

# The Defined Contribution Retirement Plan — Trust Agreement

This Trust Agreement ("Trust Agreement") for the Plan shall be effective as of the last date executed by the Parties and is made between

\_\_\_\_\_ ("the Employer") and Fidelity Management Trust Company ("the Trustee")

to establish terms for the trust for the associated Plan.

## RECITALS

1. The Employer stated the terms of the Plan by executing an Adoption Agreement to a pre-approved defined contribution plan document (created under procedures established by the U.S. Internal Revenue Service ("IRS") and for which an affiliate of the Trustee is the pre-approved plan provider) (a "Fidelity Pre-Approved Document").
2. A Plan using a Fidelity Pre-Approved Document states the Plan's terms through an Adoption Agreement and a Basic Plan Document plus any additional amendments (the "Non-Trust Plan Documents").
3. The Plan must have a trust to hold Plan assets ("Trust Fund") in order to remain qualified under Internal Revenue Code ("Code") Section 401.
4. In order to remain qualified under the Code, the Employer executes this document to evidence the terms of the Plan's trust and to appoint the Trustee for the Plan's trust.

## DEFINITIONS

For the purpose of this Trust Agreement, the definitions set forth in the Basic Plan Document shall apply to the respective capitalized terms:

- "Account" or "Accounts" shall be defined as in Article 2.1 of the BPD  
"Adoption Agreement" shall be defined as in Article 2.2 of the BPD  
"Basic Plan Document" (BPD) shall be defined as in Article 2.6 of the BPD  
"Beneficiary" shall be defined as in Article 2.7 of the BPD  
"Employer" shall be defined as in Article 2.22 of the BPD  
"ERISA" shall be defined as in Article 2.23 of the BPD  
"Participants" shall be defined as in Article 2.31 of the BPD  
"Permissible Investments" shall be defined as "Investments" in Article 6.2(a)-(d) of the BPD  
"Plan" shall be defined as in Article 2.32 of the BPD  
"Plan Administrator" shall be defined as in Article 2.33 of the BPD  
"Plan Year" shall be defined as in Article 2.34 of the BPD  
"Pre-Approved Plan" shall be defined as in Article 2.35 of the BPD  
"Provider" shall be defined as in Article 2.37 of the BPD  
"Trustee" shall be defined as in Article 2.48 of the BPD  
"Trust" shall be defined as in Article 2.46 of the BPD

**NOW, THEREFORE, the Employer and the Trustee agree as follows:**

1. **Appointment and Acceptance of Trust Responsibilities.** By executing this Trust Agreement, the Employer establishes a trust with the Trustee to hold the assets of the Plan, held at Fidelity Brokerage Services LLC ("FBS LLC"), that are invested in Permissible Investments. By executing this Trust Agreement, the Trustee agrees to accept the rights, duties, and responsibilities set forth in this Trust Agreement. The Trustee shall have no liability for, and no duty to inquire into, the administration of the assets of the Plan for periods prior to the date such assets are transferred to the Trustee in its role as trustee for the Plan, or assets held outside of this Trust.

2. **Establishment of Trust.** The Trustee shall accept and hold in the Trust such contributions by or on behalf of Participants as it may receive from time to time from the Employer together with the earnings thereon, and shall open and maintain records of contributions to and withdrawals from the Accounts for such individuals as the Employer shall from time to time certify as Participants in the Plan.

3. **Exclusive Benefit and Return of Employer Contributions.** In accordance with Code Section 401(a)(2) and ERISA Section 403(c) (if applicable), the Trustee shall hold the assets of the Trust for the exclusive purpose of providing benefits to Participants and Beneficiaries and defraying the reasonable expenses of administering the Plan, and no such assets shall ever revert to the Employer except that if the Employer or the Plan Administrator so direct:

- (a) contributions made by the Employer by mistake of fact may be returned to the Employer within one year of the date of payment,
- (b) contributions that are conditioned on the deductibility thereof under Code Section 404 may be returned to the Employer within one year of the disallowance of the deduction, and
- (c) contributions that are conditioned on the initial qualification of the Plan under the Code may be returned to the Employer within one year after such qualification is denied by determination of the Internal Revenue Service, but only if an application for determination of such qualification is made within the time prescribed by law for filing the Employer's federal income tax return for its taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

All contributions under the Plan are hereby expressly conditioned on the initial qualification of the Plan and their deductibility under the Code.

4. **Reports of the Trustee and the Employer.** Not later than 120 days after the close of each Plan Year where the Plan Year is the calendar year (or after the Trustee's resignation or removal pursuant to Article 10.6 of the BPD), the Trustee shall furnish to the Employer a written report containing such information as shall be reasonably necessary to complete reports and disclosures required of the Employer pursuant to ERISA, including, without limitation, records of the transactions performed in connection with the Plan during the period in question, and either a statement of the fair market value of the assets of each Participant's Account as of the end of the period, or information adequate to permit the Employer to compare such value. Upon the expiration of 60 days following the date on which such a report is furnished to the Employer, the Trustee shall be forever released and discharged from all liability and accountability to anyone with respect to its acts, transactions, duties, obligations, or responsibilities as shown in or reflected by such report, except with respect to any such acts or transactions as to which the Employer shall have filed written objections within such 60-day period or as otherwise required by law.

The Employer shall be responsible for the preparation and filing of such reports and disclosures as may be required by ERISA, and for providing notice to interested parties as required by Code Section 7476. The Employer shall also prepare any return or report required

Form continues on next page. ►►

as a result of liability incurred by the Plan for tax on unrelated business taxable income, or windfall profits tax, or any return or report necessary to preserve the availability of any credit or deduction with respect thereto.

**5. Fees and Expenses of the Trust.** The Trustee shall be entitled to the fees set forth in the materials provided to Participants by the Trustee, as amended from time to time, and to reimbursement of all reasonable expenses incurred in the performance of its duties. If the Employer fails to pay agreed compensation or to reimburse expenses, the same shall be paid from the assets of the Trust. To the extent incurred by the Trustee, any income, gift, estate, and inheritance taxes and other taxes of any kind whatsoever (including transfer taxes incurred in connection with the investment or reinvestment of the assets of the Trust) that may be levied or assessed in respect of such assets, if allocable to specific Participants, shall be charged to their Accounts, and if not so allocable shall be charged proportionately to all Participants' Accounts. All other administrative expenses incurred by the Trustee in the performance of its duties, including fees for legal services rendered to the Trustee, shall be charged proportionately to all Accounts. All such fees and taxes and other administrative expenses charged to a Participant's Account shall be collected from the amount of any contribution or distribution to be credited to such Account, or by selling assets credited to such Account, and the Trustee is expressly authorized in the Retirement Brokerage Customer Agreement, the brokerage account agreement terms and conditions, to liquidate any assets held in a Participant's Account for the purpose of paying such amounts. The Trustee shall not be deemed to be exercising discretion by causing the sale of any such assets to pay such fees or expenses. The Employer shall be responsible for payment of any deficiency.

**6. Power of Trustee.** The Trustee shall act solely as directed trustee of the assets it holds for the Plan ("Trust Fund"). In addition to and not in limitation of such powers as the Trustee has by law or under any other provisions of the Plan, the Trustee shall have the following powers, each of which the Trustee exercises solely as a directed trustee in accordance with the written direction of the Employer except to the extent a Plan asset is subject to Participant direction of investment and provided that no such power shall be exercised in any manner inconsistent with the provisions of ERISA:

- (a) to deal with all or any part of the Trust Fund and to invest all or a part of the Trust Fund in Permissible Investments, without regard to the law of any state regarding proper investment;
- (b) to retain uninvested such cash as the Administrator, named fiduciary, or Plan Participant under the Plan may, from time to time, direct;
- (c) to sell, lease, convert, redeem, exchange, or otherwise dispose of all or any part of the assets constituting the Trust Fund;
- (d) to enforce by suit or otherwise, or to waive, its rights on behalf of the Trust, and to defend claims asserted against it or the Trust, provided that the Trustee is indemnified to its satisfaction against liability and expenses including claims for delinquent contributions for which the Administrator, pursuant to its duties under Article 4.14 of the BPD, has directed in writing the Trustee to pursue ;
- (e) to employ legal, accounting, clerical, and other assistance to carry out the provisions of this Trust Agreement and to pay the reasonable expenses of such employment, including compensation, from the Trust if not paid by the Employer;
- (f) to compromise, adjust, and settle any and all claims against or in favor of it or the Trust;
- (g) to oppose, or participate in and consent to the reorganization, merger, consolidation, or readjustment of the finances of any enterprise, to pay assessments and expenses in connection therewith, and to deposit securities under deposit agreements;
- (h) to apply for or purchase annuity contracts in accordance with Article 14 of the BPD;

- (i) to hold securities unregistered, or to register them in its own name or in the name of nominees in accordance with the provisions of Section 2550.403a-1(b) of Department of Labor Regulations;
- (j) to appoint custodians to hold investments within the jurisdiction of the district courts of the United States and to deposit securities with stock clearing corporations or depositories or similar organizations;
- (k) to make, execute, acknowledge, and deliver any and all instruments that it deems necessary or appropriate to carry out the powers herein granted;
- (l) generally to exercise any of the powers of an owner with respect to all or any part of the Trust Fund; and
- (m) to take all such actions as may be necessary under the Trust Agreement, to the extent consistent with applicable law and the BPD.

The Employer specifically acknowledges and authorizes that affiliates or subsidiaries of the Trustee may act as its agent in the performance of ministerial, nonfiduciary duties under the Trust.

Unless specifically agreed to otherwise in writing by the Trustee, the Trustee shall have no discretion, responsibility, or authority with respect to the following items: (1) investment of the Trust Fund; (2) selection of Permissible Investments (the Trustee shall not render investment advice to any person in connection with the selection of Permissible Investments); (3) determination of the correctness of the amounts contributed and remitted to the Trustee or determination of whether any contribution is payable under the Plan; or (4) responsibility for the collection of any contributions to the Plan. With respect to collection of any contributions to the Plan, the Administrator shall be the named fiduciary responsible for ensuring the Employer or participants, where relevant, remit contributions repayments to the Trust and shall have the duty and responsibility for the collection of such contributions when not timely made. The Trustee shall be authorized to provide information and records regarding contributions it has received to the Administrator or other named fiduciary and may accept contributions and/or carry out related allocation instructions from, such named fiduciary upon its request, as may be further described in the BPD.

**7. Limitation of Duties and Liabilities.** The Trustee shall not be responsible in any way for the purpose or propriety of any distribution made pursuant to Article 7 of the BPD, or any other action or nonaction taken pursuant to the request of the Employer, the Plan Administrator, a Participant, or a Beneficiary; the validity or effect of the Plan and Trust Agreement; the qualification of the Plan or the Trust under the Code and ERISA; or the examination of the Plan by the Internal Revenue Service or the Department of Labor. Except as provided in Article 4.14 of the BPD, the Trustee shall have no authority to inquire into the correctness of any amounts contributed and remitted to the Trustee or to determine whether any contribution is payable under Article 4 of the BPD.

The Employer and the executor, administrator, or successor of the Employer, as appropriate, shall at all times fully indemnify and save harmless the Trustee, and its successors and assigns from any liability arising from any actions taken or not taken per direction from the Employer, Plan Administrator, Participant or Beneficiary, and from any and all liability whatsoever, which may arise in connection with the Plan, except liability arising from the gross negligence or willful misconduct of the Trustee.

The Trustee shall not be under any duty to take any action other than as herein specified with respect to the Trust, unless the Employer shall furnish the Trustee with instructions in proper form and such instructions shall have been specifically agreed to by the Trustee, or to defend or engage in any suit with respect to the Trust unless the Trustee shall have first agreed to do so and shall have been fully indemnified to its satisfaction.

The Trustee and its agents may conclusively rely upon and shall be protected in acting upon any written order from the Employer, Plan Administrator, Participant, or Beneficiary or its delegate or any other notice, request, consent, certificate or other instrument or paper

Form continues on next page. ►►

believed by it to be genuine and to have been properly executed, and, so long as it acts in good faith, in taking or omitting to take any other action. The Trustee may delegate to one or more entities the performance of recordkeeping and other ministerial services in connection with the Plan, for a reasonable fee to be borne by the Trustee and not by the Plan or the Trust. Any such agent's duties and responsibilities shall be confined solely to the performance of such services and shall continue only for so long as the Trustee named in the Adoption Agreement serves as Trustee. The Trustee shall not have any liability with respect to money transferred to an insurance company pursuant to the Plan.

The Trustee shall be fully protected in acting upon the directions of the Plan Administrator in making benefit distributions, and shall have no duty to determine the rights or benefits of any person under the Plan or to inquire into the right or power of the Plan Administrator to direct any such distribution. A beneficiary designation form completed and filed in accordance with Article 7.4 of the BPD shall be deemed a direction of the Plan Administrator for purposes of this Section. The Trustee shall be entitled to assume conclusively that any determination by the Plan Administrator with respect to a distribution meets the requirements of the Plan. The Trustee shall not be required to make any payment hereunder in excess of the net realizable value of the assets of the Trust held for the Participant at the time of such payment, nor to make any payment in cash unless the Plan Administrator has furnished instructions in a form and manner acceptable to the Trustee as to the assets to be converted to cash for the purposes of making payment. The Trustee is expressly authorized to liquidate any assets held in a Participant's Account to make a payment under this Section but shall not be deemed to have exercised any fiduciary discretion in doing so.

**8. Substitution, Resignation, or Removal of Trustee.** The Provider may at any time appoint an institution as a substitute for the Trustee named in the Adoption Agreement that is a bank or is a nonbank trustee that has received approval from the Internal Revenue Service; provided that the Provider shall notify the Employer in writing at least 30 days in advance of the effective date of any such appointment. The Trustee may resign at any time upon 30 days' notice in writing to the Employer and may be removed by the Employer at any time upon 30 days' notice in writing to the Trustee. Upon resignation of the Trustee, the Provider may propose a successor trustee. Upon resignation by or removal of the Trustee, the Employer shall no longer participate in the Fidelity Pre-Approved Plan created by the Non-Trust Plan Documents and shall be deemed to have adopted an individually designed plan. In such event, the Employer shall appoint a successor trustee within 60-day period and the Trustee shall transfer the assets of the Trust to the successor trustee upon receipt of sufficient evidence (such as a determination letter or opinion letter from the Internal Revenue Service or an opinion of counsel satisfactory to the Trustee) that such trust shall be a qualified trust under the Code. Upon receipt by the Trustee of written acceptance of appointment by a substitute or successor trustee, the Trustee shall transfer and pay over to such successor the assets of the Trust. The Trustee is authorized, however, to reserve such sum of money or property as it may deem advisable for payment of all its fees, compensation, costs and expenses, or for payment of any other liabilities constituting a charge on or against the assets of the Trust or on or against the Trustee, with any balance of such reserve remaining after the payment of all such items to be paid over to the substitute or successor trustee. The Trustee and the Provider shall not be liable for the acts or omissions of any substitute or successor trustee. If within 90 days after the Trustee's resignation or removal a successor Trustee has not been appointed, the Trustee shall terminate the Trust pursuant to Article 10.6 of the BPD. The Trustee named in the Adoption Agreement has accepted its appointment, and intends to serve, only for so long as the Employer's plan is a Pre-Approved Plan. If the Plan is no longer a Pre-Approved Plan, the Trustee shall resign in accordance with this Section. Notwithstanding the foregoing, any successor to the Trustee or successor trustee, either through sale or transfer of the business or trust department of the

Trustee or successor trustee, or through reorganization, consolidation, or merger, or any similar transaction of either the Trustee or successor trustee, shall, upon consummation of the transaction, become the successor trustee under this Trust Agreement.

- 9. Interpretation and Construction.** In the event of any conflict between the terms of the BPD and Adoption Agreement and any provision contained in this Trust Agreement, the terms of the BPD and Adoption Agreement will govern.
- 10. Indemnification.** The Employer shall indemnify the Trustee with respect to any third-party claims or regulatory proceedings asserted or commenced against the Trustee to the extent such claim or proceeding is the result of any act done, or an act failed to be done, by any individual or person with respect to the Plan or the Trust, excepting only those Losses asserted as part of such claim or proceeding that result from the Trustee's negligence or willful misconduct under, or breach of the terms of, this Trust Agreement. The Trustee shall indemnify the Employer with respect to any third-party claims or regulatory proceedings asserted or commenced against the Employer to the extent Losses asserted as part of any such claim or proceeding result from the Trustee's negligence or willful misconduct under, or breach of the terms of, this Trust Agreement. Any reference to the Employer or the Trustee as an indemnified Party shall be deemed to include their respective directors, officers, affiliates, and subsidiaries. "Losses" shall mean and include any and all liability, loss, damage, claim, expense, cost, fine, fee, penalty, obligation, or injury including those resulting from any and all actions, suits, proceedings, demands, assessments, or judgments, together with reasonable costs and expenses including the attorneys' fees and other legal costs and expenses relating thereto.
- 11. Consultation by the Trustee with Counsel.** The Trustee may consult with legal counsel (who may be but need not be counsel for the Employer or the Administrator) concerning any question which may arise with respect to its rights and duties under the Plan and Trust, and the opinion of such counsel shall, to the extent permitted by law, be full and complete protection in respect of any action taken or omitted by the Trustee hereunder in good faith and in accordance with the opinion of such counsel.
- 12. Persons Dealing with the Trustee.** No person dealing with the Trustee shall be bound to see to the application of any money or property paid or delivered to the Trustee or to inquire into the validity or propriety of any transactions.
- 13. Fiscal Year of the Trust.** The fiscal year of the Trust shall coincide with the Plan Year.
- 14. Amendment.** In accordance with provisions of the Plan, and subject to the limitations set forth therein, this Trust Agreement may be amended by the Employer and the Trustee executing an amendment in writing signed by the parties. No amendment to this Trust Agreement shall divert any part of the Trust Fund to any purpose other than as provided in Section 3.
- 15. Procedure upon Termination of Trust.** As soon as administratively feasible after the stated date that the Plan terminates pursuant to Article 10.6 of the BPD, the Trustee shall, after paying all expenses of the Trust, allocating any unallocated assets of the Trust, and adjusting all Accounts to reflect such expenses and allocations, distribute to Participants, former Participants, and Beneficiaries the assets credited to their Accounts in accordance with the instructions of the Plan Administrator or the Employer; provided, however, that the Trustee shall not be required to make any such distribution until it has received notice of any determination by the Internal Revenue Service, which the Trustee may reasonably require. Each such distribution shall be made promptly in accordance with Article 7 of the BPD. Upon completion of such distribution, the Trustee shall be relieved from all further liability with respect to all amounts so paid.


Form continues on next page. ►►

**16. Missing Plan Participants.** If distribution is to be made to a Participant or Beneficiary who cannot be located, following the Plan Administrator's completion of such search methods as described in applicable Department of Labor guidance, the Administrator shall give instructions to the Trustee to roll over the distribution to an individual retirement account established by the Administrator in the name of the missing Participant or Beneficiary, which account shall satisfy the requirements of the Department of Labor automatic rollover safe harbor generally applicable to amounts less than or equal to the maximum cash out amount specified in Code Section 401(a)(31)(B)(ii) (\$5,000 as of January 1, 2018) that are mandatorily distributed from the Plan. In the alternative, the Employer may direct the Trustee, subject to applicable guidance, to transfer the Account of any such missing Participant or Beneficiary, regardless of the amount of any such Account to the Pension Benefit Guarantee Corporation. In the absence of such instructions, the Trustee shall make no distribution to the distributee.

**17. Governing Law.** The Trust shall be construed, administered, and enforced according to the laws of the Commonwealth of Massachusetts to the extent not preempted by the laws of the United States of America (including ERISA); any provision of the Trust in conflict with applicable federal law shall survive to the extent permitted by that law. References to ERISA or to DOL Regulations or other guidance under ERISA shall apply only to the extent that the Trust is subject to ERISA and is not excluded from coverage under ERISA pursuant to DOL Regulation Section 2510.3-3(b) or otherwise.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Trust Agreement to be executed by its duly authorized representative.

**Trustee Signature**

<b>PRINT TRUSTEE NAME</b>	
Clint Brandner	
<b>PRINT TRUSTEE TITLE</b>	
VP, Operations	
<b>TRUSTEE SIGNATURE</b>	
<b>SIGN</b>	X 

**Employer Signature and Date**

<b>EMPLOYER (PLAN SPONSOR)</b>	
<b>PRINT NAME OF PERSON SIGNING BELOW</b>	
<b>PRINT TITLE</b>	
<b>EMPLOYER SIGNATURE</b>	<b>TODAY'S DATE MM/DD/YYYY</b>
<b>SIGN</b>	X

<p><b>Did you sign the form?</b>  <b>Questions?</b> Call 800-544-5373.</p>	<p><b>Regular mail</b>  Fidelity Investments  PO Box 770001  Cincinnati, OH 45277-0036</p>	<p><b>Overnight mail</b>  Fidelity Investments  100 Crosby Parkway KC1K  Covington, KY 41015</p>
--	--	--

Brokerage services are provided by Fidelity Brokerage Services LLC, Member NYSE, SIPC. All trademarks and service marks indicated herein are the property of their respective owners. 947636.3.0 (12/21)