

**SECURITIES ACCOUNT CONTROL AGREEMENT – Broker Dealer**  
**CAPTIVE INSURANCE COMPANIES**

This AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, among Commissioner of Commerce and Insurance, State of Tennessee, and his successor or successors (the “COMMISSIONER”);

\_\_\_\_\_ (the “CUSTODIAN”);

and \_\_\_\_\_ (the “INSURER”),

an insurance corporation organized under the laws of the State of \_\_\_\_\_

with its principal place of business at \_\_\_\_\_.

**WITNESSETH:**

WHEREAS, the INSURER is required to make a deposit of cash or securities eligible for deposit under Tennessee Code Annotated, Section 56-13-103(c)(1)(C) and 56-13-105, for the protection of its policyholders wherever located; and

WHEREAS, in accordance with said law and the laws of some other states where INSURER does business that require or permit the INSURER to custody said property for the Commissioner of its state of domicile, the INSURER, with the approval of the COMMISSIONER, has selected the CUSTODIAN as custodian of said property and the CUSTODIAN has agreed to act as a custodian under this agreement; and

WHEREAS, the CUSTODIAN maintains securities account number \_\_\_\_\_ (the “ACCOUNT”) for which CUSTODIAN will act as custodian as described herein; and

WHEREAS, neither the CUSTODIAN nor INSURER know of any claim to or interest in the Account, except for claims and interests of the parties referred to in this agreement; and

WHEREAS, the CUSTODIAN is a broker/dealer, a member of the Financial Industry Regulatory Authority, Inc., registered with the Securities and Exchange Commission and a member of the Securities Investors Protection Corporation (“SIPC”) and has agreed to serve as CUSTODIAN.

NOW, THEREFORE, the parties to this agreement, in consideration of the mutual promises herein expressed, covenant and agree as follows:

1. Control by Commissioner. CUSTODIAN will comply with all notifications it receives directing it to transfer or redeem any property in the Account (each “entitlement order”) originated by COMMISSIONER without further consent by INSURER.
2. Insurer’s Rights in Account. Except as otherwise provided in this agreement, CUSTODIAN will comply with entitlement orders originated by INSURER without further consent by COMMISSIONER. If COMMISSIONER notifies CUSTODIAN that COMMISSIONER will exercise exclusive control over the ACCOUNT (“Notice of Exclusive Control”), CUSTODIAN will cease:
  - a. Complying with entitlement orders or other directions concerning the ACCOUNT originated by INSURER; and
  - b. Distributing to Insurer interest and dividends on property in the ACCOUNT.

Until CUSTODIAN receives a Notice of Exclusive Control, CUSTODIAN may distribute to INSURER all interest and regular cash dividends on property in the ACCOUNT. Notwithstanding the foregoing, securities that CUSTODIAN does not hold in custody or annuities are not considered property in the ACCOUNT for the purposes of this agreement.

INSURER may not withdraw property from the ACCOUNT. CUSTODIAN will not comply with any entitlement order originated by INSURER that would require CUSTODIAN to make free delivery to INSURER or any other person.

INSURER further warrants and agrees that INSURER will not use any loan proceeds associated with or arising out of this agreement for the purchase of investment securities with CUSTODIAN, any affiliate of CUSTODIAN, or with any other investment or securities firm.

3. Priority of Commissioner's Security Interest. Custodian subordinates in favor of COMMISSIONER any security interest, lien, or right to setoff it may have, now, or in the future, against the ACCOUNT or property in the ACCOUNT, *except* that CUSTODIAN will retain its prior lien on property in the ACCOUNT to secure payment for property purchased for the ACCOUNT and commissions and fees for the ACCOUNT.

CUSTODIAN will not agree with any third party (subject to court order, applicable law, rule or regulation) that CUSTODIAN will comply with entitlement orders originated by the third party.

4. Statements, Confirmations, and Notices of Adverse Claims. Custodian will send copies of all statements and confirmations for the Account simultaneously to INSURER and COMMISSIONER. CUSTODIAN will use reasonable efforts to notify promptly COMMISSIONER and INSURER if any other person claims that it has a property interest in the property in the ACCOUNT and that it is a violation of that person's rights for anyone else to hold, transfer, or deal with the property. Insurer hereby authorizes CUSTODIAN to provide ACCOUNT related information to COMMISSIONER at COMMISSIONER's request.
5. Custodian's Responsibility. With the exception of permitting a withdrawal, delivery, or payment in violation of this agreement, CUSTODIAN will not be liable to Commissioner for complying with entitlement orders from INSURER that are received by CUSTODIAN before CUSTODIAN receives and has a reasonable opportunity to act on a notice of exclusive control.

CUSTODIAN will not be liable to INSURER for complying with a notice of exclusive control or with entitlement orders originated by COMMISSIONER, even if INSURER notifies CUSTODIAN that COMMISSIONER is not legally entitled to issue the entitlement order or notice of exclusive control, unless:

- a. CUSTODIAN takes an action in violation of an injunction, restraining order, or other legal process served on CUSTODIAN enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order or other legal process,
- b. This agreement does not create any obligation of CUSTODIAN except for those expressly set forth in this agreement. In particular, CUSTODIAN need not investigate whether COMMISSIONER is entitled under COMMISSIONER's agreements with INSURER to give an entitlement order or a notice of exclusive control. CUSTODIAN may rely on notices and communications it believes given by the appropriate party, and

- c. The parties agree and acknowledge that CUSTODIAN shall place a “lock” on the ACCOUNT in accordance with CUSTODIAN’s account policies and shall seek COMMISSIONER’s approval with respect to the closing of the ACCOUNT by INSURER and/or any material withdrawal by INSURER. INSURER shall be responsible for obtaining such approval and CUSTODIAN shall have no liability for any of INSURER’s losses or damages to the extent that such is related to the failure to obtain COMMISSIONER’s approval.
6. Indemnity. INSURER will indemnify CUSTODIAN, its parent, subsidiaries and affiliates, and each of their officers, directors, employees, and agents against claims, liabilities, and expenses arising out of this agreement (including reasonable attorneys’ fees and disbursements), except to the extent the claims, liabilities, or expenses are caused by CUSTODIAN’s gross negligence or willful misconduct.
7. Termination and Survival. COMMISSIONER may terminate this agreement by notice to CUSTODIAN and INSURER. CUSTODIAN may terminate this agreement on 30 days’ notice to COMMISSIONER and INSURER. If COMMISSIONER notifies CUSTODIAN that COMMISSIONER’s security interest in the ACCOUNT has terminated, this agreement will immediately terminate. Paragraph 5, Custodian’s Responsibility, and Paragraph 6, Indemnity, shall survive the termination of this agreement.
8. Assignability/Governing Law. This agreement shall not be assignable without the prior written consent of the other parties. Subject to the foregoing sentence, this agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. The laws of the State of Tennessee will govern this agreement.
9. Waiver of Jury Trial. The parties to this agreement acknowledge that the right to trial by jury is a constitutional one, but that it may be waived. Each party, after consulting (or having had the opportunity to consult) with counsel of its choice, knowingly and voluntarily, and for their mutual benefit, waives any right to trial by jury in the event of litigation involving the performance or enforcement of, or in any way related to, this agreement.
10. Entire Agreement. This agreement is the entire agreement, and supersedes any prior agreements or contemporaneous oral agreements of the parties concerning its subject matter.
11. Amendments. No amendment of, or waiver of a right under, this agreement will be binding unless it is in writing and signed by each of the parties hereto.
12. Severability. To the extent a provision of this agreement is unenforceable; this agreement will be construed as if the unenforceable provision was omitted.
13. Successors and Assigns. A successor to or assignee of COMMISSIONER’s rights and obligations under this agreement between COMMISSIONER and INSURER will succeed to COMMISSIONER’s rights and obligations under this agreement.
14. Securities Investment Protection Corporation. Securities in the ACCOUNT are protected by the coverage provided by the Securities Investment Protection Corporation (“SIPC”). The coverage is disclosed to the Insurer in the Insurer’s monthly statements.

15. Notices. A notice or other communication to a party under this agreement will be in writing (except that entitlement orders may be given orally), will be sent to the party's address set forth below or to such other address as the party may notify the other parties and will be effective upon receipt.
16. Waiver of Set-off. Except pursuant to INSURER's ACCOUNT agreements relating to the ACCOUNT, CUSTODIAN's account policies, securities settlement, law, or regulation, the securities in this ACCOUNT shall at no time be subject to any right, claim, security interest, lien or claim of any kind or right of set-off in favor of the INSURER, the CUSTODIAN or any person claiming through the INSURER or CUSTODIAN and such parties hereby irrevocably waive their respective rights, if any, to assert such claims against said securities.
17. Compensation of Custodian. CUSTODIAN agrees to hold COMMISSIONER harmless from any liability for fees and expenses of the CUSTODIAN for account services.
18. Reservation of Rights. This agreement is entered into without prejudice of the right of the COMMISSIONER to exercise any powers conferred upon him/her by law in the exercise of his/her statutory responsibilities.
19. This agreement shall be executed in triplicate and shall become effective as between the COMMISSIONER and the INSURER upon execution by the COMMISSIONER, and upon execution by the INSURER, evidenced by signature of an authorized officer of the INSURER, and upon agreement and execution by the CUSTODIAN, evidenced by the signature of an authorized officer.

EXECUTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

STATE OF TENNESSEE  
 COMMISSIONER OF COMMERCE AND INSURANCE

By: \_\_\_\_\_

Date: \_\_\_\_\_

CUSTODIAN

By: \_\_\_\_\_

Date: \_\_\_\_\_

INSURER

By: \_\_\_\_\_

Date: \_\_\_\_\_