



Date: 6/20/23

Virtual Meeting

LIFE RISK-BASED CAPITAL (E) WORKING GROUP

Thursday, June 22, 2023

12:00 – 1:00 p.m. ET / 11:00 a.m. – 12:00 p.m. CT / 10:00 – 11:00 a.m. MT / 9:00 – 10:00 a.m. PT

ROLL CALL

Philip Barlow, Chair	District of Columbia	William Leung	Missouri
Sheila Travis	Alabama	Michael Muldoon	Nebraska
Thomas Reedy	California	Seong-min Eom	New Jersey
Wanchin Chou	Connecticut	Bill Carmello	New York
Dalora Schafer	Florida	Andrew Schallhorn	Oklahoma
Vincent Tsang	Illinois	Rachel Hemphill	Texas
Mike Yanacheak	Iowa	Tomasz Serbinowski	Utah
Fred Andersen	Minnesota		

NAIC Support Staff: Dave Fleming

AGENDA

1. Consider Adoption of the Generator of Economic Scenarios (GOES) (E/A) Subgroup Charges—*Philip Barlow (DC)* Attachment 1
2. Discuss Proposal 2023-08-L Comfort Trusts—*Philip Barlow (DC)*
  - New York Comment Letter Attachment 2
  - Proposal 2023-08-L Attachments 3&4
3. Discuss Working Agenda—*Philip Barlow (DC)* Attachment 5
4. Discuss Any Other Matters Brought Before the Working Group—*Philip Barlow (DC)*
5. Adjournment

1. The **Generator of Economic Scenarios (GOES) (E/A) Subgroup** of the Life Risk-Based Capital (E) Working Group and the Life Actuarial (A) Task Force will:
  - A. Monitor that the economic scenario governance framework is being appropriately followed by all relevant stakeholders involved in scenario delivery.
  - B. Review material economic scenario generator updates, either driven by periodic model maintenance or changes to the economic environment and provide recommendations.
  - C. Regularly review key economic conditions and metrics to evaluate the need for off-cycle or significant economic scenario generator updates and maintain a public timeline for economic scenario generator updates.
  - D. Support the implementation of an economic scenario generator for use in statutory reserve and capital calculations.
  - E. Develop and maintain acceptance criteria that reflect history as well as plausibly more extreme scenarios.

Submitted via email.

June 1, 2023

Thank you for giving NYDFS the opportunity to comment on this proposal. Please note that we don't support the proposal because it leaves control over the supporting assets with the reinsurer. This proposal does not seem to mitigate the counterparty credit exposure for the cedant.

We look forward to continue discussing this proposal in the coming meetings of this working group. Thank you.

Best Regards,

Roberto Paradis, CPA, AFE  
Department of Financial Services  
Life Bureau  
One State Street  
New York, NY 10004

### Capital Adequacy (E) Task Force

#### RBC Proposal Form

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Capital Adequacy (E) Task Force                      | <input type="checkbox"/> Health RBC (E) Working Group      | <input checked="" type="checkbox"/> Life RBC (E) Working Group              |
| <input type="checkbox"/> Catastrophe Risk (E) Subgroup                        | <input type="checkbox"/> P/C RBC (E) Working Group         | <input type="checkbox"/> Longevity Risk (A/E) Subgroup                      |
| <input type="checkbox"/> Variable Annuities Capital. & Reserve (E/A) Subgroup | <input type="checkbox"/> Economic Scenarios (E/A) Subgroup | <input type="checkbox"/> RBC Investment Risk & Evaluation (E) Working Group |

<p style="text-align: right;">DATE: <u>4/11/23</u></p> <p><b>CONTACT PERSON:</b> <u>Andrew Holland</u></p> <p><b>TELEPHONE:</b> <u>212-839-5882</u></p> <p><b>EMAIL ADDRESS:</b> <u>aholland@sidley.com</u></p> <p><b>ON BEHALF OF:</b> <u>J.P. Morgan Securities LLC</u></p> <p><b>NAME:</b> <u>Philip Prince</u></p> <p><b>TITLE:</b> <u>Managing Director</u></p> <p><b>AFFILIATION:</b> <u>Interested Party</u></p> <p><b>ADDRESS:</b> <u>383 Madison Ave., 7th Floor</u> <u>New York, NY 10017</u></p>	<p style="text-align: center;"><b>FOR NAIC USE ONLY</b></p> <hr/> <p>Agenda Item # <u>2023-08-L</u> Year <u>2023</u></p> <hr/> <p style="text-align: center;"><b>DISPOSITION</b></p> <p><b>ADOPTED:</b></p> <p><input type="checkbox"/> TASK FORCE (TF) _____</p> <p><input type="checkbox"/> WORKING GROUP (WG) _____</p> <p><input type="checkbox"/> SUBGROUP (SG) _____</p> <p><b>EXPOSED:</b></p> <p><input type="checkbox"/> TASK FORCE (TF) _____</p> <p><input type="checkbox"/> WORKING GROUP (WG) _____</p> <p><input type="checkbox"/> SUBGROUP (SG) _____</p> <p><b>REJECTED:</b></p> <p><input type="checkbox"/> TF <input type="checkbox"/> WG <input type="checkbox"/> SG _____</p> <p><b>OTHER:</b></p> <p><input type="checkbox"/> DEFERRED TO _____</p> <p><input type="checkbox"/> REFERRED TO OTHER NAIC GROUP _____</p> <p><input type="checkbox"/> (SPECIFY) _____</p>
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**IDENTIFICATION OF SOURCE AND FORM(S)/INSTRUCTIONS TO BE CHANGED**

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Health RBC Blanks       | <input type="checkbox"/> Property/Casualty RBC Blanks       | <input type="checkbox"/> Life and Fraternal RBC Blanks                  |
| <input type="checkbox"/> Health RBC Instructions | <input type="checkbox"/> Property/Casualty RBC Instructions | <input checked="" type="checkbox"/> Life and Fraternal RBC Instructions |
| <input type="checkbox"/> Health RBC Formula      | <input type="checkbox"/> Property/Casualty RBC Formula      | <input type="checkbox"/> Life and Fraternal RBC Formula                 |
| <input type="checkbox"/> OTHER _____             |   |   |

**DESCRIPTION/REASON OR JUSTIFICATION OF CHANGE(S)**

See attached.

**Additional Staff Comments:**

**\*\* This section must be completed on all forms.**

**Revised 2-2023**

## RBC Proposal Form – Custody Control Accounts

### Background

- Life reinsurance transactions with Reinsurers which are licensed, accredited or approved as reciprocal jurisdiction reinsurers in a Cedant's state of domicile generally do not require a collateral mechanism to provide credit for reinsurance (CFR).
- In many life reinsurance transactions, however, the parties nonetheless negotiate and agree to collateral arrangements for commercial reasons.
  - Such collateral arrangements are common in a variety of life reinsurance transactions, including block acquisitions, embedded value and reserve financings, and pension risk transfers.
- The Life RBC Manual instructions currently allow a Cedant to avoid an overstatement of RBC charges that would otherwise be applied for credit exposure to reinsurance counterparties if such collateral is held by the Cedant as funds withheld or a "comfort" reinsurance trust is established by the Reinsurer.
- Other collateral mechanisms can provide the same level of security to Cedants with lower costs and greater flexibility.
  - The Finance industry widely supports and leverages custodial control accounts ("Custody Control Accounts") where segregated collateralization under third-party control is required (e.g., pledges of assets to Federal Home Loan Banks, posting of initial margin and variation margin on derivatives transactions).
- A Custody Control Account can similarly hold assets pledged by a Reinsurer for the benefit of a Cedant in connection with a reinsurance transaction.
- A Custody Control Account can provide the same protections to the Cedant as would be provided by a trust arrangement. However, a Custody Control Account operates at a reduced cost due to increased scale and automation.
- This proposal would amend the Life RBC formula to similarly avoid overstatement of credit risk on a reinsurance transaction when collateral is held by the Cedant in a Custody Control Account.
  - No changes to the Credit for Reinsurance Model Law or Credit for Reinsurance Model Regulation are being proposed.

## Proposed Changes to Life RBC Instructions

From Risk-Based Capital Forecasting & Instructions – Life and Fraternal, 2019

### REINSURANCE

LR016 (p. 53 of the 2019 Edition)

There is a risk associated with recoverability of amounts from reinsurers. The risk is deemed comparable to that represented by bonds between risk classes 1 and 2 and is assigned a pre-tax factor of 0.78 percent. To avoid an overstatement of risk-based capital, the formula gives a 0.78 percent pre-tax credit for reinsurance with non-authorized and certified companies, for reinsurance among affiliated companies, for reinsurance with funds withheld or reinsurance with authorized reinsurers that is supported by equivalent trusted **or custodied** collateral ~~that meets the requirements of the types~~ stipulated in **paragraph 18 of** Appendix A-785 (Credit for Reinsurance), where there have been regular bona fide withdrawals from such trusted **or custodied** collateral to pay claims or recover payments of claims during the calendar year covered by the RBC report, and for reinsurance involving policy loans. Withdrawals from trusted **or custodied** collateral that are less than the amounts due the ceding company shall be deemed to not be bona fide withdrawals. **For purposes of these instructions, “custodied collateral” shall mean assets held pursuant to a custodial arrangement with a qualified U.S. financial institution (as defined in Appendix A-785 (Credit for Reinsurance)) pursuant to which the underlying assets are segregated from other assets of the reinsurer and are subject to the exclusive control of, and available to, the ceding company in the event of the reinsurer’s failure to pay under, and otherwise pursuant to the terms of, the subject reinsurance agreement.**

### Additional Resource Materials

- Presentation dated October 2022 containing Summary of Contractual Terms for Custody Control Arrangement and Schematic Diagram
- Form of Custody Control Agreement Wording
- Comparison Chart – CFR Trust, Comfort Reinsurance Trust and Custody Control Account

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# Custody Control Accounts

October 2022

FOR DISCUSSION PURPOSES ONLY

**J.P.Morgan**

# Credit mitigation vs. capital relief

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- ▶ Life reinsurance transactions with licensed, accredited or reciprocal jurisdiction reinsurers (RJR) generally do not require a collateral mechanism to provide credit for reinsurance (CFR).
- ▶ Separate and distinct from CFR, the Life RBC Manual instructions reference certain collateral mechanisms (e.g., funds withheld or trusteed collateral), which, if present, allow the Cedant to avoid an overstatement of RBC charges that would otherwise be applied for credit exposure to reinsurance counterparties. The Life RBC formula addresses unmitigated credit exposure to reinsurers, whether admitted/accredited, unauthorized or RJR, and offers RBC credit only for those listed collateral mechanisms.
- ▶ While the subject provision of the Life RBC Manual allows an RBC credit for certain non-CFR collateral mechanisms, other credit risk mitigation (comfort) arrangements have been developed by large custodial institutions which are not similarly treated, resulting in significant inefficiencies in those transactions.



# Growing demand for credit protection, where Custody Control Accounts can be leveraged

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- ▶ In many life reinsurance transactions, where the parties negotiate and agree to collateral arrangements for commercial reasons, they are forced to use trustee assets in order to achieve the desired RBC result, even where a trust is not needed to satisfy CFR requirements; such "comfort trusts" are common in a variety of life reinsurance transactions, including block acquisitions, embedded value and reserve financings and pension risk transfers
- ▶ Other collateral mechanisms can provide the same level of security to Cedants with lower costs and greater flexibility.
- ▶ The Finance industry widely supports and leverages custodial control accounts ("Custody Control Accounts") where segregated collateralization under third-party control is required (e.g., pledges to FHLBs, Segregated Initial Margin, variation margin for 40 Act clients, etc.). In the same way, a Custodian can hold assets pledged by the Reinsurer for the benefit of the Cedant in connection with a reinsurance transaction.
- ▶ The intent of the Custody Control Account is to provide the same protections to the Cedant as would be provided by a trust arrangement.
- ▶ However, a Custody Control Account offers the same operational control as a trust arrangement, at a reduced cost due to increased scale and automation.

# Proposed changes to RBC instruction

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## From Risk-Based Capital Forecasting & Instructions – Life and Fraternal, 2019

### REINSURANCE

LR016 (p. 53 of the 2019 Edition)

There is a risk associated with recoverability of amounts from reinsurers. The risk is deemed comparable to that represented by bonds between risk classes 1 and 2 and is assigned a pre-tax factor of 0.78 percent. To avoid an overstatement of risk-based capital, the formula gives a 0.78 percent pre-tax credit for reinsurance with non-authorized and certified companies, for reinsurance among affiliated companies, for reinsurance with funds withheld or reinsurance with authorized reinsurers that is supported by equivalent trusted **or custodied** collateral ~~that meets the requirements of the types~~ stipulated in **paragraph 18 of** Appendix A-785 (Credit for Reinsurance), where there have been regular bona fide withdrawals from such trusted **or custodied** collateral to pay claims or recover payments of claims during the calendar year covered by the RBC report, and for reinsurance involving policy loans. Withdrawals from trusted **or custodied** collateral that are less than the amounts due the ceding company shall be deemed to not be bona fide withdrawals. **For purposes of these instructions, “custodied collateral” shall mean assets held pursuant to a custodial arrangement with a qualified U.S. financial institution (as defined in Appendix A-785 (Credit for Reinsurance)) pursuant to which the underlying assets are segregated from other assets of the reinsurer and are subject to the exclusive control of, and available to, the ceding company in the event of the reinsurer’s failure to pay under, and otherwise pursuant to the terms of, the subject reinsurance agreement.**

# Contractual Terms for Custody Control Arrangement

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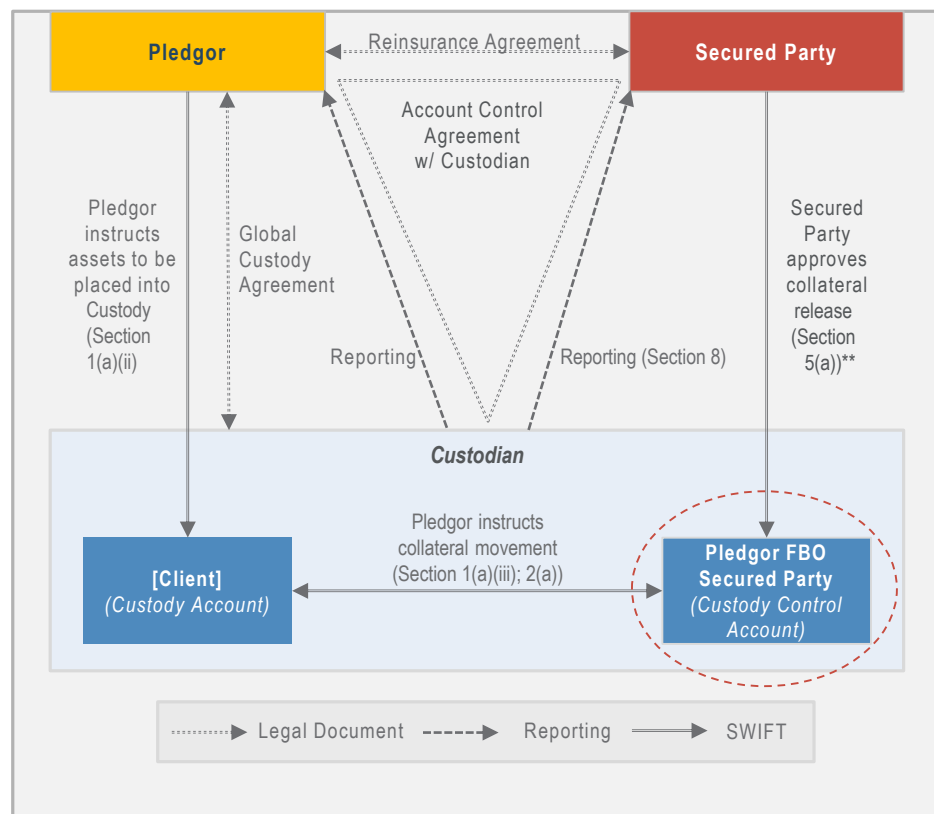
- Establishment of the Account
  - Reinsurer establishes one or more accounts pursuant to a Custody Agreement with the Custodian
  - The account is recorded as separate from any other assets of the Client, the Custodian, or other customers of the Custodian
- Pledge of Account
  - Pursuant to the Reinsurance Agreement or a separate Security Agreement (between Reinsurer and Ceding Company), the Reinsurer pledges the account, including the assets therein, to the Ceding Company
- Pledgor, Secured Party and Custodian enter into the Account Control Agreement (ACA)
  - Account Control Agreement is intended to create adequate control of the account and perfection of the lien on the account and its assets in accordance with Articles 8 and 9 of the Uniform Commercial Code (UCC)
- Investment of the Account (Pre-Default) [Section 5]
  - Reinsurer and Ceding Company agree to parameters for the ability of the Reinsurer to give instructions for withdrawals and investments of the account
  - Generally, so long as no event of default has occurred (including credit or other events identified in the Reinsurance Agreement), the Reinsurer may give instructions for investments or other withdrawals (of assets in excess of required funding)
  - At the agreement of the parties, such instructions may be structured to require dual consent or other monitoring mechanisms as agreed in the ACA

## Contractual Terms for Custody Control Arrangement (Cont.)

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- Notice of Exclusive Control [Section 5]
  - Following its receipt of a notice of exclusive control from the Ceding Company, the Custodian will take instructions solely from the Ceding Company without further consent of the Reinsurer
  - Under the terms of the ACA, instructions from the Ceding Company may include full withdrawal of the assets in the account
  - The ability of the Ceding Company to deliver a notice of exclusive control is restricted only under the Reinsurance Agreement or Security Agreement and is not restricted by the ACA
  - The Custodian does not monitor whether the notice of exclusive control was permitted under Reinsurance or Security Agreement

# Custody Control Account Schematic\*



## Legal & Operational Highlights

### Legal Documents Required

- ▶ **Global Custody Agreement:** Bilateral agreement for custodial services between Pledgor and Custodian
- ▶ **Account Control Agreement:** Tri-party agreement between Pledgor, Secured Party and Custodian

### Legal & Operational Framework

- ▶ Custody Bank acts as Custodian (not as Trustee)
- ▶ Custodian has subordinated lien over assets in the control account (though may retain a first priority lien for fees and expenses) (Section 4(b))
- ▶ Assets are segregated in a control account in the Pledgor's name FBO the Secured Party (Section 1(a)(iii); 2(a))
- ▶ The Secured Party can assume control of the account at any time upon the satisfaction of conditions as stipulated in the underlying bilateral agreement w/ the Pledgor (e.g. an event of default as notified and exclusively determined by the Secured Party) and following Custodian's receipt of a Notice of Exclusive Control (NOEC). Custodian has a reasonable time to act on the instruction without any requirement to validate the event of default (Section 5(a))
- ▶ Custodian is indemnified for following instructions (Section 15(a))
- ▶ Custodian acts upon instructions by Pledgor to deliver assets into the control account
- ▶ Parties have flexibility to decide on the control model – i.e., whether release and/or substitution of assets requires single party or dual (Pledgor and Secured Party) instructions (Section 5(a))
- ▶ The Account Control Agreement supplements a Global Custody Agreement and is not a standalone agreement (Section 1(a)(iii))

## Key Features

<b>Custody</b>	<ul style="list-style-type: none"> <li>▶ Pledgor instructs assets to be placed into custody account free of payment</li> <li>▶ Asset servicing on securities that are registered in J.P. Morgan's nominee name</li> <li>▶ Automated income transfer capability, back to main custody account in respect of any income earned on depository eligible assets can be provided (Section 6)</li> </ul>
<b>Control</b>	<ul style="list-style-type: none"> <li>▶ SWIFT message release automation for collateral release AND substitutions. Support for different arrangements (e.g. Unilateral/Dual Authentication)</li> <li>▶ Secured Party can assume control of account upon Notice of Exclusive Control instruction to the Custodian (NOEC) (Section 5(a))</li> </ul>
<b>Reporting</b>	<ul style="list-style-type: none"> <li>▶ Consolidated custody reporting available to both client and secured party (Section 8)</li> <li>▶ View and schedule customized or pre-defined reports</li> <li>▶ Intra-day and end-of-day reporting via SWIFT</li> </ul>

\*Section references on this slide refer to the form of Account Control Agreement provided to the NAIC

\*\*This model is illustrative only; the Account Control Agreement template provides optionality of control models - unilateral by either Pledgor or Secured Party, or dual

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The chart below summarizes key comparisons between: (1) a trust account established by a reinsurer to provide an asset or reduction from liability to a ceding company for reinsurance ceded (a “Credit for Reinsurance Trust”); (2) a trust account established by a reinsurer in connection with a reinsurance agreement that is not necessary to provide an asset or reduction from liability for reinsurance but rather provides credit protections to the ceding company (a “Comfort Trust”); and (3) a custodial account established by a reinsurer to provide credit protections to a ceding company in connection with a reinsurance agreement (a “Custody Control Account”). With respect to a Custody Control Account, the chart contemplates the structure proposed by JPMorgan in connection with its proposed changes to the RBC Manual.

	<b>Credit for Reinsurance Trust</b>	<b>Comfort Trust</b>	<b>Custody Control Account</b>
<b>Nature of Reinsurer</b>	Reinsurer is <b>not</b> licensed or accredited in Cedant’s domiciliary jurisdiction.	Reinsurer is licensed or accredited in the Cedant’s domiciliary jurisdiction.	Reinsurer is licensed or accredited in the Cedant’s domiciliary jurisdiction.
<b>Effect on Credit for Reinsurance</b>	Collateral in trust provides a reduction for liability (statutory credit for reinsurance) where Reinsurer is not licensed or accredited.	No effect on Credit for Reinsurance as collateral is not required in order for the Cedant to receive statutory reserve credit.	No effect on Credit for Reinsurance as collateral is not required in order for the Cedant to receive statutory reserve credit.
<b>Cedant Reinsurance Counterparty Credit Exposure RBC Charges and Credits</b>	An RBC credit is applied to offset the RBC charge for reinsurance counterparty credit exposure because such exposure has been mitigated through the trust mechanism.	An RBC credit is applied to offset the RBC charge for reinsurance counterparty credit exposure because such exposure has been mitigated through the trust mechanism.	Although credit exposure would be reduced under a Custody Control Account similar to both a Credit for Reinsurance Trust or Comfort Trust, the current RBC instructions mandate a reinsurance counterparty credit charge with no offsetting credit because of the form of the legal agreement governing the collateralization arrangement.  Under JPMorgan’s proposed revisions to the RBC Instructions, the RBC charges and credits across all three of these arrangements would be harmonized. Custodial Account Equivalent with a trust.

	<b>Credit for Reinsurance Trust</b>	<b>Comfort Trust</b>	<b>Custody Control Account</b>
<b>Structure</b>	Assets deposited in trust with a third-party trustee by the Reinsurer for the benefit of the Cedant.	Assets deposited in trust with a third-party trustee by the Reinsurer for the benefit of the Cedant.	Assets deposited in custodial account established by the Reinsurer with a third-party account bank subject to the first priority lien and exclusive control of the Cedant.
<b>Asset Classes</b>	Assets permitted to be deposited in trust are specified by the applicable statute. Frequently limited to cash, U.S. Treasuries or Agencies and SVO Listed Securities.	Asset classes are subject to the RBC instructions, and additionally include foreign securities, equity interests and interests in investment companies.	Asset classes would be subject to the RBC instructions, and additionally include foreign securities, equity interests and interests in investment companies.
<b>Valuation</b>	Cedant is only allowed to receive credit for reinsurance based on the <u>market value</u> of assets of the Trust Account.	Valuation is based on the contractual agreement between the parties. Frequently comfort trust agreements and related reinsurance agreements provide that the asset balance required is based on <u>book value</u> of assets unless one or more specified credit events have occurred, in which case market values are required.	Similar to a Comfort Trust, parties would agree to method of valuation of account assets.
<b>Duties of Trustee/Bank</b>	Trustee is a directed trustee, required to hold assets and act in accordance with the instructions of the parties, as set forth in the Trust Agreement.	Trustee is a directed trustee, required to hold assets and act in accordance with the instructions of the parties, as set forth in the Trust Agreement.	Bank would be required to hold assets and act in accordance with the instructions of the parties, as set forth in the Account Control Agreement.
<b>Title of Assets</b>	Title of assets is transferred to the trustee of the trust.	Title of assets is transferred to the trustee of the trust.	Title of assets is maintained by the Reinsurer, but subject to a lien in favor of the Ceding Company, which lien is perfected through exclusive control over the assets pursuant to an Account Control Agreement.



	<b>Credit for Reinsurance Trust</b>	<b>Comfort Trust</b>	<b>Custody Control Account</b>
<b>Withdrawal Conditions</b>	<p>No conditions are allowed for the withdrawal of assets by the Ceding Company.</p> <p>Withdrawal of assets by the Reinsurer is generally not allowed except to the extent that the market value of assets exceeds 102% of the reserves ceded under the reinsurance agreement, in which case the Reinsurer can request the trustee to release such excess.</p>	<p>Reason and nature for withdrawal by the Ceding Company are agreed to by the parties and is typically based on specified defaults of the Reinsurer.</p> <p>Withdrawals by Reinsurer may be allowed based on both market value or book value tests; if such tests are met, the Reinsurer can request the trustee to release such excess.</p>	<p>Reason and nature for withdrawal by the Ceding Company are agreed to by the parties and is typically be based on specified defaults of the Reinsurer.</p> <p>Withdrawals by Reinsurer may be allowed based on both market value or book value tests; if such tests are met, the Reinsurer can request the Bank to release such excess and the corresponding lien.</p>
<b>Substitution of Assets</b>	<p>Substitution of assets are only allowed to the extent that the market value of replacement assets exceeds the market value of the replaced assets.</p>	<p>Restrictions on substitutions are agreed between the parties and are typically based on book value and market value of relevant assets.</p>	<p>Restrictions on substitutions are agreed between the parties and are typically based on book value and market value of relevant assets.</p>

October 2022

## ACCOUNT CONTROL AGREEMENT

This account control agreement, dated [•] (this “Agreement”) is among [\_\_\_\_\_]  
(the “Customer”), [\_\_\_\_\_] (the “Secured Party”), and [\_\_\_\_\_] (“Bank”).

### 1. INTENTION OF THE PARTIES; DEFINITIONS; INTERPRETATION

#### (a) Intention of the Parties

- (i) The Secured Party and the Customer have entered into a [Reinsurance Agreement] dated [•] (as amended from time to time, the “Reinsurance Agreement”), pursuant to which the Customer has agreed to pledge collateral to the Secured Party to secure, in part, Customer’s obligations under the Reinsurance Agreement.
- (ii) Bank and the Customer have entered into a [Global] Custody Agreement dated [•] (the “Custody Agreement”), pursuant to which Bank acts as Customer’s custodian and maintains certain accounts in the name of Customer.
- (iii) Bank has established at the request of the Customer one or more custody accounts in the name of the Customer for the benefit of Secured Party (each, an “Account”; together, the “Accounts”) to hold the Pledged Assets (as defined herein) pursuant to the Custody Agreement and subject to the further terms of this Agreement.
- (iv) The Customer has granted the Secured Party a security interest in the Account(s) and the Pledged Assets pursuant to the Reinsurance Agreement.
- (v) The Secured Party and the Customer, and Bank, at the request of the Secured Party and the Customer, are entering into this Agreement to provide for the control of each Account.

#### (b) Definitions

As used herein the following terms shall have the following meanings:

“**Account**” has the meaning set forth in Section 1(a)(iii).

“**Affiliated Subcustodian Bank**” shall mean a Subcustodian that is both a subsidiary of Bank and either (i) a bank chartered or incorporated in the U.S. or (ii) a branch or subsidiary of such a bank.

“**Applicable Law**” means any applicable statute, treaty, rule, regulation or law (including common law) and any applicable decree, injunction, judgment, order, formal interpretation or ruling issued by a court or governmental entity.

“**Authorized Person**” shall mean each person Bank reasonably believes to be a person (i) listed on Exhibit B annexed hereto, (ii) who has been designated by written notice from the Customer or Secured Party (as applicable) to act on behalf of such party under this Agreement or (iii) utilizing an authorized access code of the Customer or Secured Party (as applicable) which allows for the provision of Instructions. Bank may assume that such persons will continue to be Authorized Persons until such time as Bank receives and has had reasonable time to act upon instructions from the Customer or Secured Party, as applicable, that any such person is no longer an Authorized Person.

**“Business Day”** means any day on which Bank is open for business in New York.

**“Cash”** means cash in any currency.

**“Confidential Information”** means all non-public information concerning the Secured Party, the Customer or the Accounts which Bank receives in the course of providing services under this Agreement. Nevertheless, the term Confidential Information does not include (i) information that is or becomes available to the general public other than as a direct result of Bank’s breach of the terms of this Agreement, (ii) information that Bank develops independently without using the Customer’s or the Secured Party’s confidential information, (iii) information that Bank obtains on a non-confidential basis from a person who is not known to be subject to any obligation of confidence to the Customer or to the Secured Party with respect to that information, or (iv) information that the Customer or the Secured Party has designated as non-confidential or consented to be disclosed.

**“Country Risk”** shall mean the risk of investing or holding assets in a particular country or market, including, but not limited to, risks arising from nationalization, expropriation, capital controls, currency restrictions or other governmental actions; the country’s financial infrastructure, including prevailing custody, tax and settlement practices; laws applicable to the safekeeping and recovery of Financial Assets and cash held in custody; the regulation of the banking and securities industries, including changes in market rules; currency devaluations or fluctuations; and market conditions affecting the orderly execution of securities transactions or the value of assets.

**“Custody Agreement”** has the meaning set forth in Section 1(a)(ii).

**“Financial Assets”** shall mean any Securities held in the Account that are eligible for deposit with a Securities Depository and such other assets as may be agreed by the parties; provided, that Financial Assets does not include any Cash that may be maintained in the Account.

**“Instructions”** shall mean written communications, including without limitation, Entitlement Orders, instructions and other directions, which are signed by an Authorized Person of the Secured Party or the Customer (as applicable) and delivered in accordance with Section 18.

**“Bank Affiliates”** shall mean an entity controlling, controlled by, or under common control with Bank.

**“Bank Indemnitees”** shall mean Bank and Bank Affiliates, and their respective nominees, directors, officers, employees and agents.

**“Liabilities”** shall mean any and all liabilities, losses, claims, costs, damages, penalties, fines, obligations, taxes (other than taxes based solely on a party’s own income), or expenses of any kind whatsoever (whether actual or contingent and including, without limitation, attorneys’, accountants’, consultants’ and experts’ fees and disbursements reasonably incurred and outstanding from time to time.

**“Notice of Exclusive Control”** shall mean a written notice from the Secured Party to Bank in the form annexed hereto as Exhibit C, that the Secured Party is thereby exercising exclusive control over the Account.

**“Pledged Assets”** shall mean any Financial Assets and any Cash which may be maintained in the Account.

**“Reinsurance Agreement”** has the meaning set forth in Section 1(a)(i).

**“Resignation Period”** has the meaning set forth in Section 17(b).

**“Securities”** means shares, stocks, debentures, bonds, notes or other like obligations, whether issued in certificated or uncertificated form, and any certificates, receipts, warrants or other instruments representing rights to receive, purchase or subscribe for the same that are commonly traded or dealt in on securities exchanges or financial markets and any other property as may be acceptable to Bank for the Account.

**“Securities Depository”** means any securities depository, clearing corporation, dematerialized book entry system or similar system for the central handling of Securities.

**“Subcustodian”** means any of the subcustodians appointed by Bank from time to time to hold Financial Assets and act on its behalf in different jurisdictions and includes any Affiliated Subcustodian Bank. In no event will an entity that is a Securities Depository, whether or not acting in that capacity, be deemed to be a Subcustodian. For the avoidance of doubt, the transfer agent of a Financial Asset shall not be deemed to be a Subcustodian with respect to that Financial Asset.

**“U.S.”** means United States.

The terms **“Securities Entitlement”**, **“Securities Intermediary”**, **“Entitlement Holder”** and **“Entitlement Order”** shall have the same respective meanings set forth in Sections 8-102 and 8-501 of the Uniform Commercial Code as in effect in the State of New York (the **“UCC”**).

### **(c) Interpretation**

- (i) Headings are for convenience of reference only and shall not in any way form part of or affect the construction or interpretation of any provision of this Agreement.
- (ii) Unless otherwise expressly stated to the contrary herein, references to Sections are to Sections of this Agreement and references to paragraphs are to paragraphs of the Sections in which they appear.
- (iii) Unless the context requires otherwise, references in this Agreement to “persons” shall include legal as well as natural entities; references importing the singular shall include the plural (and vice versa) use of the term “including” shall be deemed to mean “including but not limited” to, and references to appendices and numbered sections shall be to such addenda and provisions herein.
- (iv) Unless the context requires otherwise, any reference to a statute or a statutory provision shall include such statute or provision as from time to time modified to the extent such modification applies to any service provided hereunder. Any reference to a statute or a statutory provision shall also include any subordinate legislation made from time to time under that statute or provision.
- (v) The Schedules to the Agreement are incorporated herein by reference and form part of the Agreement and shall have the same force and effect as if expressly set out in the

body of the Agreement. If and to the extent that there is an inconsistency between the terms of the body of the Agreement and its Schedules, the terms of the body of the Agreement shall prevail unless expressly stated otherwise.

## **2. THE ACCOUNTS**

- (a) Exhibit A annexed hereto is a complete and accurate list of the Accounts being pledged. The Accounts shall be in the name of the Customer for the benefit of Secured Party. Except for the claims and interest of the Secured Party and the Customer in the Account (subject to any claim in favor of Bank permitted under Sections 3 and 4 hereof), Bank has not been notified in writing of any claim to or interest in the Account.
- (b) The Account will be recorded on Bank's books and records as a separate account from any other assets of Bank, any other customer of Bank or the other accounts maintained by Bank for the Customer under the Custody Agreement.
- (c) Any Cash received by or on behalf of Bank for the Account, including for the avoidance of doubt, any proceeds of Securities in the Account, will be deposited in one or more cash accounts at Bank in New York or at one of its non- U.S. branch offices and will constitute a debt owing to the Customer (for the benefit of the Secured Party) by Bank as banker, provided that any Cash so deposited with a non-U.S. branch office will be payable exclusively by that branch office in the applicable currency, subject to compliance with Applicable Law, including, without limitation, any applicable currency restrictions.

## **3. PLEDGED ASSETS**

- (a) Bank shall be under no obligation to extend credit in respect of the Pledged Assets and shall be entitled to reverse any cash credit previously made to the Account due to error or the non-receipt of any income or dividend distribution.
- (b) The Secured Party and the Customer agree that, except as expressly provided herein, Bank has no duty or responsibility for determining the eligibility, valuation or sufficiency of any collateral pledged by the Customer to the Secured Party, or the compliance of the Customer or the Secured Party with any requirements under the Reinsurance Agreement or any other agreement.
- (c) All parties agree that all property other than Cash held by Bank in the Account will be treated as "financial assets" under Article 8 of the UCC. With respect to any Cash on deposit in the Account, such Account will be deemed to be a "deposit account" (within the meaning of Section 9-102(a)(29) of the UCC) with respect to such Cash deposited in or credited to the Account, in respect of which the Bank will be deemed to be a "bank" (within the meaning of Section 9-102(a)(8) of the UCC) and the Customer will be deemed to be its "customer" (as defined in Section 4-104 of the UCC).
- (d) Bank reserves the right to refuse to accept delivery of Securities or Cash for the Account in certain countries and jurisdictions. A list of the countries and jurisdictions in which Bank accepts delivery of Securities or Cash for the Account can be obtained from Bank upon request.

## **4. PRIORITY OF LIEN**

- (a) Bank hereby acknowledges the security interest granted to the Secured Party by the Customer under the terms of the Reinsurance Agreement. The Secured Party and the

Customer acknowledge and agree that Bank has no responsibility with respect to the validity or perfection of such security interest other than to act in accordance with the terms of this Agreement.

- (b) With respect to the Secured Party's interest in the Account, Bank hereby subordinates any liens, encumbrances, claims and rights of setoff it may have against the Account or any Pledged Assets carried in the Account to any security interest of the Secured Party in the Account; provided, however, that Bank shall retain a first priority lien on any Pledged Assets in the Account for the payment of its fees and expenses and for the payment of any Pledged Assets credited to the Account for which payment or reimbursement to Bank has not been made or received. Subject to Section 12 hereof, Bank will not agree with any third party to comply with Entitlement Orders concerning the Account originated by such third party without the prior written consent of the Secured Party and the Customer.
- (c) For the avoidance of doubt, the Customer has granted Bank a security interest in and lien on, the assets in the custody accounts established pursuant to the Custody Agreement as security for any and all amounts which are now or become owing to Bank, and Bank may enforce its rights against any of the other custody accounts maintained for the Customer for any amounts owed or owing to Bank under any provision of this Agreement, whether matured or contingent.

## 5. CONTROL

(a) [Except as otherwise provided by Sections 4, 6 and 7 and any instruction originated by the Customer to accept Pledged Assets into the Account on a free of payment basis, Bank will comply with any Instruction originated by the Customer that is validated via a separate and matching Instruction from the Secured Party, until Bank receives a Notice of Exclusive Control. Following receipt of such notice, Bank will comply within a reasonable time with any Instruction originated by the Secured Party concerning Pledged Assets held in the Account without further consent of the Customer. Contemporaneously with the Secured Party's delivery of a Notice of Exclusive Control to Bank, the Secured Party shall provide a copy of such Notice of Exclusive Control to the Customer. Bank shall have no duty to confirm the Customer's receipt of such Notice of Exclusive Control.]

### OR

[Except as otherwise provided by Sections 4, 6 and 7 and any Instruction originated by the Customer to accept Pledged Assets into the Account on a free of payment basis, Bank will comply with Instructions originated by the Secured Party concerning the Account without further consent by the Customer.]

### OR

[Bank will comply with Instructions originated by the Customer concerning the Account without further consent by the Secured Party until Bank receives a Notice of Exclusive Control. Following receipt of such notice, Bank will comply within a reasonable time with any Instruction originated by the Secured Party concerning Pledged Assets held in the Account without further consent of the Customer. Contemporaneously with the Secured Party's delivery of a Notice of Exclusive Control to Bank, the Secured Party shall provide a copy of such Notice of Exclusive Control to the Customer. Bank shall have no duty to confirm the Customer's receipt of such Notice of Exclusive Control.]

(b) The Customer and Secured Party acknowledge that Bank has established cut-off times for receipt of Instructions, which will be made available to the Customer and the Secured Party. If Bank receives an Instruction after its established cut-off time, Bank will attempt to act upon such Instruction on the day requested only if Bank deems it practicable to do so or otherwise as soon as practicable after the day on which it was received.

## **6. PAYMENT OF INCOME**

Bank shall without instruction or action by the Customer or Secured Party (i) credit to the Account all interest, dividends, income or other “proceeds” (as defined in Section 9-102(a)(64) of the UCC) of the Financial Assets in the Account, and (ii) transfer all cash distributions received by Bank with respect of the Financial Assets in the Account to the Customer’s custody cash account. The parties agree that any such cash distributions shall not be subject to any security interest granted to the Secured Party. For the avoidance of doubt, cash redemptions of Financial Assets in the Account or cash payments of principal with respect to Financial Assets in the Account will not be transferred to the Customer’s custody cash account and will be credited to the Account. After Bank receives a Notice of Exclusive Control, and has had a reasonable time to comply with such notice, Bank will promptly cease transferring cash distributions received by Bank with respect to Financial Assets in the Account to the Customer’s custody cash account and will thereafter credit all such cash distributions to the Account.

## **7. CORPORATE ACTIONS AND VOTING RIGHTS**

Pursuant to the terms of the Custody Agreement with the Customer, unless Bank has received a Notice of Exclusive Control, Bank shall send to the Customer any proxies and other voting rights and corporate actions received by Bank in respect of the Pledged Assets and follow any Instruction from the Customer in respect of such proxies and rights. After Bank receives the Notice of Exclusive Control, and has had reasonable time to comply with such notice, it will send to the Secured Party any proxies and other voting rights and corporate actions received by Bank in respect of the Pledged Assets and follow any Instruction from the Secured Party in respect of such proxies and rights.

## **8. STATEMENTS, CONFIRMATIONS AND NOTICES OF ADVERSE CLAIMS**

Bank will send or make available by electronic means copies of all statements and confirmations concerning the Account to each of the Customer and the Secured Party, as instructed by the Customer and the Secured Party. If any person notifies Bank of its assertion of any lien, encumbrance or adverse claim against the Account or in any Financial Asset contained therein, Bank will promptly notify the Secured Party and the Customer thereof.

## **9. SUBCUSTODIANS AND SECURITIES DEPOSITORIES.**

(a) Appointment of Subcustodians; Use of Securities Depositories.

- (i) Bank is authorized under this Agreement to act through and hold the Financial Assets with Subcustodians. In addition, Bank and each Subcustodian may deposit Financial Assets with, and hold Financial Assets in any Securities Depository on such terms as such Securities Depository customarily operates, and the Customer the Secured Party will provide Bank with such documentation or acknowledgements that Bank may require to hold the Financial Assets in such Securities Depository. On the basis of such terms, a Securities Depository may have a security interest or lien over, or right of set-off in relation to the Financial Assets.

- (ii) Any agreement that Bank enters into with a Subcustodian for holding Financial Assets will provide (i) that such assets will not be subject to any right, charge, security interest, lien or claim of any kind in favor of such Subcustodian or its creditors except a claim for payment for their safe custody or administration, or, in the case of Cash deposits, except for liens or rights in favor of creditors of the Subcustodian arising under bankruptcy, insolvency or similar law, and (ii) that the beneficial ownership thereof will be freely transferable without the payment of money or value other than for safe custody or administration, unless in each case required otherwise by Applicable Law in the relevant market. Bank shall be responsible for all claims for payment of fees for safe custody or administration so that no Subcustodian exercises any claim for such payment against the Financial Assets. Where a Subcustodian deposits Financial Assets with a Securities Depository, Bank will direct the Subcustodian to identify on its records that the Financial Assets deposited by the Subcustodian at such Securities Depository belong to Bank, as agent of the Customer.

(b) Liability for Subcustodians and Securities Depositories

- (i) Bank will be liable for direct Liabilities incurred by the Customer or the Secured Party that result from: (a) the failure by a Subcustodian to use reasonable care in the provision of custodial services by it in accordance with the standards prevailing in the relevant market or from the fraud or willful misconduct of such Subcustodian in the provision of custodial services by it; or (b) the insolvency of any Affiliated Subcustodian Bank.
- (ii) Bank will use reasonable care in the selection, monitoring and continued appointment of Subcustodians. Subject to Bank's duty in the foregoing sentence and Bank's duty to use reasonable care in the monitoring of a Subcustodian's financial condition as reflected in its published financial statements and other publicly available financial information concerning it customarily reviewed by Bank in its oversight process, Bank will not be responsible for any Liabilities (whether direct or indirect) incurred by the Customer or the Secured Party that result from the insolvency of any Subcustodian which is not a branch of Bank or an Affiliated Subcustodian Bank.
- (iii) Bank is not responsible for the selection or monitoring of any Securities Depository and will not be liable for any Liabilities arising out of any act or omission by (or the insolvency of) any Securities Depository. In the event the Customer or the Secured Party incurs any Liabilities due to an act or omission, negligence, willful misconduct, fraud or insolvency of a Securities Depository, Bank will make reasonable efforts, in its discretion, to seek recovery from the Securities Depository, but Bank will not be obligated to institute legal proceedings, file a proof of claim in any insolvency proceeding or take any similar action.
- (iv) Investing in Financial Assets and Cash in foreign jurisdictions may involve risks of loss or other burdens and costs. The parties acknowledge that Bank is not providing any legal, tax or investment advice in connection with the services under this Agreement and that the Customer remains responsible for assessing and managing investment-related exposures arising out of Country Risk. Accordingly, Bank will not be responsible for any Liabilities resulting from Country Risk.

## 10. FEES

The Customer shall pay to Bank the compensation agreed upon in writing from time to time and any other includable expenses incurred in connection herewith.



## **11. REPRESENTATIONS**

Each of the parties represents and warrants that (i) it is duly incorporated or organized and is validly existing in good standing in its jurisdiction of incorporation or organization, (ii) the execution, delivery and performance of this Agreement and all documents and instruments to be delivered hereunder or thereunder have been duly authorized, (iii) the person executing this Agreement on its behalf has been duly authorized to act on its behalf, (iv) this Agreement constitutes its legal, valid, binding and enforceable agreement, and (v) its entry into this Agreement will not violate any agreement, law, rule or regulation by which it is bound or by which any of its assets are affected.

## **12. COMPLIANCE WITH LEGAL PROCESS AND JUDICIAL ORDERS**

If any Pledged Assets subject to this Agreement are at any time attached or levied upon, or in case the transfer, delivery, redemption or withdrawal of any such Pledged Assets shall be stayed or enjoined, or in the case of any other legal process or judicial order affecting such Pledged Assets, Bank is authorized to comply with any such order in any matter as Bank or its legal counsel reasonably deems appropriate. If Bank complies with any process, order, writ, judgment or decree relating to the Pledged Assets subject to this Agreement, then Bank shall not be liable to the Customer or the Secured Party or to any other person or entity even if such order or process is subsequently modified, vacated or otherwise determined to have been without legal force or effect.

## **13. RESPONSIBILITY OF BANK**

- (a) Bank shall have no responsibility or liability to the Secured Party for following any Instruction of the Customer or its Authorized Persons upon which Bank is authorized to rely pursuant to the terms of this Agreement, which are received by Bank before Bank has received, and had a reasonable opportunity to comply with, a Notice of Exclusive Control.
- (b) Bank shall have no responsibility or liability to the Customer for complying with a Notice of Exclusive Control or complying with any Instruction concerning the Account originated by the Secured Party upon which it is authorized to rely pursuant to the terms of this Agreement.
- (c) Bank shall have no duty to investigate or make any determination as to whether a default, termination event, dispute or other event exists under any agreement between the Customer and the Secured Party and shall comply with a Notice of Exclusive Control even if it believes that no such default, termination event, dispute or other event exists.
- (d) This Agreement does not create any obligation or duty for Bank other than those expressly set forth herein.

## **14. STANDARD OF CARE**

- (a) Notwithstanding any provision contained herein or in any other document or instrument to the contrary, Bank Indemnitees shall not be liable for following the instruction of any Authorized Person of the Secured Party or the Customer upon which Bank is authorized to rely pursuant to the terms of this Agreement.
- (b) Bank will only be liable for the Customer's or the Secured Party's direct Liabilities and only to the extent (i) they result from Bank's gross negligence, fraud or willful misconduct in performing its duties as set out in this Agreement and (ii) provided in Section 9.
- (c) Under no circumstances will Bank be liable for (i) any loss of profits (whether direct or indirect) or (ii) any indirect, incidental, consequential or special damages of any form, incurred by any person or entity, whether or not foreseeable and regardless of the type of

action in which such a claim may be brought, with respect to the Accounts, Bank's performance or non-performance under this Agreement, or Bank's role as custodian or banker.

- (d) Without limiting the foregoing, and notwithstanding any provision to the contrary elsewhere, Bank Indemnitees:
- (i) shall have no responsibilities, obligations or duties other than those expressly set forth in this Agreement, and no implied duties, responsibilities or obligations shall be read into this Agreement against Bank Indemnitees; without limiting the foregoing, Bank shall have no duty to preserve, exercise or enforce rights in the Pledged Assets (against prior parties or otherwise);
  - (ii) may in any instance where Bank determines that it lacks or is uncertain as to its authority to take or refrain from taking certain action, or as to the requirements of this Agreement under any circumstance before it, delay or refrain from taking action unless and until it has received instructions from the Secured Party or advice from legal counsel (or other appropriate advisor), as the case may be;
  - (iii) so long as it and they shall have acted (or refrained from acting) in good faith, shall not be liable for any error of judgment in any action taken, suffered or omitted by, or for any act done or step taken, suffered or omitted by, or for any mistake of fact or law, unless such action constitutes gross negligence or willful misconduct on its (or their) part;
  - (iv) may consult with legal counsel selected by it (or other experts for it, the Secured Party or the Customer), and shall not be liable for any action taken or not taken by it or them in good faith in accordance with the advice of such experts;
  - (v) will not be responsible to the Secured Party or to the Customer for any statement, warranty or representation made by any party other than Bank in connection with this Agreement;
  - (vi) will have no duty to ascertain or inquire as to the performance or observance by the Customer or the Secured Party of any of the terms, conditions or covenants of any security agreement between the Customer and the Secured Party;
  - (vii) will not be responsible to the Secured Party or the Customer for the due execution, legality, validity, enforceability, genuineness, effectiveness or sufficiency of this Agreement, (provided, however, that Bank warrants above that Bank has legal capacity to enter into this Agreement);
  - (viii) will not incur any liability by acting or not acting in reliance upon any notice, consent, certificate, statement or other instrument or writing believed by it or them to be genuine and signed or sent by an Authorized Person, the proper party or parties;
  - (ix) will not incur liability for any notice, consent, certificate, statement, wire instruction, telecopy, or other writing which is delayed, canceled or changed without the actual knowledge of Bank;

- (x) shall not be deemed to have or be charged with notice or knowledge of any fact or matter unless a written notice thereof has been received by Bank at the address and to the person designated in (or as subsequently designated pursuant to) this Agreement;
- (xi) shall not be obligated or required by any provision of this Agreement to expend or risk Bank's own funds, or to take any action (including but not limited to the institution or defense of legal proceedings) which in its or their judgment may cause it or them to incur or suffer any expense or liability; provided, however, if Bank elects to take any such action it shall be entitled to security or indemnity for the payment of the costs, expenses (including but not limited to attorneys' fees) and liabilities which may be incurred therein or thereby, satisfactory to Bank); and
- (xiii) shall not be responsible for the title, validity or genuineness of any Financial Asset in physical form that is received by or delivered to Bank from or by the Customer and credited to the Account.

## **15. INDEMNIFICATION OF BANK**

- (a) The Customer and the Secured Party, jointly and severally, agree to indemnify and hold Bank Indemnitees harmless from and against any and all Liabilities that may be imposed on, incurred by, or asserted against, Bank Indemnitees or any of them for following any Instructions upon which Bank is authorized to rely pursuant to the terms of this Agreement.
- (b) In addition to and not in limitation of paragraph (a) immediately above, the Customer and the Secured Party also jointly and severally agree to indemnify and hold Bank Indemnitees and each of them harmless from and against any and all Liabilities that may be imposed on, incurred by, or asserted against, Bank Indemnitees or any of them in connection with or arising out of Bank's performance under this Agreement, provided Bank Indemnitees have not acted with gross negligence or engaged in willful misconduct.
- (c) The foregoing indemnifications shall survive any termination of this Agreement.

## **16. FORCE MAJEURE**

Bank shall not be responsible for any Liabilities of any nature that the Customer, the Secured Party or any third party may suffer or incur, caused by an act of God, fire, flood, epidemics, earthquakes or other disasters, civil or labor disturbance, war, terrorism, act of any governmental authority or other act or threat of any authority (de jure or de facto), nationalization, expropriation, legal constraint, fraud, theft or forgery (other than on the part of Bank or its employees), cyber-attack, malfunction of equipment or software (except where such malfunction is primarily and directly attributable to Bank's negligence in maintaining the equipment or software), currency re-denominations, currency restrictions, failure of or the effect of rules or operations of any external funds transfer system, inability to obtain (or interruption of) external communications facilities, power failures or any other cause beyond the reasonable control of Bank (including, without limitation, the non-availability of appropriate foreign exchange). Without limiting the generality of the foregoing, if an event resulting from Country Risk leads to restrictions on, or losses of, Cash held by Bank or any Affiliated Subcustodian Bank in any market for the purposes of facilitating Bank's global custody business, Bank may in its sole discretion apply the impact of those restrictions or losses to the relevant currency held in any sub-cash account under the Account or in connection with the Account, in a proportional manner as Bank may reasonably determine.

## 17. TERMINATION

(a) The rights and powers granted herein to the Secured Party have been granted in order to perfect its security interest in the Account, are powers coupled with an interest and will neither be affected by the bankruptcy of the Customer nor by the lapse of time. The obligations under this Agreement shall continue in effect (i) until the security interest of the Secured Party in the Account has been terminated and the Secured Party has notified Bank of such termination in writing, or (ii) this Agreement is terminated in accordance with Sections 17(b) or (c) below.

(b) This Agreement may be terminated by:

- (i) Bank upon not less than 30 days prior written notice to the Customer and the Secured Party; or
- (ii) Customer and Secured Party, acting jointly, upon not less than 30 days prior written notice to Bank,

(such 30 days prior notice periods the "Resignation Period");

provided, however, that no termination under this Section 17(b) shall be effective until the Pledged Assets (to the extent there are any remaining in the Account) have been transferred to a substitute bank reasonably satisfactory to the Customer and the Secured Party and identified to Bank by the Customer and the Secured Party, acting jointly, via written notice, provided that, should the Customer and the Secured Party fail to provide Bank with such written notice identifying a substitute bank within 30 days of the end of the Resignation Period, Bank may transfer the Pledged Assets to the Secured Party (as the Secured Party may instruct pursuant to reasonable notice). For the avoidance of doubt, Bank must comply with all of its obligations under this Agreement until the Pledged Assets have been transferred to either a substitute bank or the Secured Party.

(c) This Agreement will terminate upon receipt by Bank of a Notice Exclusive Control, provided, however, that no termination under this Section 17(c) shall be effective until the Pledged Assets have been transferred to a substitute bank reasonably satisfactory to the Secured Party and identified to Bank via an Instruction from the Secured Party. Should the Secured Party fail to provide Bank with an Instruction identifying a substitute bank within 30 days of Bank's receipt of the Notice of Exclusive Control, Bank may transfer the Pledged Assets to the Secured Party (as the Secured Party may instruct pursuant to reasonable notice). For the avoidance of doubt, Bank must comply with all of its obligations under this Agreement until the Pledged Assets have been transferred to either a substitute bank or the Secured Party.

## 18. NOTICES

Any notice, request, Entitlement Order or other communication required or permitted to be given under this Agreement shall be in writing and delivered in accordance with the means specified below. Until such time a party properly notifies each other party that its address, email address or facsimile number has changed, notices to such party shall be sent as follows:

If to Bank:

For Notice of Exclusive Control, Pledgor Termination Notice, or Notice to Contest, please email to: \[\_\_\_\_\_].

For Instructions concerning the Pledged Assets, please deliver via SWIFT messaging, or if SWIFT is unavailable, please fax to: [\_\_\_\_\_]

If to the Customer:

\_\_\_\_\_  
 \_\_\_\_\_  
 Attention: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Fax: \_\_\_\_\_

If to the Secured Party:

\_\_\_\_\_  
 \_\_\_\_\_  
 Attention: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Fax: \_\_\_\_\_

**19. INFORMATION CONCERNING DEPOSITS AT BANK'S NON-U.S. BRANCHES.**

- (a) Under U.S. federal law, deposit accounts that the Customer maintains in Bank's foreign branches (outside of the U.S.) are not insured by the Federal Deposit Insurance Corporation. In the event of Bank's liquidation, foreign branch deposits have a lesser preference than U.S. deposits, and such foreign deposits are subject to cross-border risks.
- (b) Bank's London Branch is a participant in the UK Financial Services Compensation Scheme (the "FSCS"), and the following terms apply to the extent any amount standing to the credit of any cash account related to the Financial Assets or the Account is deposited in one or more deposit accounts at Bank's London Branch. The terms of the FSCS offer protection in connection with deposits to certain types of claimants to whom Bank's London Branch provides services in the event that they suffer a financial loss as a direct consequence of Bank's London Branch being unable to meet any of its obligations and, subject to the FSCS rules regarding eligible deposits, the Customer may have a right to claim compensation from the FSCS. Subject to the FSCS rules, the maximum compensation payable by the FSCS in relation to eligible deposits is as set out in the relevant information sheet which is available online as referenced below. For the purposes of establishing such maximum compensation, all the Customer's eligible deposits at Bank's London Branch are aggregated and the total is subject to such maximum compensation. For further information about the compensation provided by the FSCS, refer to the FSCS website at [www.FSCS.org.uk](http://www.FSCS.org.uk). Further information is also available online at [\_\_\_\_\_].

**20. MISCELLANEOUS**

(a) CONFIDENTIALITY.

- (i) Subject to Section 20(a)(iii), Bank will hold all Confidential Information in confidence and will not disclose any Confidential Information except as may be required by (A) Applicable Law or courts of competent jurisdiction, (B) governmental, regulatory or

- supervisory authorities, or law enforcement agencies with jurisdiction over Bank's businesses, or (C) with the consent of the Customer or the Secured Party (as applicable).
- (ii) The Customer and the Secured Party authorize Bank to use Confidential Information (A) in connection with the provision of services to or administration of the relationship with the Customer or the Secured Party (as applicable), (B) for any operational, credit or risk management purposes, (C) for due diligence, verification or sanctions screening purposes or (D) for the prevention or investigation of crime, fraud or any malpractice, including the prevention of terrorism, money laundering and corruption as well as for tax reporting.
  - (iii) The Customer and Secured Party authorize Bank to disclose Confidential Information to:
    - A. any Subcustodian, subcontractor, consultant, agent, Securities Depository, securities exchange, central counterparty, custodian, depository, trading venue, broker, proxy solicitor, issuer, registrar, service provider or vendor, or any person that Bank believes is reasonably required in connection with Bank's provision of relevant services under this Agreement;
    - B. its and any Bank Affiliate's professional advisors, auditors and public accountants;
    - C. its branches and any Bank Affiliate;
    - D. any proposed assignee of Bank's rights under this Agreement; and
    - E. any revenue authority or any governmental entity in relation to the processing of any tax claim.
- (b) **SUCCESSORS.** This Agreement will be binding on each of the parties' successors and assigns. The parties agree that no party can assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other parties, which consent will not be unreasonably withheld, delayed or conditioned. Nevertheless, the foregoing restriction on transfer shall not apply to any assignment or transfer by Bank to any affiliate of Bank or in connection with a merger, reorganization, stock sale or sale of all or substantially all of Bank's custody business; or by the Federal Deposit Insurance Corporation or a duly appointed conservator or receiver of Bank in furtherance of its authority under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and/or the Federal Deposit Insurance Act.
- (c) **ENTIRE AGREEMENT.** This Agreement and the exhibits hereto and the agreements and instruments required to be executed and delivered hereunder set forth the entire agreement of the parties with respect to the subject matter hereof and supersede and discharge all prior agreements (written or oral) and negotiations and all contemporaneous oral agreements concerning such subject matter and negotiations. There are no oral conditions precedent to the effectiveness of this Agreement. For the avoidance of doubt, as between the Customer and Bank, in the event of any inconsistency between the Custody Agreement and this Agreement with respect to the Accounts, the terms of this Agreement will prevail.
- (d) **AMENDMENTS.** No amendment, modification or termination of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all parties.
- (e) **GOVERNING LAW AND JURISDICTION.**
- (i) This Agreement will be construed, regulated and administered under the laws of the U.S. or the State of New York, as applicable, without regard to New York's principles

- regarding conflict of laws, except that the foregoing shall not reduce any statutory right to choose New York law or forum. The U.S. District Court for the Southern District of New York will have the sole and exclusive jurisdiction over any lawsuit or other judicial proceeding relating to or arising from this Agreement. If that court lacks federal subject matter jurisdiction, the Supreme Court of the State of New York, New York County will have sole and exclusive jurisdiction. Either of these courts will have proper venue for any such lawsuit or judicial proceeding, and the parties waive any objection to venue or their convenience as a forum. The parties agree to submit to the jurisdiction of any of the courts specified and to accept service of process to vest personal jurisdiction over them in any of these courts. The parties further hereby knowingly, voluntarily and intentionally waive, to the fullest extent permitted by Applicable Law, any right to statutory prejudgment interest and a trial by jury with respect to any such lawsuit or judicial proceeding arising or relating to this Agreement or the transactions contemplated hereby. To the extent that in any jurisdiction the Customer or the Secured Party may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, the Customer or the Secured Party, as applicable, shall not claim, and hereby irrevocably waives, such immunity.
- (ii) Notwithstanding any other provision in the Custody Agreement, for purposes of the UCC and, if applicable, the Hague Securities Convention, the State of New York shall be deemed to be Bank's location (including for the purposes of this Agreement and the perfection and priority of the Secured Party's security interest as well as for the purposes of any Cash constituting Pledged Assets held in the Account), and the Account (as well as the Security Entitlements related thereto) shall be governed by the laws of the State of New York. The parties hereto agree that this Agreement shall constitute an "account agreement" within the meaning of the Hague Securities Convention. The parties hereto further agree that the State of New York is the "securities intermediary's jurisdiction" and the "bank's jurisdiction" for purposes of the UCC and, if applicable, the law in force in the State of New York is applicable to all issues specified in the Hague Securities Convention Article (2)(l) relative to this Agreement.
- (f) SEVERABILITY; WAIVER; SURVIVAL.
- (i) If one or more provisions of this Agreement are held invalid, illegal or unenforceable in any respect on the basis of any particular circumstances or in any jurisdiction, the validity, legality and enforceability of such provision or provisions under other circumstances or in other jurisdictions and of the remaining provisions will not in any way be affected or impaired.
- (ii) Except as otherwise provided herein, no failure or delay on the part of either party in exercising any power or right under this Agreement operates as a waiver, nor does any single or partial exercise of any power or right preclude any other or further exercise, or the exercise of any other power or right. No waiver by a party of any provision of this Agreement, or waiver of any breach or default, is effective unless it is in writing and signed by the party against whom the waiver is to be enforced.
- (iii) The parties' rights, protections and remedies under this Agreement shall survive its termination.
- (g) COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

(h) NO THIRD PARTY BENEFICIARIES. A person who is not a party to this Agreement shall have no right to enforce any term of this Agreement.

*[signature page follows]*



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**[CUSTOMER]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**[BANK]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**[SECURED PARTY]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**  
**Accounts**

Account Number	Account Name

**EXHIBIT B****AUTHORIZED PERSONS OF CUSTOMER**

<b>NAME</b>	<b>TITLE</b>	<b>TELEPHONE</b>	<b>SIGNATURE</b>

**AUTHORIZED PERSONS OF SECURED PARTY**

<b>NAME</b>	<b>TITLE</b>	<b>TELEPHONE</b>	<b>SIGNATURE</b>

EXHIBIT C

[to be placed on Secured Party's Letterhead]

NOTICE OF EXCLUSIVE CONTROL

\_\_\_\_\_20\_\_

[Bank]  
[Address]\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention:\_\_\_\_\_

Re: Account Control Agreement dated as of \_\_\_\_\_ (the "Agreement")  
among \_\_\_\_\_, as Secured Party,  
\_\_\_\_\_, as Customer, and Bank, relating to Account  
No. \_\_\_\_\_

Ladies and Gentlemen:

This constitutes the Notice of Exclusive Control referred to in the above referenced Agreement.

We certify that we are entitled to deliver this notice under the Reinsurance Agreement.

[Secured Party's Name]

By: \_\_\_\_\_  
Name:  
Title:

cc: [Customer]

Priority 1 – High Priority  
 Priority 2 – Medium Priority  
 Priority 3 – Low Priority

**CAPITAL ADEQUACY (E) TASK FORCE  
 WORKING AGENDA ITEMS FOR CALENDAR YEAR 2023**

2023 #	Owner	2023 Priority	Expected Completion Date	Working Agenda Item	Source	Comments	Date Added to Agenda
<b>Ongoing Items – Life RBC</b>							
L1	Life RBC WG	Ongoing	Ongoing	Make technical corrections to Life RBC instructions, blank and /or methods to provide for consistent treatment among asset types and among the various components of the RBC calculations for a single asset type.			
L2	Life RBC WG	1	2022 or later	1. Monitor the impact of the changes to the variable annuities reserve framework and risk-based capital (RBC) calculation and determine if additional revisions need to be made. 2. Develop and recommend appropriate changes including those to improve accuracy and clarity of variable annuity (VA) capital and reserve requirements.	CADTF	Being addressed by the Variable Annuities Capital and Reserve (E/A) Subgroup	
L3	Life RBC WG	1	2022 or later	Provide recommendations for the appropriate treatment of longevity risk transfers by the new longevity factors.	New Jersey	Being addressed by the Longevity (E/A) Subgroup	
<b>Carryover Items Currently being Addressed – Life RBC</b>							
L4	Life RBC WG	1	2022 or later	Update the current C-3 Phase I or C-3 Phase II methodology to include indexed annuities with consideration of contingent deferred annuities as well	AAA		
L5	Life RBC WG	1	2022 or later	Work with the Life Actuarial (A) Task Force and Conning to develop the economic scenario generator for implementation.			
L6	Life RBC WG	1	2022	Review companies at action levels, including previous years, to determine what drivers of the events are and consider whether changes to the RBC statistics are warranted.			
L7	Life RBC WG	1	2022	Work with the Academy on creating guidance for the adopted C-2 mortality treatment for 2022 and next steps for 2023.			