

# Insurance Company Custody Agreement

.....(*name of the insurance company*) having its office at .....(*address*) hereinafter referred to as the "Insurance Company", employs

.....(*name of the credit institution*) having its office at.....(*address*) in its capacity as custodian, hereinafter referred to as the "Institution", to provide

the services hereafter set forth with respect to the solvency fund as described in Article 22, Paragraph 1, preamble and subsection a of the Insurance Supervision Act (National Gazette 1990, no. 77). Under this provision the insurance company is under obligation to maintain assets in open deposit with a licensed credit institution, as referred to in Section 1, Paragraph 1, sub c of the National Ordinance on the Supervision of Banking and Credit Institutions (National Gazette, 1994, no. 4).

This custody agreement shall be governed by the provisions as stipulated in the Financial Requirements Insurance Business Decree (P.B. 1992, no. 52).

## Section 1. Agreement

The provisions of the underlying agreement will not be in conflict with the stipulations of the Insurance Supervision Act (National Gazette 1990, no. 77) nor those of the Financial Requirements Insurance Business Decree (National Gazette 1992, no. 52).

## Section 2. Declaration

Pursuant to Article 22, Paragraph 1 of the Insurance Supervision Act, and in conjunction with the provisions of the Financial Requirements Insurance Business Decree (National Gazette 1992, no. 52) that require deposits by insurance companies, the insurance company agrees to deliver and maintain eligible assets in the amount of NAf. ....as determined by the Bank van de Nederlandse Antillen (hereinafter called "the Bank") in Article 4 of the aforementioned decree.

## Section 3. Custodial Services

The institution shall safekeep all property delivered to it, shall identify such property on its books and records, shall receive the income attributable thereto, and shall hold, invest, disburse or otherwise dispose of such income and principal or its proceeds, pursuant to the provisions of this Agreement.

The institution shall be responsible for losses of or damage to the securities under its care, custody and control. In the event of loss of or damage of the securities under the care, custody and control of the institution, the institution shall, upon demand by the insurance company, promptly replace such securities with like kind and quality, together with all rights and privileges pertaining to such securities, or, if acceptable to the insurance company, deliver cash to the deposit account equal to the then fair market value of the securities. Under no circumstances, however, shall the institution be liable for consequential damages under this agreement for causes beyond its control, which causes shall be war, insurrection, nuclear fission or fusion, radioactivity, seismic activity, earth movement, volcanism, flood, windstorm, hurricane, tornado or lightning.

The institution shall independently see to acquiring new coupon and dividend sheets and to depositing in connection with the meetings to be attended by the insurer.

#### **Section 4. Eligible Assets**

The eligible assets are determined in Article 4 of the Financial Requirements Insurance Business Decree (National Gazette, 1992, no. 52). The appraisal and the distribution of the assets require the Bank's approval.

#### **Section 5. Separate Agreements**

From a separate agreement it should be apparent that:

**5.1** With respect to the property held by the institution under this agreement, no legal act or other agreement can be undertaken without written approval of the Bank.

**5.2** Redemption and interest payments agreed upon shall not be effected without written approval of the Bank, in case the Bank has prohibited the debtor to do so.

**5.3** Additional redemption and advanced interest payments may not take place without written permission from the Bank.

**5.4** All redemption and interest payments which do not comply with subsections 5.1 and 5.2 shall not be deducted from the property held by the institution under this agreement.

**5.5** The debtor shall not invoke compensation.

**5.6** For what the IOU's secured by the right of mortgage are concerned, no cancellation or change in mortgage registrations are possible without written approval of the Bank.

#### **Section 6. Surrendering of Assets**

No assets, with the exception of coupons and dividend-coupons, shall be handed over to the institution without written prior approval of the Bank. The institution is authorized to hand over coupons and dividend-coupons to the insurance company without prior written approval of the Bank, provided it does not take place 14 days before the day on which the coupons are payable. This will not be permitted in case the Bank has prohibited the institution to do so.

#### **Section 7. Exemption**

- a. All assets shall be held in the Netherlands Antilles unless the Bank has granted an exemption of this stipulation.
- b. In the event the Bank has granted an exemption, it remains at all times authorized, if necessary, to request the insurance company to transfer the assets to the Netherlands Antilles.

#### **Section 8. Examination by the Bank**

The institution agrees that at any time upon demand of the Bank, the institution will prepare and deliver to the Bank a written verification of all securities held by the institution as custodian for the insurance company.

#### **Section 9. Investment Services**

- 9.1 The institution shall have no responsibilities with respect to initiating any investment, reinvestment or divestment of the property held by it under this Agreement, without direction from the insurance company, and approval of the Bank as provided in this Agreement.
- 9.2 All sales, purchases, exchanges, redemption and interest payments or other transactions respecting securities or other property which may be made by the institution for the account of the insurance company shall be made only with approval of the Bank pursuant to instructions of the insurance company or of the insurance company designated representative. In the absence of such instructions, the institution shall have no responsibility for the investment or reinvestment of such property nor liability for any omission to act in the absence of instructions.
- 9.3 If an acquisition initiated by the insurance company or the insurance company's representative results in a debit balance at settlement of such transaction, institution shall be entitled to charge interest on the debit balance.
- 9.4 The institutions' duties hereunder shall continue until such time as such duties shall terminate as hereinafter provided or until such time as such duties shall be altered in writing, executed by insurance company, approved by the Bank and consented by the institution.

**Section 10. Distributions**

All distributions are subject to prior approval by the Bank. Institution shall distribute principal cash or principal assets as the insurance company may direct from time to time providing such amounts are in excess of the amounts required to be pledged as required in Section 1 of this Agreement. In the event that the insurance company issues a direction to execute a transaction that is inconsistent with prior settlement instructions, the institution may retain the asset until settlement has been made.

**Section 11. Statements**

Institution shall furnish periodic statements in the usual form for accounts of this type and shall deliver the same to insurance company or to any representative designated by insurance company. Furthermore, the institution shall provide information to the Bank regarding any changes in securities pledged pursuant to this Agreement.

**Section 12. Directions to Institution**

All directions of the Bank to the institution shall be in writing. No legal act or agreement shall be undertaken without written approval of the Bank. The institution shall not be required to comply with any direction which in its judgment may subject it to liability or expense, or to prosecute or defend any action, unless indemnified in manner and amount satisfactory to it.

**Section 13. Transfer of Assets**

The Bank may request the institution to deposit the assets with the Bank considering :

- a. The Bank withdraws its approval of the institution (depository) .
- b. The institution terminates its agreement with the insurance company.

**Section 14. Termination of Agreement**

Upon termination and written direction of the Bank, the institution shall transfer the property then held in the account for the insurance company to the insurance company or the new custodian, along with all records pertaining to the securities, (with a copy of the records to the insurance company). Upon termination, the insurance company shall pay all sums due to the institution and shall indemnify the institution in the manner and amount satisfactory to it against liability incurred in the performance of this agreement.

**Section 15. Compensation**

Except as hereinafter provided, the institution shall be compensated for its services by the insurance company in the amount of NAf. ....for the administration of this account. All charges shall be paid by insurance company. The compensation

or expenses charged by the Institution for the services rendered under this Agreement shall not be charged to the assets held under this Agreement.

**EXECUTED IN TRIPLICATE**

Curaçao, Netherlands Antilles on the \_\_\_\_\_ day of \_\_\_\_\_, 19..

\_\_\_\_\_  
*Name of Insurance Company*

By \_\_\_\_\_

*Authorized Officer*

*Name and Title*

Curaçao, Netherlands Antilles on the \_\_\_\_\_ day of \_\_\_\_\_, 19..

\_\_\_\_\_  
*Name of Credit Institution*

By \_\_\_\_\_

*Authorized Officer*

*Name and Title*