

## CUSTODIAL AGREEMENT

This Custodial Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among \_\_\_\_\_ (the “Company”), and \_\_\_\_\_ (the “Custodian”), a financial institution with principal offices in \_\_\_\_\_, and the Commissioner of Commerce for the State of Minnesota (the “Commissioner”).

WHEREAS, the Company has applied to the Commissioner for the authority to self-insure its workers’ compensation obligations; and

WHEREAS, Minnesota Statutes § 79A.04 requires a private self-insurer to secure incurred liabilities for payment of compensation and the performance of the obligations of self-insuring employers imposed under Minnesota Statutes chapter 176 by depositing security; and

WHEREAS, Minnesota Statutes § 79A.04 permits cash and other acceptable securities to be deposited as security in a financial institution approved by the Commissioner, in an account assigned to the Commissioner of Management and Budget, in conformity with the requirements of Minnesota Statutes § 79A.071; and

WHEREAS, the Company has made an initial deposit of \$\_\_\_\_\_ dollars (the “Security”) with the Custodian, and the Custodian hereby acknowledges receipt and deposit thereof, and will deposit and acknowledge receipt of any future deposits, in account number \_\_\_\_\_ (the “Account”);

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the parties agree as follows:

1.     CUSTODY. The Custodian agrees to hold the Security until such time as the Custodian receives a written order from the Commissioner permitting the Company to withdraw part

or all of the Security held under this Agreement. The Custodian shall then release the Security in strict accordance with the Commissioner's order.

2. ASSIGNMENT. This Account is assigned to the Commissioner of Management and Budget by the Company to pay compensation and perform the obligations of employers imposed under Minnesota Statutes chapter 176. A depositor or other party has no right, title, or interest in the Security deposited in the Account until released by the state.

3. RELEASE TO THE COMMISSIONER. In the event the Commissioner calls the Security pursuant to Minnesota Statutes § 79A.04 because of the bankruptcy, insolvency, or default of the Company, the Commissioner shall notify the Custodian of such action by certified mail at the following address:

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Upon receipt of such notice, the Custodian shall release the Security to the Commissioner immediately or at such time as specified by the Commissioner.

4. INVESTMENT. The Custodian shall invest funds pursuant to Minnesota Statutes § 79A.04, subdivision 3a. Unless otherwise directed by the Commissioner, income earned on the Security shall be payable to the Company or used to pay the Custodian's compensation as provided under paragraph 7 of this Agreement.

5. INSPECTION OF RECORDS. The Commissioner may, at any time, inspect the records of the Custodian, insofar as they relate to this Agreement, for the purpose of determining compliance with and conformance to the provisions of this Agreement.

6. DUTY AND LIABILITY OF CUSTODIAN. The Custodian may conclusively rely upon and shall be protected in acting upon any statement, certificate, notice, request, order, or other document reasonably believed to be genuine and to have been signed or presented by the proper

party or parties. The Custodian shall have no duty to verify any such statement, certificate, notice, request, consent, order, or other document unless the Custodian has a reasonable question regarding the document's authenticity. The Custodian's sole responsibility shall be to act only as expressly set forth in this Agreement. The Custodian shall be under no obligation to institute or defend any action, suit, or proceeding in connection with this Agreement unless first indemnified to its satisfaction. The Custodian may consult counsel regarding any questions arising under this Agreement and the Custodian shall not be liable for any action taken or omitted in good faith upon advice of such counsel.

7. CUSTODIAN'S COMPENSATION. The Custodian shall be entitled to reasonable compensation for its services performed under this Agreement. The Company is responsible for paying such compensation. If the Company elects not to pay such compensation or if the Company is delinquent in paying compensation, the Custodian's compensation shall be charged against the income earned on the security as permitted under paragraph 4. The Custodian shall have no right of setoff against the Security nor may the Custodian otherwise attach the Security for nonpayment of compensation or other monies owed or owing to the Custodian from the Company.

8. TERM OF AGREEMENT. This Agreement will remain in effect until terminated by any party giving written notice by registered mail to all other parties at least sixty (60) days in advance of the specified termination date. Notwithstanding the foregoing, this Agreement shall terminate in its entirety when the entire amount of Security has been withdrawn by the Company as authorized by the Commissioner pursuant to paragraph 1 or upon the release of the entire amount of the Security to the Commissioner pursuant to paragraph 3 of this Agreement.

9. BINDING OBLIGATION. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors, and assigns.

10. ASSIGNMENT, GENERALLY. Except as specifically provided in paragraph 2, no party may assign any of its rights hereunder without the written consent of the other parties, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Commissioner may assign the Security to the self-insurers' security fund pursuant to Minnesota Statutes § 79A.04 without the written consent of the other parties to this Agreement.

11. HEADINGS. All paragraph headings of this Agreement are solely for reference and do not constitute binding or effective features of this Agreement.

12. CONSTRUED UNDER LAWS OF MINNESOTA. The provisions of this agreement and all rights and obligations of the parties hereunder shall be governed and construed in accordance with the laws of the State of Minnesota.

In witness whereof, the parties hereto executed this Agreement as of the indicated date.

CUSTODIAN (Financial Institution)

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

Acknowledged before me this

(Date) \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_

COMPANY (Self-Insurer)

STATE OF \_\_\_\_\_)

BY: \_\_\_\_\_

COUNTY OF \_\_\_\_\_)

ITS: \_\_\_\_\_

Acknowledged before me this

(Date) \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_

MINNESOTA DEPARTMENT OF COMMERCE STATE OF \_\_\_\_\_)

BY: \_\_\_\_\_

COUNTY OF \_\_\_\_\_)

ITS: \_\_\_\_\_

Acknowledged before me this

(Date) \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_

2/18 Rev.