

# Trust Agreement



THIS TRUST AGREEMENT ("Agreement") is entered into between Ascensus Trust Company (*the "Trustee"*), a North Dakota trust company, \_\_\_\_\_ (*the "Limited Trustee"*) and \_\_\_\_\_ (*the "Employer"*) and Employer's related companies ("Participating Employers"), pursuant to its \_\_\_\_\_ (*the "Plan"*).

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

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

The Employer has retained a recordkeeper (the "Recordkeeper") to assist with the recordkeeping requirements of the Plan. The Employer represents that the Recordkeeper has been authorized to instruct the Trustee as to actions to be taken under the Plan. In instructing the Trustee, the Recordkeeper will not be exercising any independent discretion as to the operation of the Plan or choice of investments.

The Trustee 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 agrees to hold and administer the Fund for the uses and purposes and on the terms and conditions set forth in this Agreement. In-kind contributions will be permitted in non-pension plans as long as they are discretionary and unencumbered as determined by the Employer.

## ARTICLE I – RELATIONSHIP OF TRUST TO PLAN

### 1.01 The Plan and This Agreement

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

### 1.02 Directed Trustee

- (a) The Trustee will serve solely as a directed trustee and is required to act only upon direction from the plan administrator of the Plan ("Plan Administrator"). The Plan Administrator, as defined in the Plan, shall be either the Employer or an individual designated by the Employer to serve in such capacity. The Trustee shall have no responsibility, discretion or authority with regard to the administration or interpretation of the Plan, including any determination of rights or benefits of any person having or claiming an interest under the Plan or this Agreement. The Trustee shall not act as an investment advisor or investment fiduciary for the Plan and shall not have any responsibility, discretion or authority for investments in the Plan.
- (b) Except as expressly set forth in Section 3.01(a) of this Agreement, the Trustee shall be subject to the directions of the Plan Administrator as the named fiduciary responsible for the management and control of the assets of the Fund, and to the investment directions of the participants and beneficiaries, as such directions are communicated to the Trustee by the Recordkeeper. Any instruction or direction referred to in this Agreement received by the Trustee through the Recordkeeper shall be deemed to be a direction from the Plan Administrator. The Trustee shall not be liable, in any manner or for any reason, for the making or retention of any investment pursuant to investment directions received from a person authorized to make such directions. The Trustee shall not be liable for the Trustee's failure to invest any or all of the assets of the Fund in the absence of such directions.

## ARTICLE II – INVESTMENTS

### 2.01 Group Trust

- (a) Certain investments of the Fund may be commingled in a group trust offered by the Trustee for the collective investment of the assets of eligible employee benefit plans, as described in Section 3.01(a) of this Agreement, and such commingling of assets is hereby expressly authorized. Such group trust shall be used to hold un-invested cash which may result from uncashed disbursement checks, unsettled trades, or otherwise.
- (b) To the extent of the Fund's participation in a group trust as described in subsection (a) above, the declaration of trust of such group trust shall be deemed to be a part of the Plan, and any investment in such group trust shall be subject to all the provisions of such declaration of trust, as the same may be amended or supplemented.

### 2.02 Insurance Contracts

If an insurance contract is purchased for the Fund, the insurance contract shall be an asset of the trust. The Trustee shall be owner of and beneficiary under such contract. Any decisions concerning the purchase, retention or termination of an insurance contract shall be made only by the insured under such contract who shall advise the Plan Administrator, who shall in turn advise the Recordkeeper. The Trustee shall have no responsibility for such decisions. The Plan Administrator is hereby authorized to serve as signatory for the Trustee to execute life insurance applications, death claims, policy surrenders, and ownership changes for employees terminating participation in the Plan.

### 2.03 Loans to Participants

The Trustee shall make payment of Plan loans to participants and beneficiaries in accordance with the directions of the Plan Administrator as communicated to the Trustee by the Recordkeeper, and any money so paid shall be sent by the Trustee to the Plan Administrator for disbursement to the participant or beneficiary unless otherwise instructed by the Recordkeeper. The Trustee shall have no responsibility for the disbursement or the repayment of such participant loans, but shall be subject to the directions of the Plan Administrator as communicated to the Trustee by the Recordkeeper. In regard to participant loans, the Plan Administrator is also authorized to serve as signatory for loan requests and loan notes.

### 2.04 Other Accounts

The Plan Administrator or Employer is hereby authorized to serve as signatory to execute any application for Plan participation in, but not limited to, collective trusts accounts, collective fund accounts, mutual fund accounts, stocks, bonds, exchange traded funds, annuity contracts, brokerage accounts and insurance contracts. However, when applications are completed, the applications are to indicate that all funds disbursed are to be sent to the Trustee.

## ARTICLE III – RESPONSIBILITIES OF THE TRUSTEE

### 3.01 Authorized Actions

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

- (a) invest funds, as instructed by the Recordkeeper in any group trust offered by the Trustee, including the group trust offered and selected by the Trustee as a medium for the collective investment of eligible employee benefit plans;
- (b) serve as custodian with respect to trust assets transferred to it pursuant to this Agreement, other than any life insurance policies issued under the Plan; and
- (c) cause any property of the trust to be issued, held or registered in the individual name of the Trustee, in the name of its nominee, in a securities depository or in such other form as may be required or permitted under applicable law (however, the records of the Trustee shall indicate the true ownership of such property).

### 3.02 Powers Without Duties

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

- (a) purchase or subscribe for securities or other property and to retain them in trust; to sell any such property at any time held by it for cash or other consideration at such time or times and on such terms and conditions as may be deemed appropriate; to exchange such property and to grant options for the purchase or exchange thereof, and to convey, partition, or otherwise dispose of, with or without covenants, including covenants of warranty of title, any securities or other property free of all trusts; to charge the trust for the cost of all securities purchased or received against a payment and to credit the trust with the proceeds received from the securities sold or delivered against payment. For any trades not settled immediately upon placement, the Trustee shall have the right to sell securities from the trust in a reasonably prudent fashion sufficient to recover any funds advanced;
- (b) oppose, or consent to and participate in, any plan of reorganization, consolidation, merger, combination, or other similar plan; to oppose or to consent to any contract, lease, mortgage, purchase, sale, or other action by any corporation pursuant to such plan, and to accept and retain any securities or other property issued under any such plan; to deposit any such property with any protective, reorganization or other similar Plan Administrator; to delegate discretionary power thereto and to pay and agree to pay part of its expenses and compensation and any assessments levied with respect to any such securities or other property so deposited;
- (c) assign, renew, extend, or discharge, or to participate in the assignment, renewal, extension, or discharge of any debt, mortgage, or other lien, upon such terms, including a partial release, as may be deemed advisable by the Trustee, and to agree to a reduction in the rate of interest thereon or to any other modification or change in the terms thereof or of any guarantee pertaining thereto, in any manner and to any extent that the Trustee may deem to be in the best interest of the Fund; to waive any default, whether in the performance of any covenant or condition of any note, bond, or mortgage or in the performance of any guarantee, or to enforce any such default in such manner and to such extent as may be deemed advisable; to exercise and enforce any and all rights of foreclosure and to exercise and enforce, in any action, suit, or proceeding at law or in equity, any rights or remedies in respect of any debt, mortgage, lien, or guarantee;
- (d) exercise all conversion and subscription rights pertaining to any securities or other property;
- (e) borrow money from others, excluding the Trustee in its corporate capacity or any party-in-interest, for the purposes of the Fund, and upon such terms and conditions as the Trustee may deem proper, and for the sum so borrowed or advanced, the Trustee may issue its promissory note as Trustee and secure the repayment thereof by creating a lien upon any assets of the Fund;
- (f) invest all or part of the Fund in interest bearing deposits with a bank or similar financial institution related to the Trustee if such bank or other institution is a fiduciary with respect to the Plan, as defined in the Employee Retirement Income Security Act of 1974 ("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.

**3.03 Accounts of the Trustee**

- (a) **Records.** The Trustee shall maintain accurate records of all Fund assets, including all contributions, distributions, or other transactions of the Fund, and those records shall be available at all reasonable times for inspection by the Recordkeeper, the Employer, or the Plan Administrator.
- (b) **Reports.** The Trustee shall cause to be submitted to the Recordkeeper such reports as agreed upon between the Trustee and the Recordkeeper. The Trustee shall have no responsibility to report to employees. The Employer recognizes that the trust created under this Agreement may be a participant in a composite trust consisting of assets received from many employers. The Trustee shall not maintain records regarding the allocation of assets and liabilities (including loans to participants and beneficiaries under Agreement Section 2.03) to participants and beneficiaries or perform any balancing and reconciliation of the Plan assets. The Recordkeeper shall maintain appropriate balancing and reconciliation procedures for the Plan and is responsible for maintaining accurate records of the Plan assets. This would include balancing, reconciliation and allocation of all assets and liabilities of the Plan. Nothing contained in the Agreement shall deprive the Trustee of the right to have a judicial settlement of its accounts.

**3.04 Representations and Warranties of the Trustee**

- (a) The Trustee has full power and authority to execute, deliver and perform this Agreement and has taken all necessary and proper action to authorize the execution and delivery of this Agreement;
- (b) the Trustee shall comply with all laws applicable to it in connection with its obligations under this Agreement;
- (c) no officer, employee, contractor or agent of the Employer or any affiliate of the Employer has been or will be employed, retained, paid a fee, or otherwise has received or shall receive any personal compensation or consideration by or from Trustee or any of the Trustee’s officers, employees, contractors or agents in connection with the obtaining, arranging or negotiation of this Agreement or other documents entered into or executed in connection herewith; and
- (d) the Trustee will not cause the trust to engage in a transaction with respect to the Plan that it knows would constitute a prohibited transaction under ERISA section 406 or Code section 4975.

**ARTICLE IV – FIDUCIARY RESPONSIBILITIES AND LIABILITIES**

**4.01 General**

- (a) Each of the Trustee, the Plan Administrator, and all other fiduciaries under the Plan and this Agreement shall be solely responsible for its own acts or omissions. The Trustee shall not be responsible for the breach of responsibility by any other Plan fiduciary except as required under ERISA or unless due to the Trustee’s gross negligence or bad faith. The Trustee shall be liable for its acts or omissions or the acts or omission of the other persons only to the extent required by federal law. The fiduciaries under the Plan will discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
- (b) The Plan Administrator and the Employer (if the Plan Administrator is not the Employer) each shall be a “named fiduciary” (within the meaning of ERISA section 402(a)) with respect to the administration and management of the Plan and this Agreement.

#### **4.02 Other Trustee Responsibilities**

Except with regard to the group trust as described in Sections 2.01 and 3.01(a) of this Agreement, (i) the Trustee shall have no obligations or duties with respect to the acquisition, retention or disposition of any securities or other property of the trust; and (ii) the Trustee shall have no obligations or duties to respond to communications, other than to forward such communications to the Plan Administrator, which relate to securities or other property which are assets of the Fund (including, but not limited to, proxy statements, tender offers and class action communications) all such obligations or duties hereby being expressly reserved to the Plan Administrator, as the named fiduciary responsible for directing the Trustee as to the management and control of the assets of the Fund. The Trustee shall transmit such communications to the Plan Administrator, who shall take whatever action is required by the Plan, unless such communications relate to insurance contracts, in which case the Trustee shall act in accordance with Section 2.02 of this Agreement.

#### **4.03 Trustee Not Responsible for Contributions**

The Trustee shall have no liability for the adequacy or timeliness of contributions to the Plan, whether employer contributions, employee deferrals or otherwise, and no responsibility to enforce the payment of such contributions. The Employer represents that it has appointed one or more limited trustees solely for purposes of ensuring the timely collection and deposit of employer contributions and employee deferrals to the Plan ("Limited Trustee"). The Employer shall ensure that there is one or more Limited Trustees for such purpose at all times during the term of this Agreement.

#### **4.04 Indemnification**

The Employer shall indemnify and hold the Trustee harmless from and against all liability or expense that the Trustee may incur arising out of or related to this Agreement or the Plan, unless arising from the Trustee's own gross negligence or willful misconduct. The Trustee shall not be required to give any bond or other security for the faithful performance of its duties under this Agreement except to the extent required by applicable law. The Trustee shall indemnify and hold the Employer harmless from and against all liability or expense arising out of or related to this Agreement or the Plan to the extent caused by the Trustee's gross negligence or willful misconduct.

#### **4.05 Incomplete or Inaccurate Information; Imputed Knowledge**

The Trustee may rely upon the completeness and accuracy of all information provided to the Trustee, and the Trustee will not be responsible for any errors, delays, or damages resulting from the receipt of incomplete, inaccurate, or untimely information. No information with respect to the Plan known by a parent, subsidiary or affiliate of the Trustee will be attributed to the Trustee or considered imputed knowledge of the Trustee.

### **ARTICLE V – DIRECTIONS**

#### **5.01 Form of Directions**

Any action to be taken by the Trustee under this Agreement that is to be taken upon instruction from the Recordkeeper shall be taken by the Trustee if, when and as instructed by the Recordkeeper (i) in a written instrument, signed by the person or persons authorized by the Recordkeeper to sign on its behalf, and delivered to the Trustee or (ii) electronically using secured communication methods acceptable to the Trustee and the Recordkeeper. The Trustee shall comply with such instructions and shall have no obligation to comply with the instructions of any other person, including the Plan Administrator and the Employer, except as otherwise expressly provided in this Agreement. The Trustee shall be under no liability for any loss or breach of trust of any kind that may result from any action or failure of action due to compliance with instructions of the Recordkeeper or Plan Administrator or a failure on the part of the Recordkeeper or Plan Administrator to give instructions properly or within a required period of time.

#### **5.02 Reliance on Directions**

The Trustee may assume that the Recordkeeper is acting in accordance with authority granted to it by the Plan Administrator or Employer unless and until it is notified to the contrary in writing by the Plan Administrator or Employer. In the event the Trustee receives such written notice, the Trustee shall be subject to the written instructions of the Plan Administrator pending the appointment of a successor Recordkeeper. In the event that a successor Recordkeeper is not appointed and the Trustee is unable to obtain any instructions from the Plan Administrator, the Trustee may, but is not required to, exercise its own discretion and may, if it so desires, apply to a court of competent jurisdiction for guidance with respect to any matter regarding the Fund.

### **ARTICLE VI – PAYMENTS AND EXPENSES**

#### **6.01 Payments by the Trustee**

(a) All payments from the trust shall be made by the Trustee to such person, in such manner, at such time and in such amounts as directed by the Plan Administrator and communicated to the Trustee by the Recordkeeper. The Trustee shall be under no duty to make inquiry as to whether any distribution instruction by the Recordkeeper is made pursuant to the provisions of the Plan and shall have no liability for any distribution made by it pursuant to instructions received from the Recordkeeper. The Trustee may make any payment required to be made by it under this Agreement by mailing its check for the amount thereof to the Plan Administrator unless otherwise instructed by the Recordkeeper.

- (b) In the event any controversy arises between the Employer and the Trustee regarding any matter arising in the administration of the Plan, the Trustee shall be subject to the direction of the Plan Administrator as communicated to the Trustee by the Recordkeeper.

#### **6.02 Trustee Compensation and Expenses**

- (a) The Trustee shall be paid reasonable compensation in such amounts as the Employer and the Trustee will agree upon from time to time in writing. Such amounts shall be deducted from the assets of the trust in accordance with procedures established by the Trustee unless paid by the Employer. The Trustee's compensation will be disclosed in the Recordkeeping Service Agreement entered into with the Recordkeeper or in a separate agreement or fee schedule entered into with or provided by the Trustee. Transactional charges made by the Trustee may be deducted from distributions to participants or beneficiaries to the extent the Trustee is instructed to do so by the Recordkeeper. Moneys to be used to fund disbursements that have not yet been presented for payment and moneys to be invested in any investments where the appropriate data or investment direction has not been timely provided to the Trustee or the Recordkeeper (i.e. the Trustee has received the funds to be invested but has not received the corresponding investment data) may be retained by the Trustee in cash or invested temporarily. Moneys to be invested will generally be invested within one business day of receipt of funds and the correct corresponding investment data.
- (b) As additional compensation for its services hereunder, the Trustee shall retain any interest earned on amounts to be invested pending receipt of investment instructions and the amounts in its disbursement account until disbursements are presented for payment, and interest earned in its contribution account until the amounts are invested. This interest is commonly known as "float" and is paid by the financial institutions at which the Trustee maintains such accounts and/or the investments in which the Trustee invests in such accounts. Employer agrees that while assets are held in these accounts, the assets shall not be considered plan assets. Generally, funds are distributed the same day as the distribution request is received or when the distribution data is in good order. The assets on which float is earned are invested in a privately managed account that may include stable value fund(s) and various overnight deposits with next day availability. The upcoming month's expected rate of return and historical actual rates of return for the assets on which float is earned are disclosed at [www.ascensus.com/trust/trust-disclosures](http://www.ascensus.com/trust/trust-disclosures).

#### **6.03 Taxes**

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

#### **6.04 Other Expenses**

Any expenses, charges, or fees incurred by the Trustee or the Recordkeeper in the administration of the Fund, including but not limited to recordkeeping, legal and accounting expenses, shall be deducted from the Fund in accordance with procedures established by the Trustee unless paid by the Employer.

### **ARTICLE VII – REPLACEMENT OF THE TRUSTEE**

#### **7.01 Resignation and Removal**

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

#### **7.02 Successor Trustee**

- (a) Upon resignation or removal of the Trustee, the Employer shall promptly appoint a successor trustee and promptly notify the Trustee of that appointment. If Employer fails to promptly appoint a successor trustee and promptly notify the Trustee of that appointment, the Trustee may (i) appoint a successor, who shall be subject to the reasonable approval of the Employer, or (ii) deem the Employer to be the successor. The successor trustee shall have all of the powers and duties conferred on the Trustee in this Agreement. The Trustee shall not cease to be the Trustee until the successor trustee assumes the appointment or 10 days have elapsed since its specified date of resignation, whichever occurs first.
- (b) The Trustee shall deliver to the successor trustee all assets and property of the Fund, either in-kind or as proceeds after liquidation, as determined by the Recordkeeper together with all records needed by the successor trustee to administer the trust properly. The Trustee is authorized, however, to reserve such amount as may be necessary for the payment of its expenses as described in Article VI incurred prior to its transfer of trust assets and records to the successor trustee to the extent not inconsistent with federal law.
- (c) The Trustee shall execute, acknowledge, and deliver all documents and written instruments which are necessary to transfer the right, title, and interest in the trust assets, and all related rights and privileges, to the successor trustee.
- (d) Upon receipt of the assets of the trust, the successor trustee shall become a successor party to this Agreement, unless a successor trust agreement has been substituted for this Agreement.

## ARTICLE VIII – AMENDMENT AND TERMINATION

### 8.01 Amendments

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

### 8.02 Termination of the Plan

Although the trust is hereby declared to be irrevocable, the Employer may partially or completely terminate the Plan at any time and shall give the Trustee written notice thereof. The Trustee shall thereafter liquidate and distribute the trust's assets pursuant to the directions of the Plan Administrator as communicated to the Trustee by the Recordkeeper.

## ARTICLE IX- LIMITED TRUSTEE

### 9.01 Responsibilities of the Limited Trustee

This Article IX of this Agreement applies to the party or parties that have indicated in Article XI that they will serve as a Limited Trustee whose powers, rights, duties and responsibilities are strictly limited to ensuring the timely collection and deposit of employer contributions with respect to the Fund. At no time will the Trustee be considered a Limited Trustee. The responsibilities and powers of the Limited Trustee may not be expanded except with its prior written consent and, notwithstanding any provision hereof to the contrary, may be further limited by the terms of a separate agreement between the Limited Trustee and the Employer.

### 9.02 Compensation and Expenses

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

### 9.03 No Obligation to Question Data

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

### 9.04 Resignation

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

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

### 9.05 Degree of Care – Limitations of Liability

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

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

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

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

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

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

### **ARTICLE X – MISCELLANEOUS**

#### **10.01 Contributions not Recoverable**

Under no circumstances shall any part of the Fund be recoverable by the Employer or Participating Employers or be used other than for the exclusive purposes of providing benefits to participants and their beneficiaries and paying proper expenses; provided, however, that, pursuant to the direction of the Plan Administrator as communicated to the Trustee by the Recordkeeper:

- (a) each contribution of the Employer and the Participating Employers for any plan year is hereby conditioned upon its being deductible by the Employer or Participating Employer for its fiscal year in which (or for which) such contribution was made, and, to the extent disallowed as a deduction under Code section 404, such contribution shall be returned by the Trustee to the Employer or Participating Employer within one year after the final disallowance of the deduction by the Internal Revenue Service or the courts;
- (b) a contribution by the Employer, a Participating Employer or a participant made as a result of a mistake of fact shall be returned to the Employer or Participating Employer within one year after the contribution;
- (c) the contribution of an Employer to the trust incident to initial qualification, with the gains and losses thereon, shall be returned by the Trustee to such Employer within one year if 1) the contribution is conditioned upon the initial qualification of the Plan, a timely determination letter request is filed and the Plan receives an adverse determination that the Plan, as first adopted, is not qualified and tax-exempt (within the meaning of Code sections 401(a) and 501(a) respectively); 2) the reversion is due to a good faith mistake of fact, or 3) the contribution is conditioned on its deductibility under Code section 404; and
- (d) any amounts contributed to the Plan by an Employer or Participating Employer that cannot then be allocated to participants because of Code section 415 shall, upon termination of the Plan, revert to the Employer.

#### **10.02 Alienation**

No account, benefit, payment, or distribution under the Plan or this Agreement shall be subject to attachment, garnishment, levy, execution or any claim or legal process of any creditor of a participant or beneficiary. A participant or beneficiary shall have no right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits or payments or proceeds which such participant or beneficiary may expect to receive under the Plan. The provisions of Section 10.02 of this Agreement shall not preclude any assignment or alienation required by applicable law or permissible under the provisions of the Plan.

#### **10.03 Successor Employers; Participating Employers**

- (a) If any successor to the Employer continues the Plan, it shall automatically become a successor party to this Agreement.
- (b) If any other company related to the Employer adopts the Plan and becomes a Participating Employer in accordance with the provisions therein, it shall automatically become a party to this Agreement.

#### 10.04 Agents

In performing its obligations under this Agreement, the Trustee shall be entitled to employ suitable agents, counsel, sub-custodians, and other service providers.

#### 10.05 Force Majeure

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

#### 10.06 Governing Law

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

#### 10.07 Limitation on Damages

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

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

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

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

#### 10.09 Class Action Waiver

**EACH PARTY MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF, REPRESENTATIVE OR CLASS MEMBER IN ANY PUTATIVE CLASS OR REPRESENTATIVE PROCEEDING.**

The arbitrator will have no authority to arbitrate a class, collective, representative or group claim/action and will have no authority to make any determination as to the enforceability of this Agreement's class/collective action waiver. Further, unless the Employer and the Trustee agree otherwise, the arbitrator will have no authority to consolidate the Employer's claims with any other claims, and may not otherwise preside over any form of a class or representative proceeding.

#### 10.10 Arbitration

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



**10.11 Necessary Parties**

To the extent permitted by law, only the Employer and the Trustee shall be necessary parties in any application to the court for an interpretation of this Agreement or for an accounting by the Trustee, and no other fiduciary of the Plan, participant, beneficiary, or other person having an interest in the 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 claiming in this Agreement.

**10.12 Severability**

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

**10.13 References**

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

**10.14 Headings**

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

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

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

**EMPLOYER**

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

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

**LIMITED TRUSTEE**

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

Address \_\_\_\_\_

Telephone \_\_\_\_\_

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

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

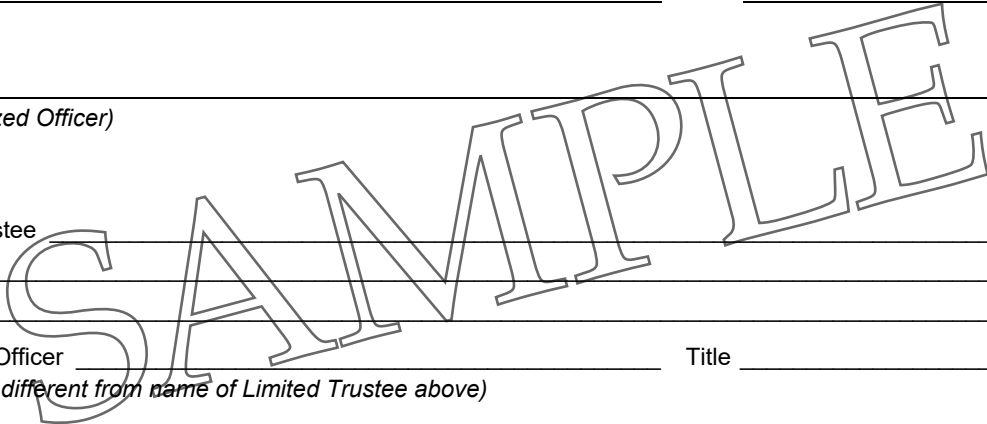
Name of Limited Trustee \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

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

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



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

Address \_\_\_\_\_

Telephone \_\_\_\_\_

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

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

**TRUSTEE**

Ascensus Trust Company  
1655 43rd Street South, Suite 100  
Fargo, ND 58103  
(701) 234-0207

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

Witness \_\_\_\_\_

SAMPLE