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# Custody Agreement

AssetMark Trust Company

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**AssetMark Trust Company**

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7th Floor  
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**TABLE OF CONTENTS**

**TERMS OF AGREEMENT ..... 2**  
**EXHIBIT A – ERISA AND IRA SUPPLEMENT TO ASSETMARK TRUST CUSTODY AGREEMENT . . . . . 8**  
**EXHIBIT B – AGREEMENT REGARDING SECURITIES LENDING AND FEE FOR HOLDS ARRANGEMENTS ..... 9**

## TERMS OF AGREEMENT

By executing the AssetMark Trust Company Account Application ("Account Application"), you (the "Client") agree to retain AssetMark Trust Company ("AssetMark Trust") to provide custodial, brokerage and related services on the following terms:

PLEASE NOTE THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION AND CLASS ACTION WAIVER. SEE SECTION 27 FOR DETAILS. IF THE CLIENT DOES NOT WISH TO BE SUBJECT TO ARBITRATION, THE CLIENT MAY OPT OUT OF THE ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS SET FORTH IN SECTION 27(d) WITHIN THE SPECIFIED TIME FRAME.

### 1. ACCEPTANCE OF APPLICATION, ESTABLISHMENT OF ACCOUNT

This Custody Agreement ("Agreement"), including its Exhibits, shall be effective upon AssetMark Trust's acceptance of the Client's Account Application. Upon AssetMark Trust's receipt of the Client's assets, in a form acceptable to AssetMark Trust, AssetMark Trust shall establish, in the name of the Client, one or more custodial accounts (each an "Account") for the safekeeping of the Client's assets. This Agreement may apply to more than one Account, but the singular form will be used in this Agreement.

The Client represents and warrants that the source of all funds to be contributed to the Account by Client have been obtained by legitimate and lawful means and do not represent the proceeds of any unlawful activity.

### 2. AGREEMENT DESIGNED FOR USE WITH ASSETMARK PLATFORM

This Agreement is designed for use with persons who have retained an investment adviser to provide investment advice with regard to Account assets and may only be used by persons who have a "Client Advisory Agreement" with AssetMark, Inc. ("AssetMark") or with a "Financial Advisory Firm" that uses the AssetMark "Platform." The individual associated with the Financial Advisory Firm is referred to as the Client's "Financial Advisor." Pursuant to their Client Advisory Agreement, the Client may authorize investment managers to manage Account assets, and these managers are referred to as "Discretionary Managers."

### 3. TYPES OF CUSTODIAL ACCOUNTS

Client's Account may be invested in one of the "Strategies" or advisory services available through the AssetMark Platform. These advised accounts include those based on Model Portfolios and those managed by a Discretionary Manager, including Advisor as Strategist and Advisor Manager Portfolio Accounts. Accounts subject to this Agreement may also include Administrative Accounts and No Strategist or Terminated Strategist Accounts. A "Funding Account," used to receive assets transferred in kind, to be sold and/or transferred to an advised account or administrative account, is also subject to this Agreement.

#### *Administrative/Non-Managed Accounts*

AssetMark Trust may also hold in custody assets in an "Administrative" or "Non-Managed" Account. Neither AssetMark Trust, nor AssetMark, nor any Discretionary Manager will manage or shall be responsible for giving any advice to an Administrative Account. Any Financial Advisor Fee payable pursuant to a Client Advisory Agreement shall be payable on an Administrative Account unless AssetMark receives instructions not to charge the Financial Advisor Fee.

Administrative Accounts may include a Cash Account, a General Securities Account and a No Strategist or Terminated Strategist Account.

**Cash Account** - If an Administrative Cash Account is selected, Client cash will be deposited with third party, FDIC-insured bank(s) as part of AssetMark Trust's FDIC-Insured Cash Program. The FDIC-Insured Cash Program includes an "Insured Cash Deposit (or "ICD") Program" and a "High Yield Cash Program." If you select an Administrative Cash account, all of your account will be deposited in the ICD Program unless your deposit qualifies for, and you select, the High Yield Cash Program, in which the interest rates credited are expected to be higher than those credited ICD Program deposits. There is no custody fee for Administrative Cash Accounts. See AssetMark Trust's FDIC-Insured Cash Program disclosures for more information.

**General Securities Account** - In the General Securities Account, the Client may transfer to the Account those equity or fixed income securities acceptable to AssetMark Trust. No securities can be purchased in this Account. The Client will be responsible for directing the sale of investments in the Account. If assets are to be held in a General Securities Account, AssetMark Trust must receive and accept, executable written instructions, prior to AssetMark Trust's receipt of the securities. Upon proper written request, AssetMark Trust will arrange for sale of General Securities Account assets, which may be through a sub-custodian or other agent. Such requests shall be processed in a reasonable time and the sale of General Securities Account assets will be at the market price available at time of sale. AssetMark Trust will not accept limit orders on the sale of General Securities Account assets. Separate fees will not be charged for these transactions unless notice is given to Client. AssetMark Trust is authorized to take any actions it deems appropriate to carry out an instruction. Instructions regarding General Securities Account assets must be executable within the normal operations of AssetMark Trust.

**No Strategist or Terminated Strategist Accounts** - AssetMark Trust may also hold in custody assets that no longer receive advisory services pursuant to a Client Advisory Agreement because the advisory services or "Strategy" in which the Account was invested has been terminated from the AssetMark Platform and the Client has not selected another Strategy for the assets. These Accounts are referred to as "No Strategist" or "Terminated Strategist" Accounts and usually are charged a Platform Fee that is a reduction from that payable when the Strategy was active on the AssetMark Platform.

### 4. ASSETMARK TRUST CAN RELY UPON INSTRUCTIONS

The Client authorizes AssetMark Trust to accept instructions from the Financial Advisor, the Financial Advisory Firm, any Discretionary Manager and AssetMark. Such instructions can include, but are not limited to, instructions:

- To contribute or transfer assets to the Account;
- To invest Account assets and execute transactions in the Account;
- To pay directly from the Account any fees related to this Agreement, a CSA or an IMSA;
- To distribute or transfer assets from the Account; and
- To take any actions incidental to the foregoing.

AssetMark Trust's acceptance of these instructions shall be subject to its policies and procedures. AssetMark Trust can rely on these instructions, whether transmitted in writing, electronically, orally or otherwise, and shall have no duty to make any investigation or inquiry with respect to any instruction received from the Financial Advisor, the Financial Advisory Firm, any Discretionary Manager or AssetMark.

## 5. ACCOUNT STATEMENTS

AssetMark Trust shall periodically, but not less than quarterly, provide the Client with an Account Statement listing the Account's assets, transactions and valuations. AssetMark Trust may also provide access to Account information by electronic or web-based access or by other means.

## 6. CONFIRMATION OF TRANSACTIONS

The Client acknowledges that they may elect to receive trade-by-trade transaction confirmations immediately upon completion of securities transactions. The Client hereby agrees that trade-by-trade transaction confirmation will not be provided pursuant to this Agreement and acknowledges and agrees that information regarding securities transactions will instead be reported in the Account Statements provided to the Client. The Client may, at any time, upon written request to AssetMark Trust, elect to receive trade-by-trade transaction confirmations for all transactions since the date of their most recent Account Statement, as well as for all subsequent transactions.

## 7. ACCOUNT INFORMATION TO AUTHORIZED PERSONS

The Client shall provide AssetMark Trust all information, and any changes to that information, required or appropriate to open and maintain the Account and provide the services contemplated by this Agreement. The Client authorizes AssetMark Trust to provide Account information (including, but not limited to, Account activity and assets) to the Financial Advisor, the Financial Advisory Firm, any Discretionary Manager and AssetMark. Client and Account information may also be provided to vendors that provide services to AssetMark Trust and/or clients, consistent with AssetMark Trust's Privacy Policy.

## 8. SHAREHOLDER MATERIALS

Unless AssetMark Trust notifies the Client otherwise, AssetMark Trust shall forward shareholder materials, including prospectuses, shareholder reports and proxies (collectively "Shareholder Materials") received to either the Client or the designated Discretionary Manager consistent with the Client's CSA or IMSA, and any elections made thereunder, as applicable, and consistent with Exhibit B, Agreement Regarding Securities Lending, of this Agreement, including section 5 of Exhibit B regarding Voting Rights with Respect to Loaned Securities. AssetMark Trust shall not be responsible or liable for any action or inaction by Client with regard to Shareholder Materials.

## 9. CLASS ACTIONS

AssetMark Trust shall not advise or act for the Client with respect to any shareholder materials or on any legal matters, including bankruptcies and class actions, with respect to securities held in the Account with the following exception. Unless AssetMark Trust provides notice to the contrary, AssetMark Trust shall provide, through a third-party service provider, "Class Action Services" (described below). Client shall be deemed to have consented to receipt of Class Action Services unless they notify AssetMark Trust in writing that they opt out of the services.

Unless Client opts out of receipt of Class Action Services, Client authorizes AssetMark Trust to act as Client's agent and to contract with a service provider, for and on behalf of Client: to provide asset recovery services covering global class action and collective action lawsuits and regulatory disgorgement; to research class actions for which Client may be eligible, based on the trade data provided by AssetMark Trust; to submit applicable claim information, such as proof of claim and required documentation, to claims administrators

or other relevant parties; to collect and receive money on behalf of Client; and to pay such moneys to Client in such manner as may be determined, subject to deduction of fees for the service.

Unless Client opts out of receipt of Class Action Services, Client represents and warrants that: Client is authorized to seek recovery with respect to the class action relating to the purchase, sale or holding of securities or financial products in Client's Account; Client owns or owned all of the securities or financial products in Client's Account subject to the class action; Client has not assigned their rights in connection with that ownership; and Client is entitled to collect any recovery in connection with those securities or financial products. If Client does not opt out of the Class Action Services, Client understands and agrees that, by authorizing the Service Provider to seek recovery in a class action on Client's behalf, Client waives or releases any rights Client has to pursue direct claims, agrees not pursue direct claims with respect to the securities or financial products purchased, sold or held in your Account and subject to the class action, and acknowledges and agrees that they will be bound by, and subject to, the terms of all forms and releases that may be entered into for settlements in which a claim is filed on Client's behalf.

Unless Client opts out of Class Action Services, Client agrees that AssetMark Trust and services provider(s) providing Class Action Services, their affiliates and their officers, directors, shareholders, agents and employees, and their agents, vendors and service providers shall not be liable for any losses, damages or expenses resulting from any action or inaction by the above parties in connection with any class action lawsuits or regulatory disgorgements.

Client acknowledges and agrees that, unless Client opts out of receipt of Class Action Services, the services provider shall be paid and compensated for providing the Class Action Services by receiving 20% of the assets it receives on Client's behalf and such other fees as shall be disclosed to Client.

The Class Action Services service provider cannot and shall not provide legal, tax, financial or other professional advice to Client, which Client confirms and acknowledges. Client shall seek and obtain its own legal, financial, accounting and other professional advice as Client shall see fit. Client's rights regarding class action may be affected if the security is subject to securities lending or a fee for holds arrangements; see Exhibit B.

## 10. ELECTRONIC DELIVERY OF MATERIALS

AssetMark Trust may offer to provide materials, including Shareholder Materials and requested trade-by-trade transaction confirmations, through electronic delivery, including through web access. The Client acknowledges that some materials may be available only electronically or only in hardcopy, and that, for those communications available in both formats, an additional fee may be charged for delivery of paper. If the Client elects to receive materials electronically, the Administrative Expense Fee may be waived.

## 11. BROKERAGE

It is anticipated that the Discretionary Manager or Client, consistent with Platform services, as applicable, will direct most, if not all, transactions to Fidelity Brokerage Services LLC and/or National Financial Services LLC ("Fidelity"), or other broker-dealers contracted by AssetMark Trust, because these contracted brokers are compensated pursuant to agreements with AssetMark Trust and generally do not charge transaction-based commissions for their execution services. However, trade execution is in the discretion of the applicable Discretionary Manager and, if the Discretionary

Manager determines that better execution may be available at another broker, the Discretionary Manager is authorized to direct the trade outside the broker(s) contracted with AssetMark Trust and, in such an instance, the Account may incur a commission or trading costs in addition to the fees specified in this Agreement. These transactions are often referred to as “trade-away” or “stepped-out” transactions and should be expected for fixed income security transactions. A Discretionary Manager may also determine to step-out an equity security transaction. See section 12 regarding trade-away fees. Fidelity’s role in any trade-away transaction is limited to acting as custodian and settlement agent in settling the transactions. Fidelity will have no obligation to select, monitor or supervise executing brokers. Trade-away transactions must comply with any applicable rules, regulations and Fidelity’s policies and procedures.

Although AssetMark Trust anticipates that transactions in mutual fund shares will be effected through Fidelity, trades may be effected through the National Securities Clearing Corporation (“NSCC”) or such clearing resources as AssetMark Trust deems appropriate.

Purchase and/or sale transactions from multiple clients may be combined into a single brokerage order. This aggregation process could be considered to result in a cross transaction among affected Client accounts.

## 12. FEES

This Agreement is designed for a Client whose Financial Advisor uses the AssetMark Platform. There is no overall, general custodial account fee for an Account invested in a Platform Strategy because such an Account is charged the Platform Fee applicable to the chosen Strategy pursuant to the applicable Client Advisory Agreement, and the Platform Fee includes compensation for custodial and brokerage services. However, other, specific fees may be charged an Account. These are described below.

Note: Separate, general custodial account fees do apply to a limited number of legacy accounts and accounts invested in Strategies with limited offering.

### *Fees applicable to Individually Managed Accounts (“IMAs”)*

Additional fees applicable to Individually Managed Accounts (“IMAs”) and Accounts managed by Discretionary Managers are as follows:

**Alternative Investments** - If an IMA includes an Alternative Investment, in addition to the Platform Fee due to AssetMark, an additional quarterly fee of \$50 shall be due and debited from the Account at the beginning of the following calendar quarter in payment of the Custodial Account Fee for the Alternative Investment for the upcoming calendar quarter. No \$50 fee is charged upon investment in an Alternative Investment during a calendar quarter, and no portion of the \$50 fee is prorated or refunded for partial calendar quarter investments.

**Trade-Away Transaction Fee** - If a Discretionary Manager of an IMA determines to “step out” or “trade away” a trade, AssetMark Trust assesses a fee of \$20.00 per trade. This transaction fee would be in addition to any commission or trading costs as discussed in Section 11, Brokerage. If an account is invested in fixed income investments, e.g., a Parametric bond ladder IMA, the Client should expect this \$20 fee on each security transaction.

### *Administrative Expense Fee*

The Account can be assessed an Administrative Expense Fee of \$25 per year. AssetMark Trust currently waives this fee but reserves the right to assess it at any time.

### *Account Termination Fee*

Upon termination of all of Client’s Accounts established pursuant to this Agreement a \$95 Account Termination Fee will be charged.

This fee will not be assessed on withdrawals from or changes to the Account or if the Client terminates the Account within five days of opening the Account.

### *Fees for Additional Services*

AssetMark Trust may charge a fee for delivery of paper communications, such as Shareholder Materials and transactional confirmations, if electronic delivery is available and not elected by Client. AssetMark Trust may also charge additional fees for special services, such as historical document retrieval, overnight delivery, wiring funds or non-standard services.

### *Inherent Investment and Transaction Expenses*

The Client should expect and agrees that fees, expenses, costs and taxes inherent in securities transactions or holding an investment shall be passed through to the Account. These fees are due to assessments by third-parties or fees or taxes required by law in connection with the security transaction or the holding of the asset. These fees are separate from, and in addition to, other fees assessed the Account, and are subject to change without notice. Below are examples of such costs that the Account shall bear.

Pooled investment funds, such as mutual funds and exchange-traded funds, pay expenses incurred by the fund, such as management fees, 12b-1 fees and administrative service fees, as well as transaction costs (such as commissions and markups or markdowns) incurred directly by the funds. If invested in such funds, the Account will indirectly pay its share of the fees and expenses paid by these funds, in addition to any fees paid to AssetMark Trust or as part of the Platform. Additionally, some funds may assess short-term redemption fees that will be paid directly by the Account. Some mutual funds share some expenses paid by the fund, such as 12b-1 fees and administrative service fees, with AssetMark Trust.

In connection with sales of equity securities and equity-related options, the Account may also incur fees referred to as “Regulatory Transaction Fees” (sometimes referred to as “Section 31 Fees”). These fees are paid to brokerage firms that effect security transactions in your account. These brokerage firms use these amounts to offset the fees they owe to self-regulatory organizations (“SROs”) and U.S. national securities exchanges to cover the transaction fees the SROs and exchanges must pay to the U.S. Securities and Exchange Commission (“SEC”). These fees are designed to recover the costs Incurred by the government, including the SEC, for supervising and regulating the securities markets and securities professionals. Because these fees may vary, and these variations not immediately known, the Client agrees that AssetMark Trust shall have the right to determine, in its sole discretion, the amount to assess the Account, that the assessment may differ or exceed the actual amount of the fee, and that AssetMark Trust may retain any such excess for its benefit.

The Account may also incur expenses related to the custody of foreign securities, including fees from paying agents of the issuers of foreign securities, such as American Depositary Receipts (e.g., “ADR Fees”). ADR Fees may appear as a separate fee on the Account Statement.

Certain jurisdictions or securities exchanges or markets may impose financial transaction taxes or fees. The Account will incur such fees in connection with transacting in such assets. For example, France levies a securities transaction fee on stock purchases of some publicly traded French companies; this fee shall be passed through to the Account.

**This must remain with the Client**

***IRA and ERISA Account Fee***

AssetMark Trust or its affiliates may receive fees for advisory, administrative or other services from mutual funds, or their service providers, whose shares may be held by the Account, from banks, including Program Banks in AssetMark Trust's FDIC-Insured Cash Program, that may hold deposits of Account assets or from other financial services providers. In the case of IRA and ERISA accounts, such "service fee" income will offset an "IRA & ERISA Account Fee" otherwise chargeable to the Account by AssetMark Trust for the additional custodial and other services provided by AssetMark Trust to IRA and ERISA accounts.

The IRA & ERISA Account Fee is payable quarterly, in advance, for the upcoming calendar quarter, at the annual rate of 0.50%, based on the Account's value (including mutual fund shares) on the last business day of the preceding calendar quarter. The IRA & ERISA Account Fee is in addition to the other fees described in this Agreement. No portion of the fee is charged upon receipt of assets to an Account, and no portion of the fee is prorated or refunded.

At this time, AssetMark Trust intends to waive any portion of this IRA & ERISA Account Fee not offset by the service fee income received by AssetMark Trust or an affiliate. Additionally, the Account will receive a credit to the extent that such service fee income received by AssetMark Trust or an affiliate exceeds the IRA & ERISA Account Fee chargeable to the Account.

**13. PAYMENTS TO ASSETMARK TRUST FROM THIRD PARTIES; ASSIGNMENT TO ASSETMARK TRUST*****Payments to AssetMark Trust from Third Parties***

AssetMark Trust and its affiliates receive 12b-1 fees, revenue sharing payments or administrative service fees from sub-custodian Fidelity, from mutual funds whose shares are held by the Account or service providers to these funds, from banks that hold deposits of Account assets, and from other financial services providers.

***Assignment to AssetMark Trust***

From time to time, AssetMark Trust will hold amounts that are not in a Client's account. Examples include, but may not be limited to, amounts that represent checks issued by AssetMark Trust that have not been cashed, amounts awaiting trade settlement for a Client account, and tax withholding amounts deducted from distributions but not yet received by the U.S. Internal Revenue Service or another tax authority. These amounts may generate interest, dividends or credits against bank service fees for the benefit of AssetMark Trust. For the sake of clarity, in consideration of the Client's use of AssetMark Trust services, the Client hereby irrevocably transfers and assigns to AssetMark Trust any ownership right that they may have in any interest, dividends or credits that accrue on such amounts, but nothing herein grants AssetMark Trust any ownership right to any other funds or assets AssetMark Trust holds on the Client's behalf.

**14. DEDUCTIONS FROM ACCOUNT TO PAY FEES AND PENALTIES**

Unless other arrangements are made, fees payable pursuant to this Agreement and pursuant to the applicable Client Advisory Agreement shall be paid through deduction by AssetMark Trust of amounts directly from the Account, and Client authorizes AssetMark Trust to debit fees from the Account. Without notice to or verification from the Client, AssetMark Trust may rely on, and may pay fees out of the Account, in accordance with any statement from the Financial Advisor, Financial Advisory Firm, applicable Discretionary Manager and AssetMark, to cover fees and expenses, and AssetMark Trust is authorized to liquidate Account assets in order to pay such fees.

***Cashiering and Administrative Service Fees***

Unless other arrangements are made, fees incurred resulting from non-sufficient funds or returned checks or wires shall be deducted directly from the Account.

***Fines and Penalties***

If AssetMark Trust is assessed any fee, fine, penalty or interest by any governmental authority or regulator due to the action or inaction of Client, including but not limited to Client not providing proper identifying information or Taxpayer Identification Number, AssetMark Trust shall have the right to assess the Client's Account for all amounts owed.

**15. LIENS ON ACCOUNT**

The Client agrees that all fees, debts and other obligations owed to AssetMark Trust, the Financial Advisor, Financial Advisory Firm, any Discretionary Manager and AssetMark by the Client, including, without limitation, with regard to other custodial accounts maintained by AssetMark Trust, shall be secured by a lien on all assets now or hereafter held or maintained in the Account and in any other present or future account of Client at AssetMark Trust, whether held individually or jointly with others or registered as a trust, IRA or retirement or pension plan of which the Client is the beneficiary, owner or participant.

**16. CHECKS**

Checks for deposit to the Account should be made payable to AssetMark Trust Company. Client acknowledges that funds deposited by check may not be available for withdrawal for up to 10 business days to provide for proper check clearance. If a check does not clear in a timely manner, Client will be held liable for any trading losses in Account.

**17. ACKNOWLEDGEMENT OF RISKS OF INVESTMENTS AND OF TAX CONSEQUENCES**

The Client acknowledges the risks inherent in any investment, that the Account will fluctuate in value and may incur losses and that transactions in Account assets may have tax consequences for the Client.

**18. SECURITIES LENDING AND FEE FOR HOLDS ARRANGEMENTS**

Securities lending and fee for holds arrangements shall be subject to the provisions set forth in Exhibit B to this Agreement.

**19. LIMITATIONS ON ROLE AND LIABILITY OF ASSETMARK TRUST; INDEMNIFICATION BY CLIENT**

- (a) The Client acknowledges and agrees that AssetMark Trust has no duty to supervise or monitor the investment of, or any transactions in, Account assets or the actions of the Client, the Financial Advisor, the Financial Advisory Firm, any Discretionary Manager or AssetMark. AssetMark Trust does not give investment, legal, tax or accounting advice and makes no recommendations concerning the investment of Account assets, the selection or retention of the Financial Advisor, the Financial Advisory Firm, any Discretionary Manager or AssetMark. The Client shall be responsible for the risks associated with the investment of the Account assets and for any tax liability incurred in connection with transactions involving Account assets. An Account may include an Alternative Investment. Alternative Investments generally are not publicly traded and lack a liquid market. The Client acknowledges that the value of an Alternative Investment may be difficult to ascertain and that any value reflected on an Account Statement is for informational purposes only and may not be the current value and may be significantly different than the actual market or the liquidation value of such Alternative Investment.

**This must remain with the Client**

The Client should obtain from the issuer of an Alternative Investment any applicable disclosure documents.

- (b) The Client acknowledges that a reasonable amount of time must be allowed for all account activity and transactions, including without limitation, time needed: (i) to establish the Account, including but not limited to receiving assets from a third-party; (ii) to purchase, sell and/or redeem Account assets or to change the investment objectives or the Strategy of the Account; (iii) to make changes related to the Account, including, but not limited to, address and beneficiary designations; and (iv) to liquidate and settle assets and/or transfer assets from and/or terminate the Account, and that AssetMark Trust shall not be liable for any losses, including, but not limited to, those due to market value fluctuations, tax consequences, or other consequential damages during the time taken for these processes and transactions. This is not a brokerage account and transactions may not be initiated within one or two business days of receipt of the instructions. The Client may not rely upon the time taken for previous changes or transactions.
- (c) The Client agrees to review all Account Statements, any trade confirmations and other notices and confirmations of information and promptly notify AssetMark Trust of any errors within 10 days, including without limitation whether investments recommended or made for an Account violate any Client instruction, objective or restriction for the Account. AssetMark Trust shall not be liable for any errors or losses that remain unreported for more than 10 days after receipt of mailed information or posting of electronic information.
- (d) AssetMark Trust shall not be liable for, and the Client shall indemnify AssetMark Trust, its service providers, and their affiliates and their officers, directors, shareholders, agents and employees against, any losses, damages or expenses resulting from any action or inaction by such parties or by any third party, except for losses resulting from such parties' gross negligence, reckless disregard, willful misconduct or bad faith. The limitations on AssetMark Trust's liability and the indemnification responsibilities of the Client shall apply, but not be limited to: (i) any losses in Account value and any tax implications with regard to Account assets; (ii) any action or inaction by AssetMark Trust taken in reliance upon any notice or instruction from the Client, the Financial Advisor, the Financial Advisory Firm, any Discretionary Manager or AssetMark, or AssetMark Trust's refusal, on advice of counsel, to act in accordance with such a notice or instruction; (iii) any action or inaction of the Client, the Financial Advisor, the Financial Advisory Firm, any Discretionary Manager or AssetMark, including, but not limited to, those resulting from transmittal or non-transmittal of information by AssetMark Trust; and (iv) AssetMark Trust's failure to execute unclear, poorly worded, or unexecutable instructions or other instructions given after previous instructions are underway. Under no circumstances shall AssetMark Trust be liable for indirect, consequential, special or incidental damages, including, but not limited to, loss of profits, gains, appreciation, revenue or opportunity.
- (e) The Client's indemnification obligation pursuant to this Agreement shall also include the responsibility to reimburse AssetMark Trust for all attorneys' fees and costs incurred by AssetMark Trust in connection with any of the following: (i) responding to threatened claims by any party, including claims by the Client related to acts of AssetMark Trust in the administration of the Account; (ii) defending (whether successfully or not and including on appeal) against asserted claims by any third party, and against unsuccessful claims by the Client, related to actions of AssetMark Trust in the administration of the Account; and (iii) prosecuting (including on appeal) a successful claim or counterclaim against the Client seeking payment under this indemnification obligation.

## 20. ENTIRE AND BINDING AGREEMENT

This Agreement, including its Exhibits, and its Account Application and any supplemental forms, as such may be amended, shall constitute the entire understanding between the Client and AssetMark Trust regarding AssetMark Trust's services to the Account, except that, for an Individual Retirement Account ("IRA") or a Roth Individual Retirement Account ("Roth IRA") Account established pursuant to a AssetMark Trust IRA Custodial Agreement or Roth IRA Custodial Agreement, the applicable AssetMark Trust IRA or Roth IRA Custodial Agreement shall supplement this Agreement, and that certain forms and accompanying language, such as beneficiary designation forms, provided by AssetMark Trust may also supplement this Agreement.

Client represents and warrants to have full power, authority and capacity to enter this Agreement. If this Agreement is entered into by a trustee or other fiduciary, including but not limited to someone meeting the definition of "fiduciary" under the Employee Retirement Income Security Act of 1974 ("ERISA"), such trustee or fiduciary represents and warrants that Client is permitted and authorized to enter this Agreement. Client represents that this Agreement, including those portions applicable to Securities Lending and Fee for Holds Arrangements, constitutes a legal, valid, and binding obligation enforceable against them and that their performance of their obligations under this Agreement shall at all times comply with all applicable laws and regulations.

## 21. MODIFICATION OF AGREEMENT AND INSTRUCTIONS

This Agreement may only be amended in writing. AssetMark Trust may amend this agreement, including the fees payable under it, by giving the Client written notice of any amendment a sufficient time in advance of the effective date of such amendment to permit the Client to provide notice of termination of this Agreement.

Any instruction, form, beneficiary designation or change request received by AssetMark Trust shall be effective only upon acceptance by AssetMark Trust, which may be conditioned on compliance with AssetMark Trust's policies, procedures or safeguards or those of a third party. Until its acceptance of a new instruction, form, designation or change, AssetMark Trust shall be entitled to rely on previously accepted instructions or designations and shall not be liable for inaction on unaccepted or unexecutable instructions. AssetMark Trust's records shall be conclusive as to accepted instructions, forms, designations and change requests. Client acknowledges that, upon termination of an Account, not all assets may be transferrable in kind and that, in such a situation, AssetMark Trust's policies are generally to liquidate such investments and transfer cash.

## 22. NOTICES

Any notice or instruction to AssetMark Trust must be in writing and delivered to AssetMark Trust Company at P.O. Box 40018, Lynchburg, VA 24506-4018 or such other address provided by AssetMark Trust. Communications and notices to Client shall be delivered to the Client's U.S. postal and/or electronic mail, as appropriate, address of record as contained in AssetMark Trust records.

## 23. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Arizona, as applied to contracts entered into and completely performed in New York.

## 24. NO AGENCY CREATED

The Financial Advisor, the Financial Advisory Firm, and any Discretionary Manager or Model Provider, and their respective employees and agents, are not agents of AssetMark Trust, and AssetMark Trust shall be liable to Client or any other party for any act or omission of another such party or its employees on the basis of a principal's liability for the acts or omissions of its agent or on the basis of an employer's liability for the acts or omissions of its employee.

## 25. ASSIGNMENT AND SUCCESSORS

AssetMark Trust may assign its rights and duties under this Agreement to any person or entity upon 30 days prior written notice to the Client. The terms and conditions of this Agreement shall be binding upon the heirs, executors, administrators, successors, assigns, and personal representatives of the Client and inure to the benefit of the Custodian and its successors and assigns.

## 26. TERMINATION

The Client may terminate the Account at any time by giving written notice to AssetMark Trust. If there is more than one Client, any one Client, acting alone, shall have authority to terminate the Account. AssetMark Trust may terminate the Account and distribute Account assets to the Client at any time without cause or reason. Upon any termination, Client shall remain liable for any unpaid fees, debts, or other obligations incurred in connection with the Account.

## 27. DISPUTE RESOLUTION BY BINDING ARBITRATION

**PLEASE READ THIS "DISPUTE RESOLUTION BY BINDING ARBITRATION" PROVISION VERY CAREFULLY. IT LIMITS CLIENT'S RIGHTS IN THE EVENT OF A DISPUTE BETWEEN CLIENT AND ASSETMARK TRUST, SUBJECT TO THE TERMS AND OPT-OUT OPTION SET FORTH BELOW.**

(a) **Scope of Arbitration Provision.** Any and all past, present or future controversy, claim or dispute arising out of, or relating to, this Agreement or the Account with AssetMark Trust, the activities or relationships that involve, lead to, or result from this Agreement, including any AssetMark Trust affiliate, or any of the current or former officers, directors, agents and/or employees of these entities or persons or any actions or services of any manner or type that were (or were to be) performed or provided by any of the above persons or entities, including but not limited to any controversy, claim or dispute arising out of or related to the breach, termination, enforcement, interpretation or validity or enforceability of this Agreement and the scope and applicability of this agreement to arbitrate or any aspect thereof (each, a "Dispute"), shall be resolved by arbitration before the Judicial Arbitration and Mediation Service ("JAMS"); unless the Client (i) opts out as provided in Section 27(d) below; or (ii) the Dispute is subject to an exception to this agreement to arbitrate set forth in Section 27(i).

(b) **Informal Dispute Resolution.** AssetMark Trust wants to address Client concerns without the need for a formal legal dispute. Before filing a claim against AssetMark Trust, the Client agrees to try to resolve the Dispute informally by contacting AssetMark Trust. Similarly, AssetMark Trust will undertake reasonable efforts to contact the Client (if AssetMark Trust has contact information for Client) to resolve any claim AssetMark Trust may possess informally before taking any formal action. If a Dispute is not resolved within 30 days after the email noting the Dispute is sent, the Client or AssetMark Trust may initiate an arbitration proceeding as described below.

(c) **The Client and AssetMark Trust Both Agree To Arbitrate.** By agreeing to this Agreement, the Client and AssetMark Trust each and both agree to resolve any Disputes through final and binding arbitration as discussed herein, except as set forth under Section 27(i) "Exceptions to Agreement To Arbitrate" below.

(d) **Opt-Out of Agreement to Arbitrate.** The Client may opt out of the binding arbitration described in this section by sending AssetMark Trust written notice within thirty (30) days following the date the Client first agrees to this Agreement (such notice, an "Arbitration Opt-out Notice"). If the Client does not provide AssetMark Trust with an Arbitration Opt-out Notice within the thirty (30) day period, the Client will be deemed to have knowingly and intentionally waived its right to litigate any Dispute except with regard to the exceptions set forth below.

(e) **Judicial Forum for Disputes.** Except as otherwise required by applicable law, in the event that this "Dispute Resolution by Binding Arbitration" section is found not to apply, the exclusive jurisdiction and venue of any Dispute (other than small claims actions) will be the state and federal courts located in Maricopa County, Arizona, and each of the parties hereto waives any objection to jurisdiction and venue in such courts. The Client and AssetMark Trust both further agree to waive their rights to a jury trial.

(f) **Arbitration Procedure.** The arbitration shall be administered by JAMS pursuant to the JAMS Comprehensive Arbitration Rules and Procedures. The JAMS rules are available at [www.jamsadr.com](http://www.jamsadr.com) or by calling 1-800-352-5267. In a Dispute involving \$10,000 or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing instead. If a hearing is warranted, arbitration will be held at the JAMS office closest to the Client's address of record or such other location as the parties may agree. Arbitration will proceed on an individual basis and will be handled by a sole arbitrator. The single arbitrator shall be a retired judicial officer. If the parties are unable to agree upon an arbitrator within fourteen (14) days of delivery of the Demand for Arbitration, then JAMS will appoint the arbitrator in accordance with the JAMS rules. The arbitrator shall be authorized to award any remedies, including injunctive relief, that would be available to the Client in an individual lawsuit and that are not waivable under applicable law. Notwithstanding any language to the contrary in this Section 27, if a party seeks injunctive relief that would significantly impact other Clients as reasonably determined by either party, the parties agree that such arbitration will proceed on an individual basis but will be handled by a panel of three (3) arbitrators. Each party shall select one arbitrator, and the two party-selected arbitrators shall select the third, who shall serve as chair of the arbitral panel. That chairperson shall be a retired judge with experience arbitrating or mediating disputes. In the event of disagreement as to whether the threshold for a three-arbitrator panel has been met, the sole arbitrator appointed in accordance with this Section shall make that determination. If the arbitrator determines a three-person panel is appropriate, the arbitrator may – if selected by either party or as the chair by the two party-selected arbitrators – participate in the arbitral panel. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, status or results of any arbitration hereunder without the prior written consent of the other parties in the arbitration.



**(g) CLASS ACTION WAIVER. ALL DISPUTES WILL BE ADJUDICATED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION OR AS A MEMBER OF A CLASS, MASS, CONSOLIDATED OR REPRESENTATIVE ACTION, IRRESPECTIVE OF THE FORUM IN WHICH THEY ARE HEARD. ANY CLAIM ASSERTED BY A PARTY SHALL NOT BE JOINED, FOR ANY PURPOSE, WITH THE CLAIM OR CLAIMS OF ANY OTHER PERSON OR ENTITY, UNLESS ALL PARTIES SPECIFICALLY AGREE TO JOINDER OF INDIVIDUAL ACTIONS. IF A COURT OR ARBITRATOR DETERMINES IN AN ACTION BETWEEN THE PARTIES THAT THIS WAIVER IS UNENFORCEABLE, THE PARTIES' AGREEMENT TO ARBITRATE WILL BE VOID FOR PURPOSES OF THAT PARTICULAR ACTION. THE PARTIES DO NOT CONSENT TO CLASS ARBITRATION.**

**(h) Arbitration Shall be Final; Parties Retain Substantive Rights. The arbitration shall be final and binding, and judgment on the award may be entered in any court having jurisdiction. Nothing in this Agreement will be read to eliminate or abridge any substantive legal right (as opposed to a procedural right, mechanism or forum) that the parties may have under federal or state law, including federal and state securities laws and ERISA.**

**(i) Exceptions to Agreement to Arbitrate. Notwithstanding the Client and AssetMark Trust's agreement to arbitrate Disputes, the Client and AssetMark Trust retain the following rights: the Client and AssetMark Trust retain the right (i) to bring an individual action in small claims court; and (ii) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights.**

**(j) Fees. For claims where less than \$10,000.00 is in dispute, if the arbitrator finds that the Client is the prevailing party in the arbitration, the Client will be entitled to a recovery of attorneys' fees and costs. Except for claims determined to be frivolous, AssetMark Trust agrees not to seek an award of attorneys' fees in arbitration of any individual claim where less than \$10,000.00 is in dispute, even if an award is otherwise available under applicable law. For claims where less than \$10,000 is in dispute, AssetMark Trust will pay all filing, administrator, and arbitrator fees, unless the arbitrator(s) finds that either the substance of your claim or the relief sought was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)). For claims where more than \$10,000 is in dispute, the payment of filing, administration and arbitrator fees will be governed by the JAMS Comprehensive Arbitration Rules and Procedures.**

**(k) This section 27 shall survive termination of this Agreement. With the exception of Section 27(g) "CLASS ACTION AND COLLECTIVE ARBITRATION WAIVER," if a court decides that any part of this Section 27 is invalid or unenforceable, then the remaining portions of this Section 27 shall nevertheless remain valid and in force. In the event that a court finds that all or any portion of Section 27(g) "CLASS ACTION AND COLLECTIVE ARBITRATION WAIVER" to be invalid or unenforceable, then the entirety of this Section 27 "Dispute Resolution By Binding Arbitration" shall be deemed void and any remaining Dispute must be litigated in court pursuant to Section 27(e).**

## **EXHIBIT A – ERISA AND IRA SUPPLEMENT TO ASSETMARK TRUST CUSTODY AGREEMENT**

This Supplement to the AssetMark Trust Custody Agreement shall apply to Clients for which AssetMark Trust holds in custody any portion of the assets: 1. of a plan, and related trust, governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), (collectively, the "Plan") for the Trustees of the Plan (the "Trustees") or 2. of an Individual Retirement Account (an "IRA").

The term "Client" in this Supplement shall include the Plan Trustee(s). If the "named fiduciary" (as defined in ERISA) of the Plan, who is authorized to contract with AssetMark Trust, is referred to by a term other than "Trustee," then all references to "Trustee" and "Client" herein shall include such fiduciary and "Trustee" shall not refer to AssetMark Trust. In the instance of an IRA, "Client" shall include the individual in whose name the IRA is established, and for purposes of this Exhibit A, "Trustee" shall not refer to AssetMark Trust.

In the event of any inconsistency or conflict between this Supplement and any other terms or provisions of the AssetMark Trust Custody Agreement, then this Supplement shall control.

1. The Client and/or their Financial Advisor shall notify AssetMark Trust if the Client is subject to ERISA.
2. The Client hereby represents and warrants having full power, authority and capacity to execute the AssetMark Trust Custody Agreement (the "Agreement"). If the Agreement is entered into by a Trustee or other fiduciary, including but not limited to someone meeting the definition of "fiduciary" under ERISA, or an employee benefit plan subject to ERISA, such Trustee or other fiduciary represents and warrants that the Client's contracting for AssetMark Trust's services is permitted by the relevant governing instrument of such Plan, and that the Client is duly authorized to enter into this Agreement. The Client agrees to furnish such documents or certifications to AssetMark Trust as required under ERISA or as AssetMark Trust reasonably requests. The Client further agrees to advise AssetMark Trust of any event or circumstance that might affect this authority or the validity of this Agreement. The Client additionally represents and warrants that (i) its governing instrument provides that an "investment manager" (as defined in Section 3(38) of ERISA) may be appointed and (ii) the person executing and delivering this Agreement on behalf of the Client is a "named fiduciary" as defined under ERISA who has the power under the Plan to appoint an investment manager and contract with a custodian.
3. While the parties do not acknowledge whether or not such bonding requirements apply to AssetMark, for any Plan assets, the Client agrees to obtain and maintain, for the period of this Agreement, the bond required for fiduciaries by Section 412 under ERISA and to include AssetMark Trust among those covered by such bond.
4. The Client has read, fully understands and agrees to be bound by the terms and conditions of the Agreement currently in effect and as may be amended from time to time.
5. The Trustees acknowledge that they are responsible for the diversification of the Plan's investments and AssetMark does not have any such responsibility.
6. The Client hereby acknowledges and agrees to a separate custody fee for ERISA Plans and IRAs (the "IRA & ERISA Account Fee"). The IRA & ERISA Account Fee pays for extensive custodial and related services provided by AssetMark Trust to such IRA and ERISA accounts. The annual rate of this fee 0.50% and is discussed in the IRA & ERISA Account Fee section of the AssetMark Trust Custody Agreement. The IRA & ERISA Account Fee is offset by fees and income that AssetMark Trust and/or its affiliates,

This must remain with the Client

including AssetMark, Inc., may receive from Fidelity or other service providers, such as advisers, fund principal underwriters or administrators, in which Account assets are invested, including funds managed by AssetMark or a AssetMark affiliate, from banks, including Program Banks in AssetMark Trust's FDIC-Insured Cash Program, that may hold deposits of Account assets or from other institutions holding Account deposits, investments or assets or from their services providers. At this time, the AssetMark Trust intends to waive any portion of the IRA & ERISA Account Fee not offset by this income. The Account will receive a credit to the extent that this income paid to AssetMark Trust and its affiliates exceeds the IRA & ERISA Account Fee.

## **EXHIBIT B – AGREEMENT REGARDING SECURITIES LENDING AND FEE FOR HOLDS ARRANGEMENTS**

The Client agrees as follows with respect to securities held in the Account in connection with Securities Lending and Fee for Holds Arrangements.

### **1. DEFINITIONS**

The following definitions apply to the provisions of the Agreement regarding the Client's participation in Securities Lending and Fee for Holds Arrangements:

*Available Securities* means those securities held by AssetMark Trust for Client that may be used in the securities lending or fee for holds programs. Available Securities shall include all Account securities held by AssetMark Trust, except those securities that are specifically identified by written notice, acceptable to AssetMark Trust, as not being Available Securities. Available Securities shall not include those Account securities subject to a lien by a third party pursuant to an agreement (usually called a "control agreement") to which AssetMark Trust has agreed. In the absence of such written notification, AssetMark Trust shall have no responsibility for determining whether any Account securities should be excluded from the definition of Available Securities and excluded from the securities lending program.

*Borrower* means any of the entities to which Available Securities may be loaned under a Securities Loan Agreement.

*Collateral* means collateral delivered by a Borrower to secure its obligations under a Securities Loan Agreement.

*Loan* means a loan of Available Securities to a Borrower.

*Loaned Security* shall mean any "security" which is delivered as a Loan under a Securities Loan Agreement; provided that, if any new or different security shall be exchanged for any Loaned Security by recapitalization, merger, consolidation, or other corporate action, such new or different security shall, effective upon such exchange, be deemed to become a Loaned Security in substitution for the former Loaned Security for which such exchange was made.

*Market Value* of a security means the market value of such security (including, in the case of a Loaned Security that is a debt security, the accrued interest on such security) as determined by the independent pricing service designated by AssetMark Trust, or such other independent sources as may be selected by AssetMark Trust on a reasonable basis.

*Replacement Securities* means securities of the same issuer, class and denomination as Loaned Securities.

*Securities Loan Agreement* means the agreement between a Borrower and AssetMark Trust (on behalf of Client) that governs Loans.

### **2. APPOINTMENT OF ASSETMARK TRUST AS AGENT FOR SECURITIES LENDING AND FEE FOR HOLDS ARRANGEMENTS**

The Client hereby appoints and authorizes AssetMark Trust, its affiliates or subsidiaries, as its agent to lend Available Securities to Borrowers in accordance with the terms of this Agreement and its provisions regarding securities lending. AssetMark Trust shall have the responsibility and authority to do, or cause to be done, all acts that AssetMark Trust shall determine to be desirable, necessary, or appropriate to implement and administer this securities lending program. Client agrees that AssetMark Trust is acting as a fully disclosed agent and not as principal in connection with the securities lending program. AssetMark Trust may take action as agent of Client on an undisclosed or a disclosed basis. AssetMark Trust is also hereby authorized to request a third party to undertake certain custodial functions in connection with holding of the Collateral provided by a Borrower pursuant to the terms hereof. In connection therewith, AssetMark Trust may instruct said third party to establish and maintain a Borrower's account and a AssetMark Trust account wherein all Collateral, including cash, shall be maintained by said third party in accordance with the terms of a form of custodial arrangement which shall also be consistent with the terms hereof. The fee from the Borrower shall be allocated between AssetMark Trust and Account with the Account being credited with 75% of the fee when received and AssetMark Trust retaining 25% of the fee.

The Client also authorizes AssetMark Trust, its affiliates or subsidiaries, as its agent, to enter into "fee for holds arrangements" with respect to certain Available Securities. AssetMark Trust will, in return for a fee from the Borrower, hold and reserve certain Available Securities and to refrain from lending such Available Securities to any third party without the Borrower's permission, provided, however, that the fee for holds arrangements shall not restrict or otherwise affect Client's ownership rights with regard to the Available Securities. The fee from the Borrower shall be allocated between AssetMark Trust and Client's Account with the Account being credited with 75% of the fee when received and AssetMark Trust retaining 25% of the fee.

AssetMark Trust has discretion in choosing counterparties for securities lending and fee for holds arrangements, and can consider issues such as creditworthiness, operational experience and reputation in addition to price when choosing such counterparties. AssetMark Trust does not represent that it will receive the highest rates or fees available in the market when it makes such arrangements.

### **3. SECURITIES LOAN ARRANGEMENTS**

Client authorizes AssetMark Trust to enter into one or more Securities Loan Agreements with such Borrowers as may be selected by AssetMark Trust. AssetMark Trust may, subject to the terms of this Agreement and its provisions regarding Securities Lending and Fee for Holds Arrangements and applicable law, borrow the Available Securities for its own account or loan it to an affiliate and it or its affiliate may have, as a result, a material interest with respect to that transaction. Any such transaction shall be an "arm's length" transaction and shall be made otherwise in compliance with applicable law. Each Securities Loan Agreement shall have such terms and conditions as AssetMark Trust may negotiate with the Borrower. Certain terms of individual Loans, including rebate fees to be paid to the Borrower for the use of cash Collateral, shall be negotiated at the time a Loan is made and renegotiated from time to time as AssetMark Trust deems appropriate in AssetMark Trust's sole discretion.

#### 4. LOANS OF AVAILABLE SECURITIES

AssetMark Trust shall be responsible for determining whether any Loans shall be made and shall have the authority to terminate any Loan in its discretion, at any time and without prior notice to the Client.

Client acknowledges that AssetMark Trust administers securities lending programs for other Clients of AssetMark Trust. AssetMark Trust shall allocate securities lending opportunities among its Clients, using reasonable and equitable methods established by AssetMark Trust from time to time. AssetMark Trust does not represent or warrant that any amount or percentage of the Client's Available Securities will in fact be loaned to Borrowers. The Client agrees that it shall have no claim against AssetMark Trust and AssetMark Trust shall have no liability based on or relating to loans made for other Clients, or loan opportunities refused hereunder, whether or not AssetMark Trust has made fewer or more loans for any other Client, and whether or not any loan for another Client, or the opportunity refused, could have resulted in loans made under this Agreement and its provisions regarding Securities Lending and Fee for Holds Arrangements.

The Client also acknowledges that, under the applicable Securities Loan Agreements, the Borrowers will not be required to return Loaned Securities immediately upon receipt of notice from AssetMark Trust terminating the applicable Loan, but instead will be required to return such Loaned Securities within such period of time following such notice as is specified in the applicable Securities Loan Agreement and in no event later than the end of the customary settlement period. Upon receiving a notice from Client that Available Securities which have been loaned to a Borrower should no longer be considered Available Securities, AssetMark Trust shall use its reasonable efforts to notify promptly thereafter the Borrower which has borrowed such securities that the Loan of such Available Securities is terminated and that such Available Securities are to be returned within the time specified by the applicable Securities Loan Agreement and in no event later than the end of the customary settlement period.

#### 5. DISTRIBUTIONS ON AND VOTING RIGHTS WITH RESPECT TO LOANED SECURITIES

Client represents and warrants that it is the beneficial owner of all Available Securities, free and clear of all liens, claims, security interests and encumbrances, and that it is entitled to receive all distributions made by the issuer with respect to Loaned Securities. Except as may be provided in the Securities Loan Agreements, all interest, dividends, class action recoveries and other distributions paid with respect to Loaned Securities shall be credited to Client's Account on the payable date and any non-cash distribution on Loaned Securities, which is in the nature of a stock split or a stock dividend, shall be added to the Loan (and shall be considered to constitute Loaned Securities) as of the date such non-cash distribution is received by the Borrower. Client acknowledges that they will not be entitled to participate in any dividend reinvestment program, and that neither they nor their Investment Manager will be able to vote Available Securities that are on loan as of the applicable record date for such Available Securities.

Client also acknowledges that payments of distributions from Borrower to are in substitution for the interest or dividend accrued or paid in respect of Loaned Securities and that the tax and accounting treatment of such payments differs from the tax and accounting treatment of such interest or dividend. Reports of substitute interest and dividends as well as other distributions will be provided to Client by AssetMark Trust.

#### 6. COLLATERAL TO SECURE OBLIGATIONS OF BORROWERS

(a) **Receipt of Collateral.** Client hereby authorizes AssetMark Trust, or a third party, to receive and hold Collateral from Borrowers to secure the obligations of Borrowers with respect to any Loan of Available Securities. All investments of cash Collateral shall be for the Account and at the risk of Client. Concurrently with, or prior to the delivery of, the Loaned Securities to the Borrower, AssetMark Trust shall receive from the Borrower Collateral in a form acceptable to AssetMark Trust.

The initial Collateral received shall (1) in the case of Loaned Securities denominated in United States Dollars or whose primary trading market is located in the United States or sovereign debt issued by foreign governments, have a value of 102% of the Market Value of the Loaned Securities, plus accrued interest, if any, on debt securities or (2) in the case of Loaned Securities which are not denominated in United States Dollars or whose primary trading market is not located in the United States, have a value of 105% of the Market Value of the Loaned Securities, plus accrued interest, if any, on debt securities or (3) have such other higher value as may be applicable in the jurisdiction in which such Loaned Securities are customarily traded.

(b) **Marking to Market.** AssetMark Trust shall value all Loaned Securities on a daily basis in accordance with its customary practice. To the extent any additional Collateral is required, AssetMark Trust shall credit such additional Collateral to AssetMark Trust's Securities Lending Collateral account for the benefit of Client on the day such Collateral is received from the Borrower.

(c) **Return of Collateral.** The Collateral shall be returned to Borrower at the termination of the Loan upon the return of the Loaned Securities by Borrower to AssetMark Trust in accordance with the applicable Securities Loan Agreement.

(d) **Limitations.** AssetMark Trust shall exercise reasonable care, skill, diligence and prudence in the investment of Collateral. Subject to the foregoing limits and standard of care, AssetMark Trust does not assume any market or investment risk of loss with respect to the investment of cash Collateral. If the value of the cash Collateral so invested is insufficient to return any and all other amounts due to such Borrower pursuant to the Securities Loan Agreement, Account shall be responsible for such shortfall.

#### 7. INVESTMENT OF CASH COLLATERAL AND COMPENSATION

To the extent that a Loan is secured by cash Collateral, such cash Collateral, including money received with respect to the investment of the same, or upon the maturity, sale, or liquidation of any such investments, shall be invested by AssetMark Trust as agent for the Client. The Client acknowledges and agrees that AssetMark Trust is acting as agent on the Client's behalf in connection with the investment of cash received as Collateral and that neither AssetMark Trust nor any of its affiliates acts as investment adviser to the Client with respect to the investment of the Collateral. The Client understands that the Client bears the risk of investment loss, including any decline in value of the Collateral investments.

In the event the net income generated by any investment made pursuant to the above paragraph does not equal or exceed the amount due the Borrower (the rebate fee for the use of cash Collateral) in accordance with the agreement between Borrower and AssetMark Trust, the rebate fee shall be renegotiated or the Loan(s) shall be terminated and the Loaned Securities recalled by AssetMark Trust.

To the extent that a Loan is secured by non-cash Collateral, the Borrower shall be required to pay a loan premium, the amount of which shall be negotiated by AssetMark Trust. Such loan premium

**This must remain with the Client**

shall be allocated between AssetMark Trust and Client's Account with the Account being credited with 75% of the fee when received and AssetMark Trust retaining 25% of the fee.

Client hereby agrees that it shall reimburse AssetMark Trust for any and all funds advanced by AssetMark Trust on behalf of Client as a consequence of Client's obligations hereunder, including Client's obligation to return cash Collateral to the Borrower and to pay any fees due the Borrower.

## 8. RECORDKEEPING AND REPORTS

AssetMark Trust will establish and maintain such records as are reasonably necessary to account for Loans that are made and the income derived there from. AssetMark Trust will provide Client with a statement describing the Loans made, and the income derived from the Loans, during the period covered by such statement.

## 9. LIMITATIONS ON ASSETMARK TRUST'S LIABILITY AND STANDARD OF CARE

The limitations on AssetMark Trust's liability and the indemnification obligations of the Client Owner set forth in the provisions of this Agreement Regarding Securities Lending and Fee for Holds Arrangements are in addition to, and are intended to supplement, the limitations on AssetMark Trust's liability and the indemnification obligations of the Client otherwise set forth in the Client's AssetMark Trust Custody Agreement.

Subject to the requirements of applicable law, AssetMark Trust shall not be liable for and Account Owner shall indemnify AssetMark Trust, its affiliates and their officers, directors, shareholders, agents and employees against, any losses, damages or expenses resulting from any action or inaction by AssetMark Trust or by any third party, except for losses resulting from AssetMark Trust's gross negligence, reckless disregard, willful misconduct or bad faith. The Client agrees to reimburse and hold AssetMark Trust harmless from and against any liability, loss and expense, including counsel and attorneys' fees, expenses and court costs, arising from or in connection with: (i) any breach of any representation, covenant or agreement of the Client contained in the provisions of this Agreement Regarding Securities Lending and Fee for Holds Arrangements or any Loan; (ii) claims of any third parties, including any Borrower; (iii) all taxes and other governmental charges; and (iv) any out-of-pocket or incidental expenses. AssetMark Trust may, upon notice and with proper supporting documentation, charge any amounts to which it is entitled hereunder against the Client's Account. Without limiting the generality of the foregoing, the Client agrees: (i) that AssetMark Trust shall not be responsible for any statements, representations or warranties which any Borrower makes in connection with any securities loans hereunder, or for the performance by any Borrower of the terms of a Loan, or any agreement related thereto, and shall not be required to ascertain or inquire as to the performance or observance of, or a default under the terms of, a Loan or any agreement related thereto; (ii) that AssetMark Trust shall be fully protected in acting in accordance with the oral or written instructions of any person reasonably believed by AssetMark Trust to be authorized to execute this Agreement on behalf of Client (an "Authorized Person"); (iii) that in the event of a default by a Borrower under a Loan, AssetMark Trust shall be fully protected in acting in its sole discretion in a manner it deems appropriate; (iv) that AssetMark Trust shall not be under any duty or obligation to take action to effect payment by a Borrower of any amounts owed by the Borrower pursuant to the Loan Agreement, provided AssetMark Trust timely advises the Client of the non-payment by the Borrower of any such amount; and (v) that the records of AssetMark Trust shall be presumed to reflect accurately any oral instructions given by an

Authorized Person or a person reasonably believed by AssetMark Trust to be an Authorized Person.

The Client acknowledges that, in the event that their participation in securities lending generates income for the Client, AssetMark Trust may be required to withhold tax or may claim such tax as is appropriate in accordance with applicable law.

AssetMark Trust, in determining the Market Value of Securities, including without limitation, Collateral, may rely upon any recognized pricing service and shall not be liable for any errors made by such service.

## 10. INDEMNIFICATION BY ASSETMARK TRUST

- (a) If at the time of a default by a Borrower with respect to a Loan (within the meaning of the applicable Securities Loan Agreement), some or all of the Loaned Securities under such Loan have not been returned by the Borrower, and subject to the terms of this Agreement, AssetMark Trust shall indemnify the Client against the failure of the Borrower as follows. AssetMark Trust shall purchase a number of Replacement Securities equal to the number of such unreturned Loaned Securities, to the extent that such Replacement Securities are available on the open market. Such Replacement Securities shall be purchased by applying the proceeds of the Collateral with respect to such Loan to the purchase of such Replacement Securities. Subject to the Client's obligations hereunder, if and to the extent that such proceeds are insufficient or the Collateral is unavailable, the purchase of such Replacement Securities shall be made at AssetMark Trust's expense.
- (b) If AssetMark Trust is unable to purchase Replacement Securities pursuant to the above provisions (in paragraph (a)), AssetMark Trust shall credit the Client's Account an amount equal to the Market Value of the unreturned Loaned Securities for which Replacement Securities are not so purchased, determined as of (i) the last day the Collateral continues to be successfully marked to market by the Borrower against the unreturned Loaned Securities; or (ii) the next business day following the day referred to in (i) above, if higher.
- (c) In addition to making the purchases or credits required above (by paragraphs (a) and (b)), AssetMark Trust shall credit to Client's Account the value of all distributions on the Loaned Securities (not otherwise credited to Client's Account(s) with AssetMark Trust), for record dates which occur before the date that AssetMark Trust purchases Replacement Securities pursuant to the above provisions (in paragraph (a)) or credits Client's account pursuant to the above provisions (in paragraph (b)).
- (d) Any credits required under the above provisions (in paragraphs (b) and (c)) shall be made by application of the proceeds of the Collateral, if any, that remains after the purchase of Replacement Securities as provided above (pursuant to paragraph (a)), if and to the extent that the Collateral is unavailable or the value of the proceeds of the remaining Collateral is less than the value of the sum of the credits required to be made as provided above (under paragraphs (b) and (c)), such credits shall be made at AssetMark Trust's expense.
- (e) If after application of the above provision (in paragraphs (a) through (d)), additional Collateral remains or any previously unavailable Collateral becomes available or any additional amounts owed by the Borrower with respect to such Loan are received from the Borrower, AssetMark Trust shall apply the proceeds of such Collateral or such additional amounts first to reimburse itself for any amounts expended by AssetMark Trust pursuant to the above provisions (in paragraphs (a) through (d) above), and then to credit to the Client's Account all other amounts owed by the Borrower to the Client with respect to such Loan under the applicable Securities Loan Agreement.

- (f) In the event that AssetMark Trust is required to make any payment and/or incur any loss or expense under this Section, AssetMark Trust shall, to the extent of such payment, loss, or expense, be subrogated to, and succeed to, all of the rights of the Client against the Borrower under the applicable Securities Loan Agreement.
- (g) These provisions shall not apply to losses attributable to war, riot, revolution, acts of government or other causes beyond the reasonable control or apprehension of AssetMark Trust.
- (h) Client acknowledges that notwithstanding these provisions, securities lending involves a risk of loss, and Client represents that it is able and willing to bear that risk of loss.

#### **11. CONTINUING AGREEMENT AND TERMINATION OF PROVISIONS OF AGREEMENT REGARDING SECURITIES LENDING AND FEE FOR HOLDS ARRANGEMENTS**

It is the intention of the parties hereto that the provisions of Exhibit B of this Agreement, regarding Securities Lending and Fee for Holds Arrangements, shall constitute a continuing agreement in every respect and shall apply to each and every Loan, whether now existing or hereafter made. The Client and AssetMark Trust may each at any time terminate this portion of the Agreement Regarding Securities Lending and Fee for Holds Arrangements, upon five (5) business days' written notice to the other to that effect. The only effects of any such termination of this portion of the Agreement Regarding Securities Lending and Fee for Holds Arrangements, will be that (a) following such termination, no further Loans shall be made hereunder by AssetMark Trust on behalf of the Client, and (b) AssetMark Trust shall, within a reasonable time after termination of this Agreement, terminate any and all outstanding Loans. The provisions hereof shall continue in full force and effect in all other respects until all Loans have been terminated and all obligations satisfied as herein provided. AssetMark Trust does not assume any market or investment risk of loss associated with the Client's change in cash Collateral investment vehicles or termination of, or change in, its participation in this securities lending program and the corresponding liquidation of cash Collateral investments.

#### **12. SECURITIES INVESTORS PROTECTION ACT OF 1970 NOTICE**

THE CLIENT IS HEREBY ADVISED AND ACKNOWLEDGES THAT THE PROVISIONS OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970 MAY NOT PROTECT THE CLIENT WITH RESPECT TO THE LOAN OF SECURITIES HEREUNDER AND THAT, THEREFORE, THE COLLATERAL DELIVERED TO ASSETMARK TRUST MAY CONSTITUTE THE ONLY SOURCE OF SATISFACTION OF THE BROKER'S OR DEALER'S OBLIGATION IN THE EVENT THE BROKER OR DEALER FAILS TO RETURN THE SECURITIES.