be no earlier than the first day of the Plan Year in which the Plan is restated.) NOTE: Specifying an amendment or restatement Effective Date as any day other than the first day of the Plan Year following the Plan Year in which this Adoption Agreement is signed may result in a reduction or elimination of accrued benefits, violating Code section 411(d)(6). Notwithstanding the foregoing, Effective Dates for certain legislative and regulatory provisions are governed by the terms specified in the Basic Plan Document.		



SECTION TWO: ELIGIBILITY (Complete Parts A and B)

Part A. Age and Eligibility Service

1. Age Requirement. An Employee will be eligible to become a Participant in the Plan for purposes of becoming a Contributing Participant (and thus eligible to make Elective Deferrals) or receiving an allocation of any Employer Profit Sharing Contributions, as applicable, made pursuant to Section Three of the Adoption Agreement, after attaining the following age _____ (not more than 21).

NOTE: If no age is specified there will be no age requirement.

2. Eligibility Service Requirement. An Employee will be eligible to become a Participant in the Plan for purposes of becoming a Contributing Participant (and thus eligible to make Elective Deferrals) or receiving an allocation of any Employer Profit Sharing Contributions, as applicable, made pursuant to Section Three of the Adoption Agreement. (select one)

- Option 1:** No eligibility service required.
- Option 2:** After completing _____ consecutive Months of Eligibility Service (not more than 12) beginning on the Employee's date of hire.

NOTE: If an Employee does not satisfy the Months of Eligibility Service requirement within the initial period specified above, such Employee will satisfy the Plan's service requirement and be eligible to become a Participant in the Plan for purposes of the contributions specified above upon completion of 1,000 Hours of Service within the Eligibility Computation Period.

- Option 3:** After completing 1 Year of Eligibility Service (Period of Service, if applicable).

NOTE: If no option is selected, Option 1 will apply.

Part B. Employees Employed as of a Specified Date

An Employee who is employed as of the date specified below, is included in the classification listed below (other than an Employee who is part of an excluded class of Employees), and has not otherwise met the age and eligibility service requirements listed above will be considered to have met those requirements and be eligible to become a Participant in the Plan (select one)

- Option 1:** An Employee employed on _____ (specify a month, day, and year)

i. Employee Classification

This waiver applies to the following Employees (select one and complete, as applicable):

Suboption (a): All Employees.

Suboption (b): Employees who are (define classifications):

ii. Entry Date

The following date will be an Entry Date for an Employee who is subject to this waiver (select one and complete, as applicable):

Suboption (a): The specified date above.

Suboption (b): _____ (specify a month, day, and year)

- Option 2:** Not applicable.

NOTE: If no option is selected, Option 2 will apply. If Option 1 is selected but no date is specified, no additional age and eligibility service waivers will apply. If Option 1 is selected but no Employees are specified, all Employees employed on the specified date will be subject to the waiver. This age and eligibility service waiver may be used either when this Plan is adopted or when the Plan is subsequently amended (e.g., to add one or more types of contributions, to add a previously excluded group of Employees).

SECTION THREE: CONTRIBUTIONS (Complete Part A)

Part A. Elective Deferrals

Authorization of Elective Deferrals

Will Elective Deferrals be permitted under this Plan? (select one)

- Option 1:** Yes (complete the following):

Will Roth Elective Deferrals be permitted under this Plan in addition to Pre-Tax Elective Deferrals?

Suboption (a): Yes.

Suboption (b): No.

- Option 2:** No.

NOTE: Roth Elective Deferrals are not permitted to be made under this plan.

Part B. Employer Profit Sharing Contributions

Employer Profit Sharing Contributions, if any, shall be allocated to all Qualifying Participants pursuant to the pro rata allocation formula described in Plan Section 3.02(B)(1).

Part C. Nondeductible Employee Contributions

May a Contributing Participant make Nondeductible Employee Contributions pursuant to Plan Section 3.05 (select one)?

Option (a): Yes.

Option (b): No.

NOTE: If no option is selected, Option (a) will apply. Nondeductible Employee Contributions made under this Part C will be subject to ACP Testing.

SECTION FOUR: VESTING AND FORFEITURES

There are no elections required for Section 4. Refer to the Basic Plan Document for information regarding this Section.

SECTION FIVE: DISTRIBUTIONS AND LOANS

Loans

Will a Participant be entitled to request a loan pursuant to Plan Section 5.16? (select one)

Option 1: Yes.

Option 2: No.

NOTE: If no option is selected, Option 2 will apply

SECTION SIX: DEFINITIONS

There are no elections required for Section 6. Refer to the Basic Plan Document for information regarding this Section.

SECTION SEVEN: MISCELLANEOUS

There are no elections required for Section 7.

SECTION EIGHT: EMPLOYER SIGNATURE

Prototype Document Sponsor

Name of Prototype Document Sponsor:

Charles Schwab & Co., Inc.

Address:

211 Main Street, San Francisco, CA 94105

Telephone:

(800) 435-4000

Check the applicable box if there is an attachment(s) that applies to this Plan other than a separate trust or custodial agreement.

Protected Benefits and Prior Plan Document Provisions Attachment.

Authorized Employer Signature

I am an authorized representative of the Adopting Employer named above and I state the following:

1. I acknowledge that I have relied upon my own advisors regarding the completion of this Adoption Agreement and the legal tax implications of adopting this Plan;
2. I understand that my failure to properly complete this Adoption Agreement may result in disqualification of the Plan;
3. I understand that the Prototype Document Sponsor will inform me of any amendments made to the Plan and will notify me should it discontinue or abandon the Plan; and
4. I have received a copy of this Adoption Agreement, the corresponding Basic Plan Document and, if applicable, any separate trust or custodial agreement used in lieu of the trust or custodial agreement contained in the Basic Plan Document.

X Signature of Adopting Employer: _____ Date Signed: _____

Print Name: _____ Title: _____

NOTE: The Adopting Employer may rely on an opinion letter issued by the IRS as evidence that the Plan is qualified under Code section 401 except to the extent provided in Revenue Procedure 2017-41. The Employer may not rely on the opinion letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the opinion letter issued with respect to the Plan and in Revenue Procedure 2017-41. An Employer who has ever maintained or who later adopts any plan (including a welfare benefit fund, as defined in Code section 419(e), which provides post-retirement medical benefits allocated to separate accounts for key employees, as defined in Code section 419A(d)(3), or an individual medical account, as defined in Code section 415(l)(2) in addition to this Plan may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of Code section 415 and 416.

This Adoption Agreement may be used only in conjunction with Basic Plan Document #02.

GETTING STARTED

These instructions are designed to help you, the Adopting Employer, along with your attorney and/or tax advisor, complete the Trustee and Custodial Agreement. The instructions are to be used only as a general guide and are not intended as a substitute for qualified legal and tax advice. We recommend that you obtain the advice of your legal or tax advisor before you sign the Trustee and Custodial Agreement. The words and phrases that are capitalized are defined terms that may be found in the Basic Plan Document.

COMPLETING THE TRUSTEE AND CUSTODIAL AGREEMENT

The Trustee and Custodial Agreement is a part of your plan document and must be signed by the adopting employer and the Trustee or Custodian.

Trustee Information

Name of Individual Trustee – if this is in an Owner-Only Plan, the Trustee and the Employer will be one in the same

Name of the Employer and any related companies

This is the name of the employer's business or if not applicable, the name of the individual establishing the plan

Name of Plan

Generally this is the same as the name of the Employer + what type of Plan it is, i.e. Individual(k)

Agreement Effective Date (MM/DD/YYYY)

Effective Date is generally the first day of the Plan Year in which this Adoption Agreement is signed

10.01 Trustee

Appointing a Trustee is optional if the Plan covers only one or more Self-Employed Individuals and spouses who work for the business (Owner-Only Plan) or satisfies another exception under ERISA. If you appoint a Trustee, this Plan only permits an Individual Trustee, and the trust provisions will apply.

If you are an Owner-Only Plan then you can check Option 3 (Not applicable)

If there is more than one Company, or you have a PSP or MPP with employees then you should elect Option 2 (Individual Trustee)

THIS TRUSTEE AND CUSTODIAL AGREEMENT (“Agreement”) is entered into between:
Name of Trustee:
Name of Custodian: TD Ameritrade, Inc.
Name of the Employer and Any Related Companies:
Name of Plan:
Agreement Effective Date:
<p>The Trustee and the Employer intend that the Plan shall be a qualified plan under section 401(a) of the Internal Revenue Code of 1986, as amended (the “Code”) and that the related trust, as defined below, shall be tax-exempt under Code section 501(a) and applicable state law.</p> <p>The Trustee (or Custodian, if applicable) shall hold in trust all cash amounts or other assets transferred to it pursuant to this Agreement, together with any gains and losses thereon (the “Fund”). The Trustee (or Custodian, if applicable) shall hold and administer the Fund for the uses and purposes and on the terms and conditions set forth in this Agreement.</p>
ARTICLE I – RELATIONSHIP OF TRUST TO PLAN
<p>The Plan and this Agreement shall be read and construed together. The terms of the Plan shall prevail over the terms of this Agreement in cases of conflict, except that this Agreement shall prevail in matters relating to the rights, duties, and liabilities of the Trustee (or Custodian, if applicable). Nothing contained in the Plan shall be deemed to impose any additional rights, duties, and liabilities on the Trustee (or Custodian, if applicable).</p>
ARTICLE II – FINANCIAL ORGANIZATION AS CUSTODIAN
<p>2.01 Appointment</p> <p>The Employer appoints the entity named in this Agreement as Custodian for the Plan, and the entity accepts such appointment, subject to the terms of this Agreement. The Employer represents and warrants to the entity that it has all requisite right, power, and authority and has taken all required actions necessary under the Plan and applicable law to designate the financial organization as Custodian of the Plan pursuant to the terms of this Agreement. The Employer, Plan Administrator, any Trustee, any other investment fiduciary for the Plan (“Investment Fiduciary”), and the Custodian so appointed will be bound by all the terms of this Agreement and the Plan. The Investment Fiduciary, as defined in the Plan, means the Employer, Trustee or investment manager with the responsibility and authority to select investment options for the Plan and to direct the investment of the assets of the Fund. In no event will the Custodian or Trustee who is acting solely as a directed trustee be an Investment Fiduciary. Notwithstanding any provision in this Agreement regarding the responsibilities of or granting powers to the Custodian, the Custodian will serve as a nondiscretionary, directed Custodian of the Fund, will have no discretionary authority with respect to the management or administration of the Plan or the Fund, and will act only as directed by the entity or individual who has such authority.</p>
<p>2.02 Authorized Actions</p> <p>Unless further limited by the Plan Trustee(s), the Custodian is authorized and directed to take any action set forth below:</p> <p>(a) receive Plan contributions and hold, invest and reinvest, and distribute the Fund as authorized by the Employer or its designee without distinction between principal and interest, provided, however, that nothing in this Agreement will require the Custodian to maintain physical custody of stock certificates (or other indicia of ownership of any type of asset) representing assets within the Fund;</p> <p>(b) maintain accurate records of contributions, investments, earnings, receipts, disbursements, withdrawals, and other transactions with respect to the Fund, and all accounts, books, and records relating thereto will be open at all reasonable times to inspection and audit by any person designated by the Employer, provided, however, that the Custodian is given reasonable advance notice of such inspection by the Employer. On direction of the Employer or Plan Administrator, and if agreed to in writing by the Custodian, the Custodian may provide annual or interim accountings, valuations, or other reports concerning the assets of the custodial account subject to payment of all required additional fees for such reports. The Custodian’s accounting will be at the custodial account level rather than the participant level, and the Custodian will not be responsible for participant-level recordkeeping, reporting, or communication unless it agrees to do so in a separate written agreement with the Employer or Plan Administrator. The Custodian will also furnish the Employer with such other information as the Custodian possesses and which is necessary for the Employer to comply with the reporting requirements of ERISA, as applicable. An accounting will be deemed to have been approved by the Employer unless the Employer or Plan Administrator objects to the contents of an accounting within sixty (60) days of its mailing or electronic transmission by the Custodian. Any objections must set forth the specific grounds on which they are based. Upon approval, the Custodian will be forever released from any and all liability with respect to the Fund;</p> <p>(c) make disbursements from the Fund to participants or beneficiaries upon the proper authorization of the Plan Administrator;</p>



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

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

- (l) maintain all records with respect to the Fund for such period as may be required under applicable law. Upon the expiration of any such required retention period, the Custodian will have the right to destroy such records. The Custodian will have the right to preserve all records and accounts in original form, electronically, or on microfilm, magnetic tape, or any other similar process pursuant to applicable federal law and subsequent rules promulgated by the IRS or Department of Labor (DOL);
- (m) except as otherwise provided in this Agreement, conclusively presume that the Employer, Trustee, Plan Administrator, or other responsible party has made all filings required by law as of the date required. Should the Custodian incur any liability by reason of any party's failure to timely file, the Employer shall indemnify and hold the Custodian, any parent, subsidiary, related corporation, or affiliate of the Custodian, including their respective directors, managers, officers, employees, and agents, harmless for any and all liabilities, costs, expenses (including reasonable attorney's fees), and other obligations, including penalties and interest, incurred by the Custodian.
- Notwithstanding the provisions of Plan Section 5.11, in connection with the disbursement of assets from the Fund to a participant, the Custodian shall withhold and remit to the IRS and other applicable taxing authorities the amount of any income tax withholding required by law pursuant to instructions provided by the Plan Administrator; and
- (n) except for the disbursement of loan proceeds and reinvestment of loan payments pursuant to instructions received pursuant to this Agreement, under no circumstances will the Custodian have or be allocated any responsibility for the administration of any participant loan program in Plan Section 5.16.

2.03 Powers of the Custodian

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

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

ARTICLE III – TRUSTEE

3.01 Appointment

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

3.02 Authorized Actions

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

- (a) receive Plan contributions and hold, invest, and reinvest the portion of the Fund for which it serves as Trustee, as authorized by the Employer or its designee, without distinction between principal and interest, provided, however, that nothing in this Agreement will require the Trustee to maintain physical custody of stock certificates (or other indicia of ownership) representing assets within the Fund;
- (b) maintain accurate records of contributions, investments, earnings, receipts, disbursements, withdrawals, and other transactions under the trust;
- (c) make disbursements from the portion of the Fund for which it serves as Trustee to participants or beneficiaries upon the proper authorization of the Plan Administrator; and
- (d) furnish to the Plan Administrator a statement that reflects the value of the investments in the custody of the Trustee as of the end of each plan year of the Plan and as of any other times as the Trustee and Plan Administrator may agree in writing.

3.03 Powers of the Trustee

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

- (a) purchase or subscribe for securities or other property and retain them in trust; sell any such property at any time held by it for cash or other consideration at such time or times and on such terms and conditions as may be deemed appropriate; exchange such property and grant options for the purchase or exchange thereof, and convey, partition, or otherwise dispose of, with or without covenants, including covenants of warranty of title, any securities or other property free of all trusts; charge the trust for the cost of all securities purchased or received against a payment and credit the trust with the proceeds received from the securities sold or delivered against payment. For any trades not settled immediately upon placement, the Trustee will have the right to sell securities from the trust in a reasonably prudent fashion sufficient to recover any funds advanced;

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

ARTICLE IV – COMPENSATION AND EXPENSES

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

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

ARTICLE V – NO OBLIGATION TO QUESTION DATA

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

ARTICLE VI – RESIGNATION

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

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

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

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

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

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

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

ARTICLE VII – DEGREE OF CARE – LIMITATIONS OF LIABILITY

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

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

ARTICLE VIII – INDEMNIFICATION OF TRUSTEE AND CUSTODIAN

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

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

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

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

ARTICLE IX – MISCELLANEOUS

9.01 Governing Law

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

9.02 Necessary Parties

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

9.03 Force Majeure

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

9.04 Limitation on Damages

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

UNDER NO CIRCUMSTANCES SHALL THE TRUSTEE, OR ITS OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, AGENTS, LICENSORS OR REPRESENTATIVES BE SUBJECT TO OR LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR SIMILAR DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES OR COSTS INCURRED AS A RESULT OF LOSS OF TIME, LOSS OF SAVINGS, LOSS OF DATA, LOSS OF REVENUES AND/OR PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, THAT MAY ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR CUSTODIAN OR ADMINISTRATOR COMPLYING WITH EMPLOYER'S DIRECTIONS, REGARDLESS IF SUCH DAMAGES ARE BASED IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

9.05 Class Action Waiver

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

9.06 Arbitration

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

9.07 Agents

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

9.08 Severability

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

9.09 References

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

9.10 Headings

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

ARTICLE X – COUNTERPARTS, IDENTIFICATION AND EXECUTION

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

EMPLOYER

Name of Employer:

X

Signature: Authorized Officer

Today's Date:

10.01 Trustee

1. Trustee Appointment a. Trustee (*Select one.*)

Option 1: Financial Organization as Trustee.

Option 2: Individual Trustee(s).

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

b. Type of Trustee

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

Option 1: Directed Trustee.

Option 2: Discretionary Trustee.

c. Trustee Signature

Name of Trustee:

Address:

Telephone:

Name of Authorized Officer (*Type or print name if different from name of Trustee above.*):

Title:

X

Signature: Trustee or Authorized Officer

Today's Date:

Name of Trustee:

Address:

Telephone:

Name of Authorized Officer (*Type or print name if different from name of Trustee above.*):

Title:

X

Signature: Trustee or Authorized Officer:

Today's Date:

10.02 Custodian

(Both a Custodian and Trustee may be appointed for the Plan. This Section 10.02 must be completed if the Plan is exempt from the Trustee requirements under ERISA section 403 and a Trustee is not appointed in Section 10.01 above.)

Financial Organization: **TD Ameritrade, Inc.**

Address: **PO Box 2760, Omaha, NE 68103-2760**

Name of Authorized Officer: **Staci Sullivan**

Title *(Type or print.)*: **Managing Director**

Signature: Authorized Officer



Today's Date: **12/01/2021**

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This amendment of the Plan (hereinafter referred to as the "Amendment") is comprised of this Hardship Distribution Basic Plan Document Amendment. The Amendment is adopted to reflect certain provisions of the Bipartisan Budget Act of 2018 (BBA-18) and related guidance. This Amendment is intended to provide good faith compliance with the BBA-18 and related guidance until the Plan is formally restated to incorporate such guidance. The Amendment is effective on the first day of the Plan Year beginning on or after January 1, 2019. This Amendment supersedes the existing provisions of the Plan to the extent those provisions are inconsistent with the provisions of the Amendment. The Amendment will not cause the Plan to become an individually designed plan.

SECTION FIVE: DISTRIBUTIONS AND LOANS TO PARTICIPANTS

The Basic Plan Document section entitled Distributions is modified by replacing Section 5.01(C)(2)(a) and (b) with the following:

a. *Hardship Withdrawals of Employer Profit Sharing Contributions* – Notwithstanding Plan Section 5.01(C)(1), an Employee may elect to receive a hardship distribution of all or part of the Vested portion of their Individual Account attributable to Employer Contributions other than those described in Plan Section 5.01(A)(2), subject to the requirements of Plan Section 5.10.

For purposes of this Plan Section 5.01(C)(2)(a), hardship is defined as an immediate and heavy financial need of the Employee where such Employee lacks other available resources. Financial needs considered immediate and heavy include, but are not limited to, 1) expenses incurred or necessary for medical care, described in Code section 213(d), of the Employee, the Employee's Spouse, dependents, or the Employee's Primary Beneficiary, 2) the purchase (excluding mortgage payments) of a principal residence for the Employee, 3) payment of tuition and related educational fees for the next 12 months of post-secondary education for the Employee, the Employee's Spouse, children, dependents, or the Employee's Primary Beneficiary, 4) payment to prevent the eviction of the Employee from, or a foreclosure on the mortgage of, the Employee's principal residence, 5) funeral or burial expenses for the Employee's deceased parent, Spouse, child, dependent, or the Employee's Primary Beneficiary, 6) payment to repair damage to the Employee's principal residence that would qualify for a casualty loss deduction under Code section 165 (determined without regard to Code section 165(h)(5) and whether the loss exceeds ten-percent of adjusted gross income), and 7) effective for distributions on or after January 1, 2018, expenses and losses (including loss of income) incurred by the Employee on account of a disaster declared by the Federal Emergency Management Agency (FEMA), provided that the Employee's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster and the Employee did not request a distribution from the Plan for such expenses and losses pursuant to Plan Section 5.01(D)(3).

A distribution will be considered necessary to satisfy an immediate and heavy financial need of the Employee only if

- i. the Employee has obtained all currently available distributions (including distributions of ESOP dividends under Code section 404(k)), other than hardship distributions, under the Plan and all other qualified and nonqualified deferred compensation plans of the Employer;
- ii. the distribution is not in excess of the amount of an immediate and heavy financial need (including amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution); and
- iii. effective for distributions on or after January 1, 2020, the Employee provided the Plan Administrator with a representation, in writing (including by using an electronic medium as defined in Treasury Regulation section 1.401(a)-21(e)(3)), or in such other form that may be permitted under rules promulgated by the IRS, that they have insufficient cash or other liquid assets reasonably available to satisfy their financial need.

b. *Hardship Withdrawals of Elective Deferrals* – Distribution of Elective Deferrals, including any earnings credited to an Employee's account, may be made to an Employee in the event of hardship. For the purposes of this Plan Section 5.01(C)(2)(b), hardship is defined as an immediate and heavy financial need of the Employee where the distribution is needed to satisfy the immediate and heavy financial need of such Employee. Hardship distributions are subject to the spousal consent requirements contained in Code sections 401(a)(11) and 417, if applicable.

For purposes of determining whether an Employee has a hardship, rules similar to those described in Plan Section 5.01(C)(2)(a) will apply except that only the financial needs listed above will be considered. Any existing suspension of an Employee's Elective Deferrals due to the receipt of a hardship distribution from the Plan will cease to continue as of the first day of the Plan Year beginning on or after January 1, 2019. In addition, the Employee's Elective Deferrals will not be suspended for any period of time due to the receipt of a hardship distribution that is made during the Plan Year beginning on or after January 1, 2019. For hardship distributions before 2002, a distribution will be considered as necessary to satisfy an immediate and heavy financial need of the Employee only if all plans maintained by the Employer provide that the Employee may not make Elective Deferrals for the Employee's taxable year immediately following the taxable year of the hardship distribution in excess of the applicable limit under Code section 402(g) for such taxable year less the amount of such Employee's Elective Deferrals for the taxable year of the hardship distribution.

SIGNATURE

The Pre-approved Document Provider hereby adopts this Amendment on behalf of the Adopting Employers.

Name of Pre-approved Document Provider: Charles Schwab & Co

Signature: 

Date Signed: 01/21/2021

Hardship Distribution Summary of Material Modifications

Name of Plan _____

Name of Adopting Employer _____

Plan Sequence Number _____ Plan Year End _____

The purpose of this document is to update your Summary Plan Description (SPD). This document is very important and should be kept with your SPD. The following update to your SPD is limited to changes to certain hardship distribution provisions of the SPD and does not impact the other provisions of the SPD. To the extent that any provisions of this Summary of Material Modifications (SMM) conflict with your SPD, the terms of this SMM will apply. The following sections of your SPD are amended to read as follows:

DISTRIBUTIONS AND LOANS

Q3. Can I withdraw money from the Plan while I am still employed?

Hardship Distributions

If you have a financial hardship, you may request a distribution of the vested portion of your Plan balance, regardless of the original source of the contributions, including any earnings on such contributions.

The types of expenses that qualify for a hardship distribution include medical expenses for you, your spouse, or your dependents; payment to purchase your principal residence; tuition and education-related expenses for you, your spouse, or your dependents; payments to prevent eviction from your principal residence; funeral expenses for your parent, your spouse, or your dependents; payments to repair your principal residence that qualify for a casualty loss deduction; and expenses and losses (including loss of income) that you incurred as a result of a disaster declared by the Federal Emergency Management Agency because your principal residence or principal place of employment was located in the area at the time of the disaster. The Plan Administrator may modify the list of events that qualify for a hardship distribution when Profit Sharing Contributions are being used to satisfy your hardship request.

Before you take a hardship distribution, you must take all other distributions, excluding nontaxable loans, available to you under the Plan and all other plans maintained by the Employer.

If you take a hardship distribution, you will not be eligible to make Deferrals for the next six months. However, the six-month restriction will not continue during the Plan Year beginning on or after January 1, 2019. In addition, effective for Plan Years beginning on or after January 1, 2019, if you take a hardship distribution, you will be eligible to make Deferrals immediately following the hardship distribution.

Investment Products: Not FDIC Insured * No Bank Guarantee * May Lose Value

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