

# **The Northern Trust Company of Delaware Provisions for Delaware Trusts**

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**THE NORTHERN TRUST COMPANY OF DELAWARE**  
**Provisions for Delaware Trusts**

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**THE NORTHERN TRUST COMPANY OF DELAWARE**  
**Provisions for Delaware Trusts**

**PROVISIONS TO BE INCLUDED IN ALL TRUSTS**

THE FOLLOWING PROVISIONS SHOULD BE INCLUDED IN EACH TRUST INSTRUMENT UNDER WHICH THE NORTHERN TRUST COMPANY OF DELAWARE WILL SERVE AS TRUSTEE. THESE PROVISIONS NEED NOT APPEAR TOGETHER OR IN THE ORDER WHICH THEY APPEAR BELOW.

**I. TRUSTEE COMPENSATION**

A. [The Trustee shall be entitled to receive compensation for its services under this Trust Agreement in accordance with an agreement between the Trustee and the \_\_\_\_\_. In the absence of such an agreement,<sup>1</sup> notwithstanding any other provision hereof or otherwise applicable law or in equity, the Trustee (or any Affiliate thereof) shall be entitled, without notice to or consent by any beneficiary or court and without any disclosure otherwise required pursuant to 12 *Del. C.* § 3312(c) or otherwise applicable law, to receive compensation for its services under this Trust Agreement in accordance with its schedule of rates published from time to time and in effect at the time the compensation is paid, including minimum fees and additional compensation as stated therein, and except as required by law, such compensation shall not be reduced by any compensation received by the Trustee or its Affiliates for providing any of the additional services authorized herein. The Grantor recognizes that such compensation may exceed the compensation for such services in effect from time to time under the laws of the State of Delaware.

**II. INVESTMENT IN AND RETENTION OF SECURITIES MANAGED, ISSUED, UNDERWRITTEN OR DISTRIBUTED BY TRUSTEE OR AFFILIATE; OTHER DEALINGS AND TRANSACTIONS WITH AFFILIATES**

A. The Trustee is authorized, directly or at the direction of the Investment Adviser, if one is serving, to invest in, retain or otherwise deal in any securities or other property, real or personal (within or without the United States), including without limitation: any security as defined by the Securities Act of 1933, any contract of sale of a commodity for future delivery within the meaning of the Commodity Exchange Act, shares or interests in any private investment fund, private equity or venture capital fund, hedge fund, common trust fund, joint venture, general or limited partnership, limited liability company, statutory or common law trust, real estate investment trust

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<sup>1</sup> Bracketed portion of language is optional.

or an open-end (including any mutual fund) or closed-end management type investment company or unit investment trust, whether registered under the Investment Company Act of 1940 or unregistered, any money market instrument, bank deposit account (including but not limited to savings, time, certificate of deposit and transaction accounts), precious metal, foreign exchange, structured product, insurance contract, options, options on futures and variable forward contracts, swaps, caps, collars and other derivative instruments of a financial nature, notwithstanding the fact that the Trustee, investment manager or custodian, its respective parent or any affiliate, provides services (whether as manager, issuer, underwriter, distributor, custodian, advisor, agent, or otherwise) with respect to any such investment and further notwithstanding that the Trustee, investment manager, custodian or its respective parent or any Affiliate may receive compensation with respect to any such investment (in addition to Trustee's compensation), so long as the total compensation received is reasonable, and neither the Trustee nor the Investment Adviser shall have any duty to make the disclosure described in Section 3312(c) of Title 12 of the *Delaware Code* or, to the fullest extent permitted by law, pursuant to any other otherwise applicable law. To the extent permitted by local law, this provision is intended to be a specific override of any contrary provision of law prohibiting such additional fees or otherwise requiring either a reduction in the Trustee's compensation or investment advisory or other fees or commissions or an election between such compensation and such additional fees or commissions. Any diversification requirement under applicable law that would otherwise apply is expressly negated and shall not apply to the trust.

### **III. EMPLOYMENT OF AND DEALINGS WITH AFFILIATED AGENTS, INCLUDING BROKER-DEALERS AND OTHER AFFILIATED CORPORATIONS**

- A. Conflicts of interest may arise by virtue of the powers granted to the Trustee in this Trust Agreement. The Trustee is therefore expressly exempted from the adverse operation of any rule of law that might otherwise apply to the Trustee in the performance of its fiduciary duties by reason of conflict of interest. Notwithstanding any duty otherwise existing hereunder or at law or in equity, the Trustee shall have no greater burden to justify its acts as a fiduciary by reason of conflict of interest than it would have in the absence of any conflict.
- B. The Trustee is authorized without notice to or consent by any beneficiary or court and without any disclosure otherwise required pursuant to 12 *Del. C.* § 3312(c) or other applicable law, to engage any corporation, partnership, limited liability company or other entity that is a subsidiary or affiliate of a corporate trustee serving hereunder and/or any individual who is a partner, director, member, manager, officer or employee of any such subsidiary or affiliate (individually and collectively, an "Affiliate"), to act as agent of or

render services to the trust, to delegate discretionary authority to any Affiliate and to pay customary fees and compensation to such Affiliate without reduction of any compensation paid to the Trustee. Subject to the Investment Adviser's direction with respect to any investment powers set forth below, the Trustee, and any Affiliate appointed by the Trustee, is hereby authorized:

- C. To appoint one or more Affiliates to manage in its or their sole discretion the investment of all or any portion of the trust's assets or to provide non-discretionary investment advice;
- D. To appoint one or more Affiliates to act as custodian of all or any portion of the trust's assets and, in connection therewith, to cause such assets to be held in any jurisdiction by or in the name of any nominee of the Trustee or an Affiliate;
- E. To engage one or more Affiliates to provide trust administration or recordkeeping services for the trust;
- F. To use, engage or hire any Affiliates as broker, dealer, principal or agent in the purchase or sale of stocks, bonds or other securities or property for the account of the trust;
- G. To purchase from or sell to any Affiliate any stock, bonds or other securities or property and to engage in agency cross transactions with any Affiliate, in each case at such price and upon such terms as the Trustee and such Affiliate may deem advisable;
- H. To invest any funds in the trust in any stocks, bonds, or other securities or property, real or personal, or whatsoever kind or nature, which may be distributed, underwritten, managed or issued by or through an Affiliate, and from which an Affiliate may receive fees or other compensation;
- I. To make any investment or enter into any transaction which may directly or indirectly benefit any Affiliate or in which any Affiliate has an interest; and
- J. To grant proxies to any Affiliate or to exercise any voting or consent rights pertaining to any securities or other property held in the trust in a manner which may directly or indirectly benefit or advance the interests of any Affiliate.

#### **IV. GOVERNING LAW AND SELECTION OF FORUM<sup>2</sup>**

- A. This Trust Agreement shall be construed under, and the trusts created hereunder shall be governed by, the laws of the State of Delaware. Any action

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<sup>2</sup> The trust instrument will need to specify that the governing law is Delaware and include a change of situs provision. The suggested language is preferred but approved alternative provisions may also be used.

or proceeding relating to this trust shall be brought and enforced in the Court of Chancery of the State of Delaware.

1. *Alternative:* This Trust Agreement shall be construed under, and all matters pertaining to the validity and construction of this Trust Agreement and the trusts created hereunder shall be governed by, \_\_\_\_\_ law. The administration of the trusts created by this Trust Agreement shall be governed by [*Delaware law*][*the law of the jurisdiction in which the trust is being administered*]. Any action or proceeding relating to this trust shall be brought and enforced in the Court of Chancery of the State of Delaware.

## V. CHANGE OF TRUST SITUS

- A. The situs of the trusts created hereunder shall be Delaware. The Trustee shall have the power to remove all or part of the trust property or to change the situs of administration of the trust from one jurisdiction to another (including outside the United States) and to elect, by a separate acknowledged instrument filed with the trust records, that the law of such other jurisdiction shall govern the administration of the trust, provided that the Trustee shall not make such an election if it would alter any beneficial interest under the trust. The Trustee's authority to change the situs of administration of the trust and elect that the laws of another jurisdiction shall thereafter govern the administration of the trust does not impose a duty on the Trustee to monitor the laws of any jurisdiction other than the jurisdiction in which the trust is then administered.
- B. *Alternative (if directed trust):* At any time, the [*Trust Protector/or other advisor*] may direct the Trustee to change the situs of any trust created hereunder, by written instrument signed by the [*Trust Protector/or other advisor*] and delivered to the Trustee. After receiving such written direction, the Trustee shall, by written instrument filed with the records of such trust, change the situs of such trust in accordance with such direction, and thereafter, unless stated otherwise in the written direction, the laws governing the administration of such trust shall be those of the new situs; provided that the [*Trust Protector/or other advisor*] shall not make such an election if it would alter any beneficial interest under the trust.

## VI. PERPETUITIES SAVINGS CLAUSE<sup>3</sup>

- A. The trusts created hereunder shall be perpetual to the fullest extent permitted by Delaware law. If any trust created hereunder is deemed to be subject to the law of a jurisdiction that has a rule against perpetuities or similar rule which limits the period during which property can be held in trust, then such trust (other than a trust created by the exercise of a power of appointment conferred

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<sup>3</sup> The trust instrument will need to include a perpetuities savings provision. The suggested language is preferred but approved alternative provisions may also be used.

hereunder which exercise commences a new rule against perpetuities period under the law of such jurisdiction) shall terminate in all events upon the expiration of the longest period that property may be held in trust under this Trust Agreement under the law of such jurisdiction (including any applicable period in gross, such as 21 years, 90 years or 110 years); provided, however, that if the jurisdiction has a rule against perpetuities or similar rule which applies only to certain types of property, such as real property, the provisions of this Section shall apply only to such property. If under the law of such jurisdiction the longest period that property may be held in trust may be determined (or alternatively determined) with reference to the death of the last survivor of a group of individuals in being upon the date of this Trust Agreement, those individuals shall consist of \_\_\_\_\_.

## VII. WAIVER OF ACCOUNTS; APPROVAL OF ACCOUNTS

- A. The Trustee shall not be required to render annual or other periodic accounts to any court, whether or not required by statute. The Trustee will have the right, at the expense of the Trust, to prepare an accounting in accordance with applicable court requirements and rules and to apply at any time to a court of competent jurisdiction for judicial settlement of any account of the Trustee whether or not previously settled as herein provided or for the determination of any question of construction or for instructions. In any such action or proceeding it will be necessary to join as parties solely the Trustee and [the Grantor, or, if the Grantor is then deceased, the then living current permissible adult beneficiaries of the Trust]<sup>4</sup> [the then living current permissible adult beneficiaries of the Trust] (although the Trustee may also join such other parties as the Trustee may deem appropriate), and any judgment or decree entered herein will be conclusive and binding on all persons at any time interested in the Trust.
- B. Within ninety days of the removal or resignation of a Trustee, or otherwise no less frequently than annually, the removed Trustee, the resigning Trustee or the Trustee, as applicable, shall provide the trust's income beneficiaries, or their designated representatives, with a written account of the trust's transactions for the immediately preceding reporting period. Unless within 60 days after the mailing of a written account a beneficiary asserts an objection to a transaction disclosed in such account, the account shall be deemed to be as conclusive and fully binding, and the Trustee rendering such account shall be fully relieved and discharged in all respects, as if the account had been approved in a judicial proceeding in which all persons interested in the trust had appeared, either individually or by a representative under 12 *Del. C.* § 3547. All costs and expenses of any such accounting shall be paid by Trustee

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<sup>4</sup> This option may be appropriate in trust instruments, which contain silent trust provisions, or in asset protection trusts.



from principal or income, or both, of the trust as it in its sole and absolute discretion determines.

## **PROVISIONS TO BE INCLUDED IN TRUSTS WHERE NORTHERN IS TO ACT AS A DIRECTED TRUSTEE AS TO INVESTMENTS**

### **I. APPOINTMENT OF INVESTMENT ADVISER; EXONERATION OF TRUSTEE AND INVESTMENT ADVISER.**

- A. Notwithstanding any other provision hereof, the Trustee shall only have the duty to act with respect to all matters relating to the management and investment of assets upon the written direction of the Investment Adviser. The Trustee shall exercise the powers granted to it hereunder or by statute relating (i) to buying, selling, retaining, leasing, exchanging, borrowing, lending, guaranteeing, mortgaging, pledging or encumbering property held in any trust hereunder, (ii) participation in voting trusts, incorporations, reorganizations, consolidations, liquidations or mergers, (iii) the creation of partnerships, limited liability companies, corporations, business trusts or other business entities (including the transfer of any portion of the Trust estate to any such entity) and the management of such business entities, (iv) voting and exercising all rights of an equity holder or member or manager of any entity owned (in whole or in part) or managed, directly or indirectly, by the trust, including without limitation, subscription, conversion, option and similar rights, and (v) opening accounts of the trust or an entity owned, in whole or in part, by the trust, only upon receiving the written direction of the Investment Adviser of such trust and the Trustee shall have no other duties to the trust, the beneficiaries of the trust or the Investment Adviser of the trust relating to the exercise of such powers.
- B. Any written direction of the Investment Adviser shall be in a form acceptable to the Trustee and, by providing such written direction, the Investment Adviser shall be deemed to have certified to the Trustee (i) that the actions directed to be taken by the Investment Adviser are authorized by the Trust Agreement and applicable law, (ii) that the Investment Adviser has considered and/or consulted with competent advisers regarding the potential consequences of such actions, including (but not limited to) federal and state tax consequences, (iii) that the implementation of such direction from the Investment Adviser by the Trustee shall not cause the Trustee, in any circumstance, to incur any personal liability, including the payment of any liabilities of the trust or cause the Trustee to make any representation, warranty, covenant, agreement or other obligation in its individual capacity rather than as Trustee of the Trust as a result of such direction, (iv) that the Trustee shall have no duty or responsibility to inquire into or examine whether the exercise of such power by the Investment Adviser is authorized by the Trust Agreement or applicable law, and (v) that the Investment Adviser shall hold the Trustee harmless and indemnify the Trustee for any claims, losses,

damages and costs (including reasonable attorneys' fees) arising out of or relating to such certification by the Investment Adviser. To the extent that the Investment Adviser delivers a written direction to the Trustee to instruct or authorize any other person to act directly with respect to trust assets upon the written direction of the Investment Adviser or any other person other than the Trustee, the Trustee shall not be liable for any such direction or for the actions taken pursuant to any such direction.

- C. With regard to trust assets and trust liabilities over which the Investment Adviser has responsibility and in addition to the Investment Adviser's duties herein, the Investment Adviser shall have the duty (a) to confirm to the Trustee, in writing, the value of trust assets and liabilities at least annually and upon the request by the Trustee, (b) to direct the Trustee with respect to making any representation, warranty or covenant required to be made in order to maintain any investment, (c) to direct and instruct the Trustee on future actions, if any, to be taken with respect to such representations, warranties and covenants and (d) to direct the Trustee to sign agreements and any other documentation required in connection with the purchase of any investment and the maintenance of any such investment. The Trustee shall be entitled to rely upon the valuation provided by the Investment Adviser for all purposes in administering the trust, without incurring any liability to any party, and shall be under no obligation to inquire or to make any independent verification of the information provided to the Trustee by the Investment Adviser. Notwithstanding the foregoing, the Trustee shall have no duty hereunder to request a valuation at any time, including upon the Investment Adviser's failure to provide an annual valuation.
- D. Notwithstanding any provision herein to the contrary, (i) the Trustee shall have no duty or responsibility to inquire into or examine whether any actions directed to be taken by the Investment Adviser are authorized by the Trust Agreement or applicable law or result in any adverse tax consequence to the Trust, the Grantor(s) of the Trust or any beneficiary of the Trust, and (ii) the Trustee shall have no duty or responsibility to monitor or otherwise confirm that the Investment Adviser is complying with his duties under this Trust Agreement, and the Trustee shall not be liable to any person, including any beneficiary, for any such breach resulting from its following the direction of the Investment Adviser.
- E. In reliance on the provisions of 12 *Del. C.* § 3313(a), the Grantor hereby appoints \_\_\_\_\_ (the "Investment Adviser") as Investment Adviser. By accepting an appointment to serve or act hereunder, such Investment Adviser shall be deemed to have consented to submit to the jurisdiction of each court in which jurisdiction and venue are proper to review the administration of the trust and to be made parties to any proceedings in each such court that place in issue the decisions or actions of the Investment Adviser. The Investment Adviser shall exercise the Investment Adviser's

functions in a fiduciary capacity and in a manner that the Investment Adviser reasonably believes to be in accordance with the purposes of this Trust Agreement. The Investment Adviser shall be deemed to have acted within the scope of its authority, to have exercised reasonable care, diligence and prudence, and to have acted impartially as to all persons interested unless the contrary be proven by affirmative clear and convincing evidence, and in the absence of such proof the Investment Adviser shall not be liable for loss arising from depreciation or reduction in value of any property authorized to be held or acquired. The Trustee and Investment Adviser shall not be liable for the acts or defaults of each other or any other Trustee or adviser to the Trust.

- F. If at any time during the continuance of the Trust (i) a successor Investment Adviser fails to be appointed or fails to accept its appointment in writing within 30 days after the resignation, removal, disqualification or unwillingness to serve of the Investment Adviser, or (ii) there shall be no Investment Adviser of the Trust, then the Trustee shall petition the court currently having jurisdiction over the Trust for an order which accepts the resignation of the trustee and appoints a successor thereto. The Trustee shall have no liability for the actions or omissions of any successor trustee so appointed by the court. Any successor trustee so appointed shall have all of the powers and discretions conferred in this Trust upon the original Trustee and any and all costs incurred by the Trustee related to such proceeding, including but not limited to attorney's fees and court costs, shall be considered an expense of the Trust. During such time as there is no Investment Adviser serving hereunder or qualified to serve hereunder, the Trustee shall have no responsibility or duty to exercise any power subject to the direction of the Investment Adviser and shall not be held liable for any act or omission relating to the exercise or non-exercise of such powers. As specified in 12 Del. C. § 3313(b), unless the Trustee has acted with wilful misconduct proven by clear and convincing evidence in the court then having primary jurisdiction over the trust, the Trustee shall incur no liability for any act or failure to act by the Investment Adviser, or for acting on or implementing any direction of the Investment Adviser, and it shall not be liable for any loss resulting from any action taken by the Investment Adviser, or taken by it in accordance with a direction of the Investment Adviser. As provided in 12 Del. C. § 3313(e), the Trustee shall have no duty to monitor the conduct of the Investment Adviser, provide advice to the Investment Adviser or consult with the Investment Adviser or communicate with or warn or apprise any beneficiary or third party concerning instances in which the Trustee would or might have exercised the Trustee's own discretion in a manner different from the manner directed by the Investment Adviser. Furthermore, in accordance with 12 Del. C. § 3302(e) and § 3586, the Trustee shall have no liability under this Trust to any Trust beneficiary or any other person whose interest arises under this Trust for the Trustee's good faith reliance on this provision or any other provision of this Trust Agreement concerning investment decisions (unless the Trustee has

acted with wilful misconduct proven by clear and convincing evidence in the court then having primary jurisdiction over the Trust, which court shall be the Delaware Court of Chancery for so long as Delaware remains the situs of the Trust).

## **PROVISIONS TO BE INCLUDED WHERE NORTHERN IS TO ACT AS A DIRECTED TRUSTEE AS TO DISTRIBUTIONS**

### **I. APPOINTMENT OF DISTRIBUTION ADVISER; EXONERATION OF TRUSTEE AND DISTRIBUTION ADVISER.**

- A. Notwithstanding any other provision hereunder, Trustee shall only have the duty to exercise its power to make discretionary distributions of income and/or principal pursuant to Section(s) \_\_\_ hereof upon and in accordance with the written direction of the "Distribution Adviser" of such trust. The Trustee shall make only such distributions of net income or principal as the Distribution Adviser directs or that are non-discretionary and mandated by the terms of the Trust. Notwithstanding the foregoing or any other provision of this Trust Agreement, if at any time a beneficiary of a trust created by or pursuant to this Trust Agreement is serving as Distribution Adviser, such beneficiary may only exercise the authority conferred pursuant to the terms of this Trust Agreement to direct the Trustee to distribute income and/or principal of the Trust to such beneficiary and his or her descendants for his, her or their health, education, maintenance or support. In addition, such beneficiary may not direct the Trustee to distribute income or principal to his or her descendants if doing so would discharge a legal obligation of such beneficiary.
- B. Any distribution direction to the Trustee shall be in writing, delivered by mail, courier, facsimile transmission, electronic mail, or otherwise in such form as is acceptable to the Trustee and to such address as the Trustee may specify from time to time by written instruction to the Distribution Adviser. The Trustee shall have no obligation to investigate or confirm the authenticity of directions it receives or the authority of the person or persons conveying them, and the Trustee shall not be liable in relying on any such direction from a person purporting to be acting on behalf of the Distribution Adviser without further inquiry by the Trustee.
- C. By providing a written direction to the Trustee, the Distribution Adviser shall be deemed to have certified to the Trustee (i) that the actions directed to be taken by the Distribution Adviser are authorized by the Trust Agreement and applicable law, (ii) that the Distribution Adviser has considered and/or consulted with competent advisers regarding the potential consequences of such actions, including (but not limited to) federal and state tax consequences, (iii) that the implementation of such direction from the Distribution Adviser by the Trustee shall not cause the Trustee, in any circumstance, to incur any personal liability, (iv) that the Trustee shall have no duty or responsibility to inquire into or examine whether the actions directed to be taken by the Distribution Adviser are authorized by the Trust Agreement or applicable law, and (v) that the Distribution Adviser shall hold the Trustee harmless and

indemnify the Trustee for any claims, losses, damages and costs (including reasonable attorneys' fees) arising out of or relating to such certification by the Distribution Adviser. The Trustee shall have no duty or responsibility to review the beneficiaries' needs or requests for income or principal distributions, make any recommendation with respect to such distributions, solicit any direction from the Distribution Adviser, calculate the impact of any distribution on the likely duration of the trust or ensure the equality or impartiality of distributions among the beneficiaries. The Trustee shall not have any duty or responsibility to review whether the Distribution Adviser is satisfying its responsibilities hereunder.

- D. Notwithstanding any provision herein to the contrary, (i) the Trustee shall have no duty or responsibility to inquire into or examine whether any actions directed to be taken by the Distribution Adviser are authorized by the Trust Agreement or applicable law or result in any adverse tax consequence to the Trust, the Grantor(s) of the Trust or any beneficiary of the Trust, and the Trustee shall not be liable to any person, including any beneficiary, for any such breach or consequence resulting from its following the direction of the Distribution Adviser.
- E. Initially, the Distribution Adviser of each of the trusts created hereunder shall be \_\_\_\_\_, so long as [he/she] is willing and able to act as the Distribution Adviser. If at any time \_\_\_\_\_ is not willing or able to act as Distribution Adviser, then the Distribution Adviser of such trust shall be such individual or entity appointed by \_\_\_\_\_. If no such appointment is made within 30 days after the resignation, removal or unwillingness to serve of the Distribution Adviser, then the Trustee may petition the court having jurisdiction over the trust to appoint a successor Distribution Adviser to serve and any costs relating to the petition, including, without limitation, attorneys' fees and court costs, shall be borne by the trust. During such time as there is no Distribution Adviser serving hereunder, Trustee shall not be held liable for any act or omission related to the distribution powers subject to the direction of the Distribution Adviser.
- F. The Distribution Adviser of each trust hereunder shall exercise the Distribution Adviser's functions in a fiduciary capacity and in a manner that the Distribution Adviser reasonably believes to be in accordance with the purposes of this Trust Agreement. The Distribution Adviser shall be under no duty to inquire into or to ensure the performance by Trustee of its duties and shall not be liable for any loss to such trust (unless such loss results from actions in bad faith or wilful misconduct of such Distribution Adviser).
- G. As provided in 12 *Del. C.* § 3313(b), absent wilful misconduct proven by clear and convincing evidence in the court then having primary jurisdiction over the Trust, the Trustee shall incur no liability for any act or failure to act by the Distribution Adviser, or for acting on a direction of the Distribution Adviser,

and Trustee shall not be liable for any loss to the trust or any claim of inequality, partiality or unreasonableness resulting from any action taken in accordance with the direction of the Distribution Adviser. As provided in 12 Del. C. § 3313(e), the Trustee shall have no duty to monitor the conduct of the Distribution Adviser, provide advice to the Distribution Adviser or consult with the Distribution Adviser or communicate with or warn or apprise any beneficiary or third party concerning instances in which the Trustee would or might have exercised the Trustee's own discretion in a manner different from the manner directed by the Distribution Adviser. The Trustee and the Distribution Adviser shall not be liable for the acts or defaults of each other. Furthermore, in accordance with 12 Del. C. § 3302(e) and § 3586, the Trustee shall have no liability under this Trust to any Trust beneficiary or any other person whose interest arises under this Trust for the Trustee's good faith reliance on the provisions of this Article or any other provision of this Trust Agreement concerning distribution decisions (unless the Trustee has acted with wilful misconduct proven by clear and convincing evidence in the court then having primary jurisdiction over the Trust, which court shall be the Delaware Court of Chancery for so long as Delaware remains the situs of the Trust).



**PROVISIONS TO BE INCLUDED WHERE NORTHERN IS TO  
ACT AS A DIRECTED TRUSTEE AS TO EITHER OR BOTH  
DISTRIBUTIONS AND/OR INVESTMENTS**

**I. THE TRUSTEE AND THE ADVISERS -- GENERAL PROVISIONS**

- A. The Trustee shall have no obligation to investigate or confirm the authenticity of any investment direction, distribution direction or other direction it receives from any Adviser acting under this Trust Agreement, or the authority of the person or persons conveying such direction.
- B. To the extent that more than two persons are serving concurrently as an Adviser in the same capacity, an affirmative vote of a majority of such Advisers must be reached with respect to any decision, action taken or direction given. Otherwise, such Advisers must act unanimously. Notwithstanding the foregoing, to the extent that more than one person is serving as an Adviser hereunder, such Co-Advisers may designate, by written instrument executed by all Co-Advisers (the "Designation Instrument"), one Co-Adviser to convey all written directions to the Trustee (the "Designated Adviser"). A copy of the Designation Instrument shall be provided to the Trustee for its records. Until otherwise advised in writing by all Co-Advisers, the Trustee shall be entitled to rely on the designation set forth in the Designation Instrument and shall not be liable to any person for any loss or breach hereunder for acting in accordance with any direction provided by the Designated Adviser.
- C. No successor Trustee shall be required to examine the acts of any prior Trustee, and any successor Trustee shall be responsible only for those assets which are actually delivered to such Trustee. After the transfer and delivery of the property held in such trust to a successor Trustee, the prior Trustee of such trust shall have no further liability or responsibility with respect to such property.
- D. [Optional: No successor Adviser shall be required to examine the acts of any prior Adviser, and any successor Adviser shall be responsible only for actions it takes and directions it gives subsequent to its appointment.]
- E. Notwithstanding any otherwise applicable law or in equity, unless the Trustee or an Adviser has written notice of an event affecting the beneficial interests in the trust, neither the Trustee nor the Adviser shall incur any liability for acting as though such event had not occurred.
- F. To the extent the provisions of this Trust Agreement restrict, modify or eliminate the duties and liabilities of the Trustee that would otherwise apply at law, in equity or otherwise, such provisions shall supersede and replace such otherwise applicable duties and liabilities.

## II. TRUSTEE LIABILITY AND INDEMNIFICATION PROVISIONS

- A. Each person acting as Trustee shall be presumed to have acted within the scope of its authority, to have exercised reasonable care, diligence and prudence, and to have acted impartially as to all persons unless it be affirmatively shown that such person acted in a manner that constitutes wilful misconduct. Except as otherwise provided herein, Trustee shall be personally liable only for its own wilful misconduct. No Trustee shall be liable for making any delegation with reasonable care. Trustee shall have no duty to offer to the trust any business opportunities that become available to it, individually or in any other capacity. Trustee shall not be liable for its reliance on (i) any apparently valid documents and certifications including, but not limited to, tax reports and other tax information provided to Trustee by any entity in which the Trust holds an ownership interest; (ii) the opinions of counsel or any accountant or advisor to any trust; and (iii) any valuation of trust assets (including any supporting documentation with respect thereto) provided by the [Investment Adviser/Distribution Adviser].
- B. Each person acting as Trustee (or any officer, affiliate, director, employee, or agent of a Trustee, each an ("Indemnified Person")) shall be entitled to indemnification from the trust, to the fullest extent permitted by law, from and against any and all losses, claims, taxes, damages, reasonable expenses, and liabilities (including liabilities under state or federal securities or tax laws) of any kind and nature whatsoever (collectively, "Expenses"), to the extent that such Expenses arise out of or are imposed upon or asserted against such Indemnified Persons with respect to the creation, operation or termination of the Trust, the execution, delivery or performance of this Trust Agreement or the transactions contemplated hereby, except as a result of the wilful misconduct of such Indemnified Person.
- C. As used in this Trust Agreement, the term "wilful misconduct" shall have the same meaning given to such term in 12 Del. C. § 3301(g).

## **PROVISIONS TO INCLUDE WHERE NORTHERN IS TO ACT AS AN ADMINISTRATIVE TRUSTEE ONLY**

- I. **ADMINISTRATIVE TRUSTEE PROVISIONS.** [For use only when The Northern Trust Company of Delaware is serving solely as the administrative trustee.]
- A. It is intended that each trust created under this Trust Agreement have its situs as, be governed by the laws of, and be administered in the State of Delaware. THE NORTHERN TRUST COMPANY OF DELAWARE is hereby appointed as the initial Administrative Trustee (and it or any successor Administrative Trustee who may accept its appointment under this Trust Agreement is referred to herein as the "Administrative Trustee"). The Administrative Trustee shall act in a fiduciary capacity but shall not be a Trustee or co-Trustee except to the extent and for the limited purposes described in this Section \_\_\_. Accordingly, no reference in this Trust Agreement to the "Trustee, "co-Trustee" or "Trustees" shall include, or be deemed to refer to, the Administrative Trustee.
- B. The Administrative Trustee may resign at any time and for any reason by delivering an acknowledged instrument to that effect to the Grantor or, after the Grantor's death or incapacity, to each adult beneficiary eligible to receive distributions of income (whether discretionary or mandatory) from the trust. If there are no adult beneficiaries, the instrument of resignation shall be delivered to the parent or legal guardian of each minor beneficiary eligible to receive distributions of income (whether discretionary or mandatory) from the trust. Such resignation shall state the effective date.
- C. The Administrative Trustee may be removed or replaced at any time, with or without cause, by the Grantor or, if the Grantor is incapable of acting, by a majority in number of the adult beneficiaries eligible to receive distributions of income (whether discretionary or mandatory) from the trust or, if none, by a majority in number of the minor beneficiaries (each such beneficiary acting through his parent or legal guardian) eligible to receive distributions of income (whether discretionary or mandatory) from the trust. If, upon the removal of the Administrative Trustee, no successor Administrative Trustee designated by this Trust Agreement qualifies to act, the individual(s) who remove such Trustee shall appoint a successor Trustee (other than the Grantor); provided, however, that such successor Administrative Trustee may not be related or subordinate to the person or persons making such appointment, within the meaning of § 672(c) of the Internal Revenue Code.
- D. Notwithstanding anything in this Trust Agreement to the contrary, the Administrative Trustee shall only have the following exclusive duties, which shall all be carried out in the State of Delaware or such other jurisdiction as

the Trustees shall, from time to time, select as the situs of the trust:

1. To maintain bank accounts, brokerage accounts and other custody accounts which receive Trust income and contributions and from which Trust expenditures and distributions are disbursed.
  2. To maintain storage of tangible personalty and evidence of intangible trust property.
  3. To maintain trust records.
  4. To maintain an office for Trustee meetings and other trust business.
  5. To originate, facilitate and review trust accountings, reports and other communications with the Grantor, any co-Trustees, beneficiaries and unrelated third parties, except as specifically provided otherwise in this Trust Agreement.
  6. To respond to inquiries concerning the trust from the Grantor, any co-Trustees, beneficiaries and unrelated third parties.
  7. To execute documents with respect to trust account transactions.
  8. To retain accountants, attorneys, investment counsel, agents and other advisors in connection with the performance of its duties under this Section.
- E. Other than as explicitly set forth above, the Administrative Trustee shall have no duties, obligations, or authority and the Trustee and any co-Trustees serving, from time to time, need not obtain the consent of or consult with the Administrative Trustee prior to exercising their powers or performing their duties under this Trust Agreement. The Administrative Trustee shall only participate in transactions under which it does not have discretionary authority hereunder upon receiving written direction of the [Investment Adviser/Trustee(s)]. Any such written direction shall be in a form acceptable to the Administrative Trustee and, by providing such written direction, the [Investment Adviser/Trustee(s)] shall be deemed to have certified to the Administrative Trustee (i) that the actions directed to be taken by the [Investment Adviser/Trustee(s)] are authorized by the agreement and applicable law, (ii) that the [Investment Adviser/Trustee(s)] has considered and/or consulted with competent advisers regarding the potential consequences of such actions, including (but not limited to) federal and state tax consequences, (iii) that the implementation of such direction from the [Investment Adviser/Trustee(s)] by the Administrative Trustee shall not cause the Administrative Trustee, in any circumstance, to incur any personal liability, including the payment of any liabilities of the trust or cause the Trustee to make any representation, warranty, covenant, agreement or other obligation in its individual capacity rather than as Trustee of the Trust as a

result of such direction, (iv) that the Administrative Trustee shall have no duty, responsibility or authority to inquire into or examine whether the exercise of such power by the [Investment Adviser/Trustee(s)] is authorized by the Trust Agreement or applicable law, and (v) that the [Investment Adviser/Trustee(s)] shall hold the Administrative Trustee harmless and indemnify the Administrative Trustee for any claims, losses, damages and costs (including reasonable attorneys' fees) arising out of or relating to such certification by the [Investment Adviser/Trustee(s)].

- F. Notwithstanding any provision herein to the contrary, the Administrative Trustee shall have no duty or responsibility to inquire into or examine whether any actions directed to be taken by the [Investment Adviser/ Trustee(s)] are authorized by the Trust Agreement or applicable law or result in any adverse tax consequence to the Trust, the Grantor(s) of the Trust or any beneficiary of the Trust, and the Administrative Trustee shall not be liable to any person, including any beneficiary, for any such breach or consequence resulting from its following the direction of the [Investment Adviser/ Trustee(s)].
- G. Whenever, pursuant to the terms of this Trust Agreement, the Administrative Trustee acts or fails to act at the direction of any person authorized by the terms of this Trust Agreement to direct the Administrative Trustee as to any particular matter, then notwithstanding any other provision of this Trust Agreement or otherwise existing provision of law or in equity, (i) as provided in 12 Del. C. § 3313, the Administrative Trustee shall not be liable for any loss resulting from such acts except in cases of wilful misconduct and (ii) to the extent any such action concerns a matter outside the scope of 12 Del. C. § 3313, in accordance with 12 Del. C. § 3303, the Administrative Trustee shall have no liability under this Trust Agreement except for the Administrative Trustee's own wilful misconduct.
- H. In performing its duties as Administrative Trustee, the Administrative Trustee shall have no liability hereunder except on account of the Administrative Trustee's own wilful misconduct proved by clear and convincing evidence in the court then having primary jurisdiction over the trust. An Administrative Trustee shall not be personally liable for making any delegation that is authorized under this Trust Agreement, nor for any action taken without such Administrative Trustee's express agreement, nor for any failure to act absent wilful misconduct. The Administrative Trustee shall not be liable for relying absolutely on (i) any apparently valid documents and certifications including, but not limited to, tax reports and other tax information provided to the Administrative Trustee by any entity in which the trust fund holds an ownership interest; (ii) the opinions of counsel or any accountant to any trust; and (iii) any valuation of trust assets (including any supporting documentation with respect thereto) provided by the [Investment Adviser][other Trustee(s)].

- I. Every act done, power exercised or obligation assumed by the Administrative Trustee pursuant to the provisions of this Trust Agreement shall be held to be done, exercised or assumed, as the case may be, by the Administrative Trustee acting in a fiduciary capacity and not otherwise, and every person, firm, corporation or other entity contracting or otherwise dealing with the Administrative Trustee shall look only to the funds and property of the trust for payment under such contract or payment of any money that may become due or payable under any obligation arising under this Trust Agreement, in whole or in part, and the Administrative Trustee shall not be individually liable therefor even though the Administrative Trustee did not exempt himself, herself or itself from individual liability when entering into any contract, obligation or transaction in connection with or growing out of the trust fund.
- J. The decision of any Administrative Trustee hereunder with respect to the exercise or nonexercise by such Administrative Trustee of any power hereunder, or the time or manner of the exercise thereof, made in good faith, shall fully protect such Administrative Trustee and shall be final, conclusive and binding upon all persons interested in the Trust or the income therefrom. No Administrative Trustee acting hereunder shall be responsible for any error of judgment or mistake of fact or law.
- K. The Administrative Trustee shall be entitled to receive compensation for its services as Administrative Trustee in accordance with any written agreement then in effect between the [Trustee/Investment Adviser] and the Administrative Trustee, or, if no such written agreement exists, the Administrative Trustee shall be entitled to receive from the income or principal of the trust or trusts with respect to which it shall be so acting compensation for its services in an amount to be determined from time to time by the application of the current prevailing rates then charged by the Administrative Trustee for acting as an Administrative Trustee. Such compensation may exceed the compensation for such services in effect from time to time under the laws of the State of Delaware and may be paid without court approval.
- L. No bond or other security shall be required for any reason whatsoever of any Administrative Trustee named herein or appointed as herein provided.
- M. Notwithstanding any other provision herein to the contrary, for so long as THE NORTHERN TRUST COMPANY OF DELAWARE serves as Administrative Trustee hereunder, it shall serve solely as the Administrative Trustee hereunder and it shall only have the duties, obligations and authority of an Administrative Trustee hereunder.

## PROVISIONS TO INCLUDE IN SPECIAL SITUATIONS

### I. SPECIAL HOLDINGS DIRECTION ADVISER

- A. Notwithstanding any other provision herein, in the case of Special Assets (as defined below), the Trustee shall, and shall only have a duty to, exercise the investment powers granted to it herein only upon receiving the written direction of the Special Holdings Direction Adviser of such trust. Any bank or trust company acting as a Trustee hereunder (sometimes hereinafter, the "Trust Company"), including The Northern Trust Company of Delaware, as Trustee shall not be authorized to make, nor shall it be responsible or liable for, decisions regarding the retention or disposition of Special Assets or as to voting any proxies, consents or other actions to be taken with respect thereto. The Special Holdings Direction Adviser at any time acting shall have the sole and exclusive authority, liability and responsibility hereunder with respect to such Special Assets (including, but not limited to, "investment decisions" (as that term is defined in 12 *Del. C.* § 3313(d)) (the "Special Holding Investment Powers"), and the Trust Company shall have no responsibility to the Trust, any beneficiary or any other person for any action taken or any omission made by or at the direction of such Special Holdings Direction Adviser with respect to the Special Assets for so long as the Special Assets are assets of such trust. Any such written direction shall be in a form acceptable to the Trustee and, by providing such written direction, the Special Holdings Direction Adviser shall be deemed to have certified to the Trustee (i) that the actions directed to be taken by the Special Holdings Direction Adviser are authorized by the Trust Agreement and applicable law, (ii) that the Special Holdings Direction Adviser has considered and/or consulted with competent advisers regarding the potential consequences of such actions, including (but not limited to) federal and state tax consequences, (iii) that the implementation of such direction from the Special Holdings Direction Adviser by the Trustee shall not cause the Trustee, in any circumstance, to incur any personal liability, including the payment of any liabilities of the trust or cause the Trustee to make any representation, warranty, covenant, agreement or other obligation in its individual capacity rather than as Trustee of the Trust as a result of such direction, (iv) that the Trustee shall have no duty or responsibility to inquire into or examine whether the exercise of such power by the Special Holdings Direction Adviser are authorized by the Trust Agreement or applicable law, and (v) that the Special Holdings Direction Adviser shall hold the Trustee harmless and indemnify the Trustee for any claims, losses, damages and costs (including reasonable attorneys' fees) arising out of or relating to with such certification by the Special Holdings Direction Adviser. "Special Assets" are (i) any assets so designated by the Special Holdings Direction Adviser; and (ii) any other assets so designated by the Trust Company as to which at any time the Trust Company or any of its Affiliates determines that it is or might be inappropriate or inadvisable for it to accept, have discretion over, dispose

of or otherwise control or act with respect to. Any such designation made by the Trust Company shall not be deemed to be an exercise of the Trust Company's power, authority, control over or discretion with respect to such assets. Notwithstanding any provision herein to the contrary, the Trustee shall have no duty or responsibility to inquire into or examine whether any actions directed to be taken by the Special Holdings Direction Adviser are authorized by the agreement or applicable law or result in any adverse tax consequence to the Trust, the Grantor(s) of the Trust or any beneficiary of the Trust, and the Trustee shall not be liable to any person, including any beneficiary, for any such breach resulting from its following the direction of the Special Holdings Direction Adviser.

- B. With regard to trust assets over which the Special Holdings Direction Adviser has investment responsibility and in addition to the Special Holdings Direction Adviser's duties herein, the Special Holdings Direction Adviser shall have the duty (a) to confirm to the Trustee, in writing, the value of the trust assets over which [he/she/it] has control at least annually and upon request by the Trustee, (b) to manage or participate in the management of any entity constituting a Special Asset of the Trust, to the extent such entity's governing instruments or applicable law require or permit the Trust to manage the same, (c) to direct the Trustee with respect to making any representation, warranty or covenant required to be made in order to make and/or maintain any Special Asset and (d) to direct and instruct the Trustee on the future actions, if any, to be taken with respect to such representations, warranties and covenants.
- C. The initial Special Holdings Direction Adviser shall be \_\_\_\_\_ . During any period that The Northern Trust Company of Delaware is the Trustee, the Special Holdings Direction Adviser, if an individual, may not be a director, partner, employee, or spouse of a director, partner or employee of the Trust Company or any of its affiliates or successors.
- D. It is intended that a directed trust with respect to the Special Assets be created and, in this regard, the Trustee shall not be under any duty to inquire into or monitor such Special Assets or the directions of the Special Holdings Direction Adviser, and shall not be liable for any act or failure to act by the Special Holdings Direction Adviser, or for acting or ceasing to act at the direction of the Special Holdings Direction Adviser or with respect to the Trustee's implementation of any direction by the Special Holdings Direction Adviser except in cases of wilful misconduct and the Trustee shall not be liable for any loss resulting from any action taken or not taken by the Special Holdings Direction Adviser, or taken by the Trustee in accordance with the direction of the Special Holdings Direction Adviser, except in cases of wilful misconduct.



- E. The Trustee shall be protected to the fullest extent permitted by law, and specifically permitted by 12 *Del. C.* §3313, and shall be liable only for its wilful misconduct that has been established by clear and convincing evidence in the court then having primary jurisdiction over the trust. In accordance with 12 *Del. C.* §3302(e) and §3586, the Trustee shall have no liability hereunder to any trust beneficiary or any other person whose interest arises under hereunder for the Trustee's good faith reliance on the foregoing provisions or on any other provision herein concerning Special Assets.
- F. The Special Holdings Direction Adviser may delegate some or all of the authority of the Special Holdings Direction Adviser in accordance with and subject to the restrictions and liabilities set forth in 12 *Del. C.* §3322, by a writing delivered to the Trustee or to one or more individuals or entities from whom the Trustee is instructed to accept written investment direction and such person, persons or entities so appointed may, acting alone, exercise the authority of the Special Holdings Direction Adviser as so delegated.
- G. The Special Holdings Direction Adviser shall be entitled to resign at any time by delivery of a separate writing to the then acting Trustee as well as to the Grantor or, if the Grantor is not then living, to the adult beneficiaries then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust or, if none, to the parents or legal guardians the minor beneficiaries then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust. The Special Holdings Direction Adviser may also be removed with or without cause by the Grantor or, if the Grantor is incapable of acting, by a majority in number of the adult beneficiaries then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust or, if none, by a majority in number of the minor beneficiaries (each such beneficiary acting through his parent or legal guardian) then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust, provided that a successor Special Holdings Direction Adviser is appointed and accepts such appointment in writing at that time and the then acting Trustee is notified in writing of such removal or replacement.
- H. If, upon the resignation or unwillingness or inability to serve of the Special Holdings Direction Adviser, no successor Special Holdings Direction Adviser qualifies to act, the Grantor or, if the Grantor is incapable of acting, a majority in number of the adult beneficiaries then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust or, if none, a majority in number of the minor beneficiaries (each such beneficiary acting through his parent or legal guardian) then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust shall have the right to appoint any person or persons (whether individual, corporate or other entity) in whatever number shall be determined to be appropriate, to serve as

successor Special Holdings Direction Adviser, and shall provide notice to the Trustee.

- I. If no successor Special Holdings Direction Adviser has been appointed or has accepted its appointment in writing within thirty (30) days after the resignation, removal or unwillingness to serve of the Special Holdings Direction Adviser, then the Trustee may petition the Court having jurisdiction over the trust to appoint a successor Special Holdings Direction Adviser to serve and any costs relating to the petition shall be borne by the Trust. During such time as there is no Special Holdings Direction Adviser serving hereunder or qualified to serve hereunder, the Trustee shall have no responsibility or duty to exercise any Special Holding Investment Power and shall not be held liable for any act or omission relating to the exercise or non-exercise of said Special Holdings Investment Powers.
- J. The Special Holdings Direction Adviser of each Trust hereunder shall exercise the Special Holdings Direction Adviser's functions in a fiduciary capacity and in a way that the Special Holdings Direction Adviser reasonably believes to be in accordance with the purposes of this agreement. The Special Holdings Direction Adviser need not inquire into the Trustee's performance of its duties, and shall not be held liable for any loss whatsoever to any Trust hereunder, unless it results from action(s) taken in bad faith or wilful misconduct that has been established by clear and convincing evidence in the court then having primary jurisdiction over the Trust.

## II. **TRUST PROTECTOR**

- A. Notwithstanding any other provision of this agreement, there shall at all times be one or more Trust Protectors (the "Trust Protector" or "Trust Protectors") to serve in accordance with the provisions of this Section \_\_.
- B. Initially, the Trust Protector shall be [NAME]. Any Trust Protector acting hereunder may resign at any time by delivering written notice thereof to any Trustee then acting. If at any time a Trust Protector is not willing or able to act as the Trust Protector, then the Trust Protector shall be such one or more persons as the then serving Trust Protector shall have designated. Any designation pursuant to this Subsection \_\_ shall be by written instrument signed and acknowledged by the person or persons making such designation and delivered to the Trustee. If no such designation is made by the then serving Trust Protector, the Trust Protector shall be the following persons, in the order named, who are willing and able to act as the Trust Protector, including such person if such person appoints himself or herself:

- 1.
- 2.
- 3.

- C. If no such designation is made within thirty (30) days after the unwillingness or inability to serve of the Trust Protector, then the Trustee may petition the Court having jurisdiction over the trust to appoint a successor Trust Protector to serve and any costs relating to the petition shall be borne by the Trust. At no time may the Grantor or any party related or subordinate to the Grantor within the meaning of Section 672(c) of the Internal Revenue Code be eligible to serve as Trust Protector.
- D. The Trust Protector may \_\_\_\_\_ [Specify which actions may be taken by the Trust Protector or with the consent of the Trust Protector (e.g., enter into compensation agreements with fiduciaries, removal and appointment of other fiduciaries, etc.).]
- E. The Trust Protector of each Trust hereunder shall exercise the Trust Protector's functions in a fiduciary capacity and in a way that the Trust Protector reasonably believes to be in accordance with the purposes of this agreement. The Trust Protector shall not be under any duty to inquire into or ensure the performance by the Trustee of its duties and shall not be liable for any loss to such trust (unless such loss results from actions in bad faith or the wilful misconduct of the Trust Protector). The Trust Protector shall have no duty to monitor the conduct of [e.g., the Investment Advisor or the Distribution Advisor] and shall not be liable for any exercise or failure to exercise the powers granted herein (unless such loss result from actions in bad faith or are a result of the wilful misconduct of the Trust Protector).
- F. The Trustee shall not participate in or have any liability for the selection of the Trust Protector. The Trustee shall not have any duty to seek any direction or action from the Trust Protector. While a Trust Protector is serving, the Trustee shall have no responsibility to monitor the performance of the Trust Protector or to replace the Trust Protector. In addition, the Trustee shall have no duty to communicate with, warn or apprise any beneficiary or third party concerning instances in which the Trustee would or might have exercised the Trustee's own discretion in a manner different from the manner directed by the Trust Protector.
- G. [The Trust Protector shall not be entitled to receive compensation for serving as Trust Protector.]<sup>5</sup>

### III. **CLAIMS AGAINST TRUST ASSETS [ASSET PROTECTION TRUSTS ONLY]**

- A. No beneficiary (including the Grantor) may alienate or in any other manner transfer, assign, pledge or mortgage, whether voluntarily or involuntarily, his or her interest in any trust hereunder, and no one may attach or otherwise

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<sup>5</sup> An alternative provision setting forth the desired compensation arrangement may be used.

reach any interest of any beneficiary hereunder to satisfy a claim against that beneficiary, whether the claim is legal or equitable in origin. This article shall not limit or otherwise affect any power of appointment conferred upon a beneficiary or the right of a beneficiary to disclaim or release any interest created hereunder. This paragraph constitutes a restriction on the transfer of the Grantor's beneficial interest in the trust estate that is enforceable under applicable non-bankruptcy laws within the meaning of Section 541 (c) (2) of the Bankruptcy Code (11 U.S.C. Section 541 (c) (2)) or any similar or successor statute.

- B. To the extent that any creditor of the Grantor or any creditor of a beneficiary hereunder asserts a claim that it is entitled, through the exercise of judicial process or otherwise, to reach the assets of the trust in satisfaction of its claim, notwithstanding any duty otherwise existing hereunder or at law or in equity, even if otherwise directed to do so, the Trustee shall have no obligation to defend the trust or its assets against any such claim or to initiate or intervene in any litigation, arbitration proceeding or mediation proceeding for the purpose of resisting any such claim, unless the Trustee is reasonably satisfied, determined in its sole and absolute discretion, that it will be fully indemnified from the assets of the trust for all of its liabilities and expenses (including professional fees and expenses of counsel, accountants and expert witnesses) arising from or attributable to the Trustee's participation therein. If the Trustee reasonably determines that the readily marketable assets of the trust are, or have become, insufficient for such purposes, the Trustee may request that the Grantor or beneficiary, as applicable, provide the Trustee with comparable indemnity, supported with such security as may be satisfactory to the Trustee in its sole discretion. In the absence of such additional indemnity or security, the Trustee may refuse to participate in any such proceeding or may withdraw from an ongoing proceeding, even if such refusal or withdrawal may result in the granting or awarding of relief against the trust (including a distribution of some or all of the trust assets in satisfaction of a claim). Any determination made under this Section \_\_\_ shall not be subject to challenge. The Trustee shall not be liable to the Grantor, any beneficiary or any other person for any determination made hereunder, including, without limitation, the Trustee's refusal to defend or withdrawal from, any such litigation, regardless of whether such actions may result in a complete distribution of the trust in satisfaction of a claim.

#### **IV. LIFE INSURANCE.**

- A. **LIABILITY PROTECTION.** Unless specifically requested in writing by Grantor or by a permissible beneficiary hereunder and accepted in writing by Trustee, Trustee shall have no duty or responsibility whatsoever (a) to evaluate any life insurance policy held hereunder, regardless of how the policy may be acquired, (b) to evaluate the financial condition of the underwriter of any such policy or changes in the financial condition of the underwriter, (c) to

determine whether the contract is or remains a proper investment, including whether such policy should be sold, surrendered or permitted to lapse, (d) to make a determination of whether to exercise any policy option available under the contract, (e) to make a determination of whether to diversify such contracts relative to one another or to other assets, if any, administered by the Trustee, or (f) to inquire about changes in the health or financial condition of the person or persons insured under any such contract (collectively, the "Insurance Related Actions"). Pursuant to 12 Del. C. §3302(d), Trustee shall have no liability from its failure to do any of the above-described Insurance Related Actions. The Grantor acknowledges that the Trustee has disclosed the application of 12 *Del. C.* § 3302(d), and the limitation of the Trustee's duties thereunder, to the trust created hereunder. Additionally, it is the Grantor's intent that Trustee shall be held harmless from any loss or liability with respect to the failure of any insurance underwriter to perform its obligations under a life insurance policy, or other such contract, or by poor investment performance or any other action or inaction by any insurance underwriter.

**B. SPECIAL POWERS RELATING TO INSURANCE (TO BE INCLUDED IN THE TRUSTEE'S POWERS SECTION).**

1. The Trustee shall have the following powers and responsibilities with respect to any insurance policies owned by the trust, subject to the direction of an Investment Adviser if one is acting:

a) **Exercise of Rights.** To exercise all or any of the options, benefits, rights, privileges, and interests under the policies; and any receipts releases and other instruments executed by the Trustee in connection with the policies shall be binding and conclusive as to all persons entitled to any proceeds hereunder.

b) **Conversion of Privileges.** If the Trustee is the owner of any group term life insurance policy and the policy is terminated either because the person insured is no longer eligible for coverage under the policy or because of termination of the group policy, the Trustee may convert such group term policy to any other policy of insurance authorized by law or the provisions of the group term insurance policy. The decision of the Trustee with regard to conversion of the group term policy shall be made in its sole discretion and shall be conclusive and binding on all persons having an interest in this trust.

c) **Payment of Premiums.** Unless the premium on the life insurance policy is paid by the employer of the Grantor, and except as otherwise provided in this section, the Trustee may, in its sole discretion, pay the premiums on the policies. If funds are insufficient for reasons beyond the control of the Trustee, the

Trustee may exercise the options available to it under the life insurance contract, including, but not limited to, surrender of the policy, accepting a paid-up policy or exercise of a waiver of premium provisions in the event of disability of the Grantor. The Trustee may pay the premiums from funds received from the Grantor, or from other persons. The Trustee shall not, without the consent of an adverse party, as defined in IRC § 672(a), use any trust income for the payment of premiums on insurance on the life of the Grantor.

d) Collection of Proceeds. The policies of insurance transferred to the trust, and all additional policies which may later be so transferred, shall be made payable to the Trustee on behalf of the trust. For the purpose of collecting monies due under such policies, the Trustee shall have the power to make proper proofs and releases to enable it to receive the proceeds thereof, to institute any suit or proceeding and to perform any and all other acts necessary or appropriate for accomplishing such purpose. The Trustee shall not, however, be obligated to institute or maintain any litigation to enforce payment of any policy until the Trustee shall have been indemnified to its satisfaction. The receipt of the Trustee shall be in full acquittance and discharge of the companies issuing the policies and upon payment of the proceeds thereof to the Trustee, the insurance companies shall be exempted from all liability as to the proper application of the trust estate. Expenses incurred in making such collections shall be a proper charge against the trust.

**V. CONFIDENTIALITY OF TRUST [FOR CONFIDENTIAL TRUSTS ONLY]**

A. Notwithstanding any other provision of this Trust Agreement and in accordance with 12 Del. C. § 3303(a), none of the Trustee, the Investment Adviser, the Distribution Adviser or the Trust Protector, if any, shall furnish any account statement or other account information to any beneficiary of the Trust (other than the Notice Recipients), or provide any such beneficiary with notice of the existence of the Trust or any information regarding the Trust or its terms or assets, unless directed in writing to do so by the Trust Protector.

1. *Alternative (Minor Beneficiaries)*: Notwithstanding any other provision of this Trust Agreement and in accordance with 12 Del. C. § 3303(a), none of the Trustee, the Investment Adviser, the Distribution Adviser or the Trust Protector, if any, shall furnish any account statement or other account information to any beneficiary of the Trust (other than the Notice Recipients), or provide any such beneficiary with notice of the existence of

the Trust or any information regarding the Trust or its terms or assets until such beneficiary attains the age of thirty-five (35).

2. Contingent Beneficiaries. Notwithstanding any other provision of this Trust Agreement and in accordance with 12 Del. C. § 3303(a), the Trustee [and any other Adviser] serving in accordance with the provisions of this Trust Agreement shall not be required to provide any notice or account statement to any contingent beneficiary of a trust or any information regarding the Trust or its terms or assets until such time as the interest of such beneficiary in the Trust vests.

- B. Notice Recipient. During such time or times as the Trustee is instructed not to, or by the terms of this Trust Agreement is not permitted to, provide notice of the existence of the trust or furnish trust information to a beneficiary or beneficiaries hereunder, the Trustee shall furnish any notice, statement, accounting or other instrument permitted or required to be provided to a beneficiary under the terms of this Trust Agreement, to the Notice Recipient. By delivery of said document to the Notice Recipient, the Trustee will be deemed to have satisfied its duties hereunder relating to the provision of such information and shall have no liability for the failure to provide such information to the beneficiary or beneficiaries or for the actions and/or omissions of the Notice Recipient. The Notice Recipient shall have the authority to acknowledge receipt of any said document provided to such person. Further, the Trustee may seek a release from the Notice Recipient on behalf of the applicable beneficiaries in the same manner provided in Section \_\_\_\_\_ with respect to accountings.
- C. Wherever the term "Notice Recipient" appears in this Trust Agreement, it shall mean the following individuals in the indicated order of priority: (1) the Grantor, while living and competent; (2) each current adult beneficiary to whom the Trustee is then authorized to distribute income; or (3) if there is no current adult income beneficiary, the custodial parents or legal guardians of each current minor beneficiary to whom the Trustee is then authorized to distribute income.
- D. For purposes of this Trust Agreement, any beneficiary who is prohibited from receiving notice of the existence of the Trust, whether by virtue of the confidentiality provisions of this Trust Agreement or otherwise, shall for all purposes of this Trust Agreement (including any judicial proceeding and all non-judicial matters, such as granting releases pursuant to 12 Del. C. § 3588 and measuring the limitation period in 12 Del. C. § 3585) be represented and bound by the Notice Recipient.

**VI. DETERMINATION OF EQUIVALENT VALUE FOR GRANTOR TRUSTS**

- A. The Grantor or Trust Protector shall exercise the Power to Substitute granted pursuant to Section \_\_\_ by an instrument in writing signed by the Grantor or Trust Protector and delivered to the Trustee and the Investment Adviser, which certifies to the Trustee and the Investment Adviser that the substituted property and the Trust property for which it is substituted are of equivalent value. Within 30 days of receiving written exercise of the Power to Substitute, the Investment Adviser shall provide the Trustee with a written confirmation that (i) certifies that the property proposed to be substituted by the Grantor or Trust Protector is of equivalent value with the Trust property for which it will be substituted, and (ii) directs the Trustee as to the actions necessary and appropriate to affect the substitution. In the event the Investment Adviser fails to provide the written confirmation described in the preceding sentence or provides notice to the Trustee that the assets or property proposed to be substituted are not of equivalent value with the property to be acquired by the Grantor or Trust Protector, the Investment Adviser will be deemed to have directed the Trustee not to take any action to affect the proposed substitution. The Trustee may, but shall not be required to, seek a judicial determination by a Court of competent jurisdiction that the requirement of equivalent value is satisfied. The reasonable expenses of such independent determination, including any judicial determination, shall be borne by the Grantor exercising each power.
- B. The Trustee shall have no duty or responsibility to inquire into or examine (i) whether the certifications made by the Grantor or Trust Protector and the Investment Adviser hereunder are true and accurate, or (ii) whether any actions directed (or deemed directed) to be taken by the Investment Adviser under this Section \_\_\_ will result in any adverse tax consequence to the Trust, the Grantor, or any beneficiary of the Trust. Further, the Trustee shall have no duty or responsibility to monitor or otherwise confirm that the Investment Adviser is complying with his duties under this Section \_\_\_. The Trustee shall not be liable to any person, including any beneficiary, for any loss to the trust or any other person as a consequence of actions directed (or deemed directed) to be taken under this Section or for any breach resulting from reliance on the certifications provided hereunder or from following the direction (or deemed direction) of the Investment Adviser.

**VII. DECANTING.**

- A. **AUTHORIZATION.** With regard to any trust created by or pursuant to this Trust Agreement of which the Trustee has the power to invade the principal of the trust to make distributions to or for the benefit of one or more persons, regardless of whether such power is subject to an ascertainable or non-ascertainable standard, the Trustee may instead exercise the power by



appointing all or part of the principal of such trust (the "First Trust") in favor of the Trustee of another trust (the "Second Trust"); provided, however, (i) that the beneficiary(ies) of the Second Trust may only be one or more of the beneficiaries of the First Trust, (ii) that any standard to which the Trustee's power to invade the principal is subject in the First Trust is the applicable standard with respect to principal distributions set forth in the Second Trust, and (iii) that the exercise of such power is consistent with the allowances, requirements and/or restrictions regarding the Second Trust set forth in 12 *Del. C.* § 3528, to the extent not otherwise provided to the contrary herein.

- B. PROHIBITION. Except as expressly provided herein, no Trustee of a trust created by or pursuant to this Agreement may exercise its power to invade the principal of such trust, if any, to appoint all or part of the principal of such trust in favor of the trustee of another trust (hereinafter referred to as "Decanting"), regardless of any statutory authority that may otherwise permit any such Decanting. For the avoidance of doubt, the foregoing is intended to be an express prohibition on the Decanting of any trust created hereunder.

#### VIII. MODIFICATION PROHIBITION

- A. Except as expressly provided herein, no Trustee of a Trust created by or pursuant to this Agreement may exercise any statutory power granted to such Trustee under the laws of the applicable jurisdiction, including, without limitation, the power to merge or decant trusts or the power to enter into a non-judicial settlement, to the extent the exercise of such power in such contemplated manner would result in a modification of the terms and provisions of such Trust.

## **SAMPLE LANGUAGE TO CONSIDER IN ANY TRUST**

### **I. RESIGNATION AND REMOVAL OF TRUSTEE AND APPOINTMENT OF SUCCESSOR**

- A. The Trustee may resign by a separate acknowledged instrument delivered to the Grantor or, after the Grantor's death or incapacity, to each adult beneficiary then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust, such resignation to be effective upon the appointment of a successor Trustee. If there are no adult beneficiaries, the instrument of resignation shall be delivered to the parent or legal guardian of each minor beneficiary then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust.
- B. If, upon the resignation of the Trustee, no successor Trustee designated by this Trust Agreement qualifies to act, a majority in number of the adult beneficiaries then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust or, if none, a majority in number of the minor beneficiaries (each such beneficiary acting through his parent or legal guardian) then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust, may appoint a successor Trustee (other than the Grantor).
- C. Any Trustee may be removed, with or without cause, by the Grantor or, if the Grantor is incapable of acting, by a majority in number of the adult beneficiaries then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust or, if none, by a majority in number of the minor beneficiaries (each such beneficiary acting through his parent or legal guardian) then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust. If, upon the removal of the Trustee, no successor Trustee designated by this Trust Agreement qualifies to act, the individuals who remove such Trustee shall appoint a successor Trustee (other than the Grantor), provided, however, that such successor Trustee may not be related or subordinate to the person or persons making such appointment, within the meaning of § 672(c) of the Internal Revenue Code.
- D. If no successor Trustee has qualified within 60 days after the resignation or removal of the Trustee, the resigned or removed Trustee may appoint such a successor, or may bring an appropriate action in court for the appointment of such a successor. The costs and expenses of any such action, including but not limited to the compensation and expenses of attorneys and guardians, shall be paid from principal or income, or both, of the trust, as the Trustee in its sole discretion shall determine.

- E. Notwithstanding the foregoing, a Trustee, for its administrative convenience, may appoint an affiliated corporation or successor of an affiliated corporation as successor Trustee. The Trustee shall effect any such appointment with a written instrument delivered to the party or parties who would receive notice of the Trustee's resignation.
- F. Any appointment of a successor Trustee pursuant to this Trust Agreement shall be made by a separate acknowledged instrument delivered to the Trustee so appointed, shall be effective at such time as may be specified in such instrument, and shall be revocable until such time. A successor Trustee shall qualify by filing its consent to act with the trust records.
- G. After the transfer and delivery of the property held in trust to a successor Trustee, a resigning or removed Trustee of a trust hereunder shall have no further liability or responsibility with respect to such property. No successor Trustee shall be required to examine the acts of any prior Trustee, and any successor Trustee shall be responsible only for those assets which are actually delivered to such Trustee.
- H. No bond or other security shall be required for any reason whatsoever of any Trustee named herein or appointed as herein provided.

## II. CONFLICT OF INTERESTS WITH LENDING

*Northern as lender will require a waiver of conflict of interest prior to any loan to a trust or loan to a trust beneficiary that depends on the exercise of the trustee's discretion to make distributions for the repayment of the loan.*

- A. From time to time, one or more of the trust, the grantor, the grantor's spouse, the individual acting as Trustee and/or one or more entities the interests in which are held directly or indirectly by the trust, may have or wish to enter into a loan ("Loan") with the Corporate Trustee in its individual capacity (the "Lender"). Having the Corporate Trustee acting as both Trustee and Lender poses a conflict of interest for the Corporate Trustee because as Trustee, the Corporate Trustee has a fiduciary duty to preserve the trust property for the beneficiaries, while as Lender, the Corporate Trustee will be a direct or indirect creditor of the trust and in the position of seeking repayment on favorable terms of the Loan from the trust and therefore from the trust property. These competing interests as Lender and as Trustee shall be referred to as the "Loan Conflict of Interest."

The grantor hereby specifically (a) waives, on behalf of [himself/herself] and all beneficiaries hereunder, the Corporate Trustee's Loan Conflict of Interest, and (b) authorizes the Corporate Trustee as Trustee, without notice to or consent by any beneficiary or court and without any disclosure otherwise required pursuant to 12 *Del. C.* § 3312(c) or other applicable law, to take any action or omit to take any action in good faith related to the Loan, including

but not limited to any participation as Trustee in any decision as to when and whether to enter into and repay the Loan or to deal with the collateral and any security interest therein, as though the Loan Conflict of Interest did not exist. Notwithstanding any duty otherwise existing hereunder or at law or in equity, the Corporate Trustee (i) shall have no greater burden to justify its acts as a fiduciary by reason of conflict of interest than it would have in the absence of any conflict and (ii) shall not be liable for any action or omission taken by the Corporate Trustee as Trustee in good faith with respect to the Loan, or any action or omission taken by the Lender pursuant to the Loan or any security interest related thereto while the Loan is outstanding, including but not limited to any decision to pursue the Lender's rights as a security interest holder in the event of any default.

### **III. WAIVER OF PRUDENT INVESTOR RULE, RULE AGAINST SELF-DEALING AND DUTY OF LOYALTY**

A. With the written consent of (i) the Grantor, if living, or (ii) if the Grantor is not then-living, the Primary Beneficiary, [or (iii) if the Primary Beneficiary is a minor or otherwise incapacitated or disabled, a majority of the Notice Recipients,]<sup>6</sup> the Trustee shall have the power to acquire and retain investments not regarded as traditional for trusts, including, without limitation, investments that would be forbidden or would be regarded as imprudent, improper or unlawful under 12 Del. C. § 3302, any applicable jurisdiction's "prudent person" or "prudent investor" rule, any rule or law concerning the duty of loyalty, any rule or law limiting, prescribing, or voiding or making voidable any interested party or self-dealing transaction, or any other rule or law which restricts a fiduciary's capacity to invest. The Trustee may invest in any type of property, wherever located, including, but not limited to, any type of security or option, improved or unimproved real property, and tangible or intangible personal property, and in any manner, including direct purchase, joint ventures, partnerships, limited partnerships, limited liability companies, corporations, mutual funds, business trusts or any other form or participation or ownership whatsoever. Furthermore, the Trustee may acquire property from, transfer property to, obtain services from, provide services to, and otherwise enter into contracts, understandings, arrangements, and other dealings, of any kind or nature, with any person or entity (each such person or entity hereinafter referred to as a "Third Party") whether or not the Third Party is in any manner related to, or affiliated with, the Trustee or any other person or entity related to, or affiliated with, the Trustee and without regard to whether the Trustee, acting in its corporate or personal capacity or in any other capacity, or any person related to, or affiliated with, the Trustee has other contracts, understandings, arrangements or dealings, whether or not for remuneration with the Third Party. Notwithstanding any duty otherwise existing hereunder or at law or in equity,

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<sup>6</sup> To be used only where Notice Recipients have been appointed.

in making investments the Trustee may disregard any or all of the following factors:

1. Whether a particular investment, or the Trust investments collectively, will produce a reasonable rate of return or result in the preservation of principal.
  2. Whether the acquisition or retention of a particular investment, or Trust investments collectively, is consistent with the Trustee's duty of impartiality. No duty of impartiality shall exist.
  3. Whether the acquisition or retention of a particular investment or any aspect of the administration of such investment violates any duty of loyalty or rule against self-dealing. No duty of loyalty shall exist to the extent such duty would limit or preclude self-dealing transactions.
  4. Whether the Trust is diversified. No duty to diversify shall exist.
  5. Whether any or all of the Trust investments would traditionally be classified as too risky or speculative for trusts. The entire Trust may be so invested. The Investment Fiduciary shall have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy.
- B. To the extent the Trustee is directed hereunder as to the exercise of investment powers, the party providing such direction (the "Investment Fiduciary") shall have the authority to direct the Trustee to make any investment which the Trustee is authorized to make under this Section \_\_\_\_\_. The purpose in granting the foregoing authority is to modify the "prudent person" rule, "prudent investor" rule, the application of 12 Del. C. § 3302, the duty of loyalty, the rule against self-dealing, or any rule or law which restricts a fiduciary's ability to invest insofar as any such rule or law would prohibit an investment or investments because of one or more factors listed above, or any other factor relating to the nature of the investment itself.

#### IV. **AMENDMENT OF ADMINISTRATIVE PROVISIONS**

- A. Notwithstanding the preceding provisions of this Trust Agreement, the [Trust Protector *or other fiduciary*], acting in a fiduciary capacity, shall have the power without notice to or consent by any beneficiary or court, by separate writing filed with the trust records, to amend the administrative provisions of this trust, including provisions relating to the Trustee; provided, however, that any amendment to a provision(s) relating to the Trustee shall require the consent of the Trustee. The [Trust Protector *or other fiduciary*]'s exercise of this power and the provisions subject to such exercise shall be conclusive upon all persons interested in the trust. The [Trust Protector *or other fiduciary*] may exercise this power from time to time, and may release this

power in whole or in part, provided that the [Trust Protector *or other fiduciary*] shall not amend the trust in a manner that would alter any beneficial interest under the trust.

**V. AUTHORIZATION TO TERMINATE SMALL TRUSTS**

- A. The Trustee may terminate the trust (i) if, in its sole discretion, continuation of such trust shall no longer be economically feasible, or (ii) if, due to the current fair market value of the trust at such time, the trust would be subject to the minimum fee of the then acting corporate trustee. Following such termination, the Trustee shall distribute the principal to the income beneficiary of the trust or to the committee, conservator, natural or legal guardian or other person responsible for such beneficiary.

# **SAMPLE LANGUAGE TO CONSIDER WHEN NORTHERN IS TO ACT AS A DIRECTED TRUSTEE AS TO INVESTMENTS**

## **I. RESIGNATION, REMOVAL OF INVESTMENT ADVISERS AND APPOINTMENT OF SUCCESSORS**

- A. The Investment Adviser shall be entitled to resign at any time by delivery of a separate writing to the then-acting Trustee as well as the grantor, or upon the grantor's death or incapacity, to those adult persons over the age of eighteen (18) then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust, or if none, to the parent or legal guardian of each minor beneficiary then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust. The Investment Adviser may also be removed with or without cause by the grantor, or upon the grantor's death or incapacity, a majority of those adult persons over the age of eighteen (18) then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust, or if none, the parent or legal guardian of each minor beneficiary then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust, provided that a successor Investment Adviser is appointed by such persons, in writing, at the time of such removal.
- B. If, upon the resignation or unwillingness or inability to serve of the Investment Adviser, no successor Investment Adviser qualifies to act, the grantor, or upon the grantor's death or incapacity, a majority of those adult persons over the age of eighteen (18) then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust, or if none, the parent or legal guardian of each minor beneficiary then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust shall have the right to appoint any person or persons (whether individual, corporate or other entity) in whatever number shall be determined to be appropriate, to serve as successor Investment Adviser, and shall provide notice to the Trustee.

## **II. INVESTMENT ADVISER COMPENSATION**

- A. **INVESTMENT ADVISER COMPENSATION.** No Investment Adviser shall be entitled to receive any compensation for serving hereunder. However, each Investment Adviser of each trust hereunder shall be entitled to be reimbursed from the income or principal of such trust for reasonable expenses incurred as such Investment Adviser (including, without limitation, reasonable attorney fees and investment-counsel fees).

1. *Alternative.* Each Investment Adviser shall be entitled to reasonable compensation based on his or her normal hourly rate at his or her principal place of business, as that hourly rate may be determined from time to time.

In addition to such compensation, each Investment Adviser of each trust hereunder shall be entitled to be reimbursed from the income or principal of such trust for reasonable expenses incurred as such Investment Adviser (including, without limitation, reasonable attorney fees and investment-counsel fees).

2. *Alternative.* Each Investment Adviser shall be entitled to reasonable annual compensation in the amount of \_\_\_\_\_ basis points, calculated using the value of the trust assets as of the end of the preceding calendar year. In addition to such compensation, each Investment Adviser of each trust hereunder shall be entitled to be reimbursed from the income or principal of such trust for reasonable expenses incurred as such Investment Adviser (including, without limitation, reasonable attorney fees and investment-counsel fees).

B. PAYMENT. The Trustee shall pay out of the income or principal or both, as it in its sole discretion determines, the [compensation,] charges and expenses of each of the Investment Advisers and, notwithstanding any duty otherwise existing at law or in equity, shall have no obligation to inquire into the reasonableness of any such charges or expenses.



## **SAMPLE LANGUAGE TO CONSIDER WHERE NORTHERN IS TO ACT AS A DIRECTED TRUSTEE AS TO DISTRIBUTIONS**

### **I. STANDARD OF LIABILITY FOR DISTRIBUTION ADVISER**

- A. No Distribution Adviser shall be liable hereunder for any action taken or omission to act absent proof that the Distribution Adviser personally engaged in wilful misconduct or gross negligence. By accepting an appointment to serve or act hereunder, such Distribution Adviser shall be deemed to have consented to submit to the jurisdiction of each court in which jurisdiction and venue are proper to review the administration of the trust and to be made parties to any proceedings in each such court that place in issue the decisions or actions of the Distribution Adviser.

### **II. RESIGNATION, REMOVAL OF DISTRIBUTION ADVISERS AND APPOINTMENT OF SUCCESSORS**

- A. The Distribution Adviser shall be entitled to resign at any time by delivery of a separate writing to the then-acting Trustee as well as the grantor, or upon the grantor's death or incapacity, to those adult persons over the age of eighteen (18) then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust, or if none, to the parent or legal guardian of each minor beneficiary then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust.
- B. The Distribution Adviser may also be removed with or without cause by the grantor, or upon the grantor's death or incapacity, a majority of those adult persons over the age of eighteen (18) then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust, or if none, the parent or legal guardian of each minor beneficiary then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust, provided that a successor Distribution Adviser is appointed by such persons, in writing, at the time of such removal.
- C. If, upon the resignation or unwillingness or inability to serve of the Distribution Adviser, no successor Distribution Adviser qualifies to act, the grantor, or upon the grantor's death or incapacity, a majority of those adult persons over the age of eighteen (18) then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust, or if none, the parent or legal guardian of each minor beneficiary then eligible to receive distributions of income (whether discretionary or mandatory) from the Trust shall have the right to appoint any person or persons (whether individual, corporate or other entity) in whatever number shall be determined to be appropriate, to serve as successor Distribution Adviser, and shall provide notice to the Trustee.

### III. DISTRIBUTION ADVISER COMPENSATION

A. DISTRIBUTION ADVISER COMPENSATION. No Distribution Adviser shall be entitled to receive any compensation for serving hereunder. However, each Distribution Adviser of each trust hereunder shall be entitled to be reimbursed from the income or principal of such trust for reasonable expenses incurred as such Distribution Adviser (including, without limitation, reasonable attorney fees).

1. *Alternative.* Each Distribution Adviser shall be entitled to reasonable compensation based on his or her normal hourly rate at his or her principal place of business, as that hourly rate may be determined from time to time. In addition to such compensation, each Distribution Adviser of each trust hereunder shall be entitled to be reimbursed from the income or principal of such trust for reasonable expenses incurred as such Distribution Adviser (including, without limitation, reasonable attorney fees).

2. *Alternative.* Each Distribution Adviser shall be entitled to reasonable annual compensation in the amount of \_\_\_\_\_ basis points, calculated using the value of the trust assets as of the end of the preceding calendar year. In addition to such compensation, each Distribution Adviser of each trust hereunder shall be entitled to be reimbursed from the income or principal of such trust for reasonable expenses incurred as such Distribution Adviser (including, without limitation, reasonable attorney fees).

B. PAYMENT. The Trustee shall pay out of the income or principal or both, as it in its sole discretion determines, the [compensation,] charges and expenses of each of the Advisers and, notwithstanding any duty otherwise existing at law or in equity, shall have no obligation to inquire into the reasonableness of any such charges or expenses.