

## Custody Agreements

**COMMONWEALTH INSURANCE COMPANY OF AMERICA**

**ITEM 11**

**CUSTODY AGREEMENTS**

**CUSTODY AGREEMENT**

**by and between**

**COMMONWEALTH INSURANCE COMPANY OF AMERICA**

**and**

**THE BANK OF NEW YORK MELLON**

## TABLE OF CONTENTS

	<u>PAGE</u>
<b>SECTION 1 – CUSTODY ACCOUNTS; INSTRUCTIONS.....</b>	<b>1</b>
1.1    Definitions .....	1
1.2    Establishment of Account .....	3
1.3    Distributions .....	3
1.4    Authorized Instructions .....	3
1.5    Authentication .....	3
1.6    Security Procedure .....	3
1.7    On-Line Systems .....	4
<b>SECTION 2 – CUSTODY SERVICES.....</b>	<b>4</b>
2.1    Holding Securities .....	4
2.2    Subcustodians .....	4
2.3    Depositories .....	5
2.4    Agents .....	5
2.5    Custodian Actions without Direction .....	5
2.6    Custodian Actions with Direction .....	6
2.7    Foreign Exchange Transactions .....	6
<b>SECTION 3 – CORPORATE ACTIONS.....</b>	<b>6</b>
3.1    Notification .....	6
3.2    Direction .....	7
3.3    Partial Redemptions, Payments, Etc.....	7
<b>SECTION 4 – SETTLEMENT OF TRADES .....</b>	<b>7</b>
4.1    Trading Instructions .....	7
4.2    Contractual Settlement and Income .....	7
4.3    Trade Settlement .....	7
<b>SECTION 5 – DEPOSITS AND ADVANCES.....</b>	<b>8</b>
5.1    Deposits .....	8
5.2    Sweep .....	8
5.3    Overdrafts and Indebtedness .....	8
5.4    Securing Repayment.....	8
5.5    Setoff .....	9
<b>SECTION 6 – TAXES, REPORTS AND RECORDS .....</b>	<b>9</b>
6.1    Tax Obligations .....	9
6.2    Pricing and Other Data .....	9
6.3    Statements and Reports .....	10
6.4    Review of Reports .....	10
6.5    Inspection of Books and Records .....	10
6.6    Required Disclosure .....	10
6.7    Centralized Functions .....	11

<b>SECTION 7 – PROVISIONS REGARDING CUSTODIAN.....</b>	<b>11</b>
7.1 Standard of Care .....	11
7.2 Duties.....	12
7.3 Limitation on Liability .....	12
7.4 Gains.....	12
7.5 Force Majeure.....	13
7.6 Fees.....	13
7.7 Indemnification .....	13
<b>SECTION 8 – AMENDMENT; TERMINATION; ASSIGNMENT .....</b>	<b>13</b>
8.1 Amendment .....	13
8.2 Termination .....	13
8.3 Successors and Assigns .....	14
<b>SECTION 9 – ADDITIONAL PROVISIONS.....</b>	<b>14</b>
9.1 Non-Custody Assets .....	14
9.2 Appropriate Action.....	14
9.3 Governing Law.....	14
9.4 Sovereign Immunity .....	14
9.5 Representations .....	14
9.6 USA PATRIOT Act .....	15
9.7 Non-Fiduciary Status.....	15
9.8 Notices.....	15
9.9 Entire Agreement .....	15
9.10 No Third Party Beneficiaries.....	15
9.11 Execution in Counterparts .....	15

## CUSTODY AGREEMENT

**CUSTODY AGREEMENT** ("Agreement"), dated as of \_\_\_\_\_, 2013, between **COMMONWEALTH INSURANCE COMPANY OF AMERICA**, an insurance company organized under the laws of the state of Washington (the "Client") and **THE BANK OF NEW YORK MELLON**, a bank organized under the laws of the state of New York (the "Custodian").

### SECTION 1 – CUSTODY ACCOUNTS; INSTRUCTIONS

**1.1 Definitions.** Whenever used in this Agreement, the following words shall have the meanings set forth below:

"Account" or "Accounts" shall have the meaning set forth in Section 1.2.

"Authorized Instructions" shall have the meaning set forth in Section 1.4.

"Authorized Person" shall mean any Person authorized by the Client to give Oral or Written Instructions with respect to one or more Accounts or with respect to foreign exchange, derivative investments or information and transactional web based services provided by the Custodian or a BNY Mellon Affiliate. Authorized Persons shall include Persons authorized by an Authorized Person. Authorized Persons, their signatures and the extent of their authority shall be provided by Written Instructions. The Custodian may conclusively rely on the authority of such Authorized Persons until it receives a Written Instruction to the contrary.

"BNY Mellon Affiliate" shall mean any direct or indirect subsidiary of The Bank of New York Mellon Corporation.

"Book-Entry System" shall mean the U.S. Federal Reserve/Treasury book-entry system for receiving and delivering securities, its successors and nominees.

"Business Day" shall mean any day on which the Custodian and relevant Depositories and Subcustodians are open for business.

"Centralized Functions" shall have the meaning set forth in Section 6.7.

"Country Risk Events" shall have the meaning set forth in Section 2.1.

"Customer-Related Data" shall have the meaning set forth in Section 6.7.

"Data Providers" shall mean pricing vendors, analytics providers, brokers, dealers, investment managers, Authorized Persons, Subcustodians, Depositories and any other Person providing Market Data to the Custodian.

"Data Terms Website" shall mean <http://www.bnymellon.com/products/assetservicing/vendoragreement.pdf> or any successor website the address of which is provided by the Custodian to the Client.

"Depository" shall include the Book-Entry System, the Depository Trust Company, Euroclear, Clearstream Banking S.A., the Canadian Depository System, CLS Bank and any other securities depository, book-entry system or clearing agency (and their respective successors and nominees) authorized to act as a securities depository, book-entry system or clearing agency pursuant to applicable law.

"Losses" shall mean, collectively, losses, costs, expenses, damages, liabilities and claims.

"Market Data" shall mean pricing or other data related to Securities and other assets. Market Data includes but is not limited to security identifiers, valuations, bond ratings, classification data, and other data received from investment managers and others.

"Non-Custody Assets" shall have the meaning set forth in Section 9.1.

"Oral Instructions" shall mean instructions expressed in spoken words received by the Custodian.

"Operational Losses" shall have the meaning set forth in Section 2.2.

"Person" or "Persons" shall mean any entity or individual.

"Required Care" shall have the meaning set forth in Section 2.2.

"Securities" shall include, without limitation, any common stock and other equity securities, depository receipts, limited partnership and limited liability company interests, bonds, debentures and other debt securities, notes or other obligations, and any instruments representing rights to receive, purchase, or subscribe for the same, or representing any other rights or interests therein (whether represented by a certificate or held in a Depository, with a Subcustodian or on the books of the issuer) that are acceptable to the Custodian.

"Subcustodian" shall mean a bank or other financial institution (other than a Depository) that is utilized by the Custodian or by a BNY Mellon Affiliate, in its discretion, in connection with the purchase, sale or custody of Securities or cash hereunder.

"Tax Obligations" shall mean taxes, withholding, certification and reporting requirements, claims for exemptions or refund, interest, penalties, additions to tax and other related expenses.

"Third Party Service Provider" shall mean a service provider hired by the Custodian to provide or to assist the Custodian with providing value-added services requested by the Client.

"Written Instructions" shall mean written communications received by the Custodian by S.W.I.F.T., overnight delivery, postal services, facsimile transmission,

email, on-line communication system or other method or system, each as specified by the Custodian as available for use in connection with the services hereunder.

**1.2 Establishment of Account.** The Client hereby appoints the Custodian as custodian of all Securities and cash at any time delivered to the Custodian to be held under this Agreement. The Custodian hereby accepts such appointment and agrees to establish and maintain one or more accounts in which the Custodian will hold Securities and cash as provided herein. Such accounts (each, an "Account," and collectively, the "Accounts") shall be in the name of the Client.

**1.3 Distributions.** The Custodian shall make distributions or transfers out of an Account pursuant to Authorized Instructions. In making payments to service providers pursuant to Authorized Instructions, the Client acknowledges that the Custodian is acting in an administrative or ministerial capacity, and not as the payor, for tax information reporting and withholding purposes.

**1.4 Authorized Instructions.** The Custodian shall be entitled to rely upon any Oral or Written Instructions actually received by the Custodian and reasonably believed by the Custodian to be from an Authorized Person ("Authorized Instructions"). The Client agrees that an Authorized Person shall forward to the Custodian Written Instructions confirming Oral Instructions by the close of business of the same day that such Oral Instructions are given to the Custodian. The Custodian may act on such Oral Instructions but is not obligated to do so until Written Instructions are received. The Client agrees that the fact that Written Instructions confirming Oral Instructions are not received or that contrary Written Instructions are received by the Custodian shall in no way affect the validity or enforceability of transactions authorized by such Oral Instructions and effected by the Custodian.

**1.5 Authentication.** If the Custodian receives Written Instructions that appear on their face to have been transmitted by an Authorized Person via (i) facsimile, email, or other electronic method that is not secure, or (ii) secure electronic transmission containing applicable authorization codes, passwords or authentication keys, the Client understands and agrees that the Custodian cannot determine the identity of the actual sender of such Written Instructions and that the Custodian shall be entitled to conclusively presume that such Written Instructions have been sent by an Authorized Person and are Authorized Instructions. The Client shall be responsible for ensuring that only Authorized Persons transmit such Written Instructions to the Custodian and that all Authorized Persons treat applicable user and authorization codes, passwords and authentication keys with extreme care.

**1.6 Security Procedure.** The Client acknowledges and agrees that it is fully informed of the protections and risks associated with the various methods of transmitting Written Instructions to the Custodian and that there may be more secure methods of transmitting Written Instructions than the method selected by the sender. The Client agrees that the security procedures, if any, to be followed in connection with a



transmission of Written Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

**1.7 On-Line Systems.** If an Authorized Person elects to transmit Written Instructions through an on-line communication system offered by the Custodian, the use thereof shall be subject to any terms and conditions contained in a separate written agreement. If the Client or an Authorized Person elects, with the Custodian's prior consent, to transmit Written Instructions through an on-line communications service owned or operated by a third party, the Client agrees that the Custodian shall not be responsible or liable for the reliability or availability of any such service.

## **SECTION 2 – CUSTODY SERVICES**

**2.1 Holding Securities.** Subject to the terms hereof, the Client hereby authorizes the Custodian to hold any Securities in registered form in the name of the Custodian or one of its nominees. Securities held for the Client hereunder shall be segregated on the Custodian's books and records from the Custodian's own property. The Custodian shall be entitled to utilize Subcustodians and Depositories in connection with its performance hereunder. Securities and cash held through Subcustodians shall be held subject to the terms and conditions of the Custodian's or a BNY Mellon Affiliate's agreements with such Subcustodians. Securities and cash deposited by the Custodian in a Depository will be held subject to the rules, terms and conditions of such Depository. Subcustodians may hold Securities in Depositories in which such Subcustodians participate. Unless otherwise required by local law or practice or a particular subcustodian agreement, Securities deposited with Subcustodians will be held in a commingled account in the name of the Custodian or a BNY Mellon Affiliate for its clients. The Custodian shall identify on its books and records the Securities and cash belonging to the Client, whether held directly or indirectly through Depositories or Subcustodians. In no event shall the Custodian be liable for any Losses arising out of the holding of Securities or cash in any particular country, including but not limited to, Losses resulting from nationalization, expropriation or other governmental actions; regulation of the banking or securities industry; exchange or currency controls or restrictions, devaluations or fluctuations or currency redenomination; availability of Securities or cash or market conditions which prevent the transfer of property or the execution of Securities transactions or affect the value of property ("Country Risk Events").

**2.2 Subcustodians.** The Custodian shall exercise reasonable care in the selection or retention, monitoring and continued use of Subcustodians in light of prevailing rules, practices, procedures and circumstances in the relevant market (the "Required Care").

With respect to any Losses incurred by the Client as a result of the acts or the failure to act by any Subcustodian ("Operational Losses," which specifically excludes Losses arising out of or relating to Country Risk Events), the Custodian shall be liable for:

a. Operational Losses with respect to Securities or cash held by the Custodian with or through a BNY Mellon Affiliate; and

b. Operational Losses with respect to Securities or cash held by the Custodian with or through a Subcustodian (other than a BNY Mellon Affiliate) to the extent that such Operational Losses were directly caused by failure on the part of the Custodian to exercise Required Care.

With respect to all other Operational Losses not covered by clauses (a) and (b) above, the Custodian shall take appropriate action to recover Operational Losses from such Subcustodian, and Custodian's sole liability shall be limited to amounts recovered from such Subcustodian (exclusive of costs and expenses incurred by Custodian).

In addition, the Custodian shall be liable for repayment to the Client of cash credited to the Client's Account and credited to the Client's or the Custodian's cash account at the Subcustodian that the Custodian is not able to recover from the Subcustodian (other than as a result of Country Risk Events).

**2.3 Depositories.** The Custodian shall have no liability whatsoever for the action or inaction of any Depository or for any Losses resulting from the maintenance of Securities with a Depository. The Custodian shall be liable to repay cash credited to the Client's Account and credited to the Client's, the Custodian's or the Subcustodian's account at such Depository (other than as a result of Country Risk Events).

**2.4 Agents.** The Custodian may appoint agents, including BNY Mellon Affiliates, on such terms and conditions as it deems appropriate to perform its services hereunder. Except as otherwise specifically provided herein, no such appointment shall discharge the Custodian from its obligations hereunder.

**2.5 Custodian Actions without Direction.** With respect to Securities held hereunder, the Custodian shall:

- a. Receive income and other payments due to the Account;
- b. Carry out any exchanges of Securities or other corporate actions not requiring discretionary decisions;
- c. Facilitate access by the Client or its designee to ballots or online systems to assist in the voting of proxies received for eligible positions of Securities held in the Account (excluding bankruptcy matters);
- d. Forward to the Client or its designee information (or summaries of information) that the Custodian receives from Depositories or Subcustodians concerning Securities in the Account (excluding bankruptcy matters);
- e. Forward to the Client or its designee an initial notice of bankruptcy cases relating to Securities held in the Account and a notice of any required action related

to such bankruptcy cases as may be received by the Custodian. No further action or notification related to the bankruptcy case shall be required;

f. Endorse for collection checks, drafts or other negotiable instruments received on behalf of the Account; and

g. Execute and deliver, solely in its custodial capacity, certificates, documents or instruments incidental to the Custodian's performance under this Agreement.

**2.6 Custodian Actions with Direction.** The Custodian shall take the following actions in the administration of the Account only pursuant to Authorized Instructions:

a. Settle purchases and sales of Securities and process other transactions, including, without limitation, free receipts and deliveries;

b. Take actions necessary to settle transactions in connection with futures or options contracts, short-selling programs, foreign exchange or foreign exchange contracts, swaps and other derivative investments; and

c. Deliver Securities in the Account if an Authorized Person advises the Custodian that the Client has entered into a separate securities lending agreement; provided that the Client executes such agreements as Custodian may require in connection with such arrangements.

**2.7 Foreign Exchange Transactions.** Any foreign exchange transaction effected by the Custodian in connection with this Agreement may be entered with the Custodian or a BNY Mellon Affiliate acting as a principal or otherwise through customary channels. The Client may issue standing Written Instructions with respect to foreign exchange transactions, but the Custodian may establish rules or limitations concerning any foreign exchange facility made available to the Client. With respect to foreign exchange transactions done through The Bank of New York Mellon's Global Markets FX Desk, it is acting as a principal counterparty on its own behalf and is not acting as a fiduciary or agent for, or in connection with, the Client, its investment manager or the Account.

### **SECTION 3 – CORPORATE ACTIONS**

**3.1 Notification.** The Custodian shall notify the Client or its designee of rights or discretionary corporate actions as promptly as practicable under the circumstances, provided that the Custodian in its capacity as custodian has actually received notice of such right or discretionary corporate action from the relevant Subcustodian or Depository. Without actual receipt by the Custodian in its capacity as custodian, the Custodian shall have no liability for failing to so notify the Client.

**3.2 Direction.** Whenever there are voluntary rights that may be exercised or alternate courses of action that may be taken by reason of the Client's ownership of Securities, the Client or its designee shall be responsible for making any decisions relating thereto and for directing the Custodian to act. In order for the Custodian to act, it must receive Authorized Instructions using the Custodian generated form or clearly marked as instructions, addressed as the Custodian may from time to time request, by such time as the Custodian shall advise the Client or its designee. If the Custodian does not receive Authorized Instructions by such deadline, the Custodian shall not be liable for failure to take any action relating to or to exercise any rights conferred by such Securities.

**3.3 Partial Redemptions, Payments, Etc.** The Custodian shall promptly advise the Client or its designee upon its notification of a partial redemption, partial payment or other action with respect to a Security affecting fewer than all such Securities held within the Account. If the Custodian, any Subcustodian or Depository holds any Securities affected by one of the events described, the Custodian, the Subcustodian or Depository may select the Securities to participate in such partial redemption, partial payment or other action in any non-discriminatory manner that it customarily uses to make such selection.

#### **SECTION 4 – SETTLEMENT OF TRADES**

**4.1 Trading Instructions.** Promptly after each purchase or sale of Securities by the Client, an Authorized Person shall deliver to the Custodian Authorized Instructions specifying all information necessary for the Custodian to settle such purchase or sale. For the purpose of settling purchases of Securities, the Client shall provide the Custodian with sufficient immediately available funds for all such transactions by such time and date as conditions in the relevant market dictate.

**4.2 Contractual Settlement and Income.** The Custodian may, as a matter of bookkeeping convenience, credit the Account with the proceeds from the sale, redemption or other disposition of Securities or interest, dividends or other distributions payable on Securities prior to its actual receipt of final payment therefor. All such credits shall be conditional until the Custodian's actual receipt of final payment and may be reversed by the Custodian to the extent that final payment is not received. Payment with respect to a transaction will not be "final" until the Custodian shall have received immediately available funds that under applicable local law, rule or practice are irreversible and not subject to any security interest, levy or other encumbrance, and that are specifically applicable to such transaction.

**4.3 Trade Settlement.** Transactions will be settled using practices customary in the jurisdiction or market where the transaction occurs. The Client understands that when the Custodian is instructed to deliver Securities against payment, delivery of such Securities and receipt of payment therefor may not be completed simultaneously. The Client assumes full responsibility for all risks involved in connection with the Custodian's delivery of Securities pursuant to Authorized Instructions in accordance with local market practice.

## SECTION 5 – DEPOSITS AND ADVANCES

**5.1 Deposits.** The Custodian may hold cash in Accounts or may arrange to have such cash held by a BNY Mellon Affiliate or Subcustodian, or with a Depository. Where cash is on deposit with the Custodian, a Subcustodian, a BNY Mellon Affiliate or a Depository, it will be subject to the terms of this Agreement and such deposit terms and conditions as may be issued by such entity from time to time.

**5.2 Sweep.** Cash may be swept as directed by the Client or its investment manager to investment vehicles offered by the Custodian or to other investment vehicles. Cash may be uninvested when it is received or reconciled to an Account after the deadline to be swept into a target vehicle, or when held for short periods of time related to transaction settlements. The Client acknowledges that, as part of the Custodian's compensation, the Custodian will earn interest on cash balances held by the Custodian, including disbursement balances and balances arising from purchase and sale transactions, as provided in the Custodian's indirect compensation disclosures.

**5.3 Overdrafts and Indebtedness.** The Custodian may, in its sole discretion, advance funds in any currency hereunder. If an overdraft occurs in an Account (including, without limitation, overdrafts incurred in connection with the settlement of securities transactions, funds transfers or foreign exchange transactions) or if the Client is for any other reason indebted to the Custodian, the Custodian shall be entitled, and the Client authorizes the Custodian, to collect from the Account the amount of the advance, overdraft or indebtedness, plus accrued interest at a rate then charged by the Custodian to its institutional custody clients in the relevant currency.

**5.4 Securing Repayment.** If any advance of funds is made by the Custodian to purchase or to make payment on or against delivery of Securities under this Agreement, the Custodian shall have a continuing security interest in and right of setoff against such Securities and the proceeds thereof, until such time as the Custodian is repaid the amount of such advance. If at any time before such repayment the market value of such Securities is less than the amount of the advance made to finance their purchase, the Custodian shall have a continuing security interest in and right of setoff against any cash in any currency held by the Custodian or any BNY Mellon Affiliate at any time for and in the name of the Client as is necessary for the repayment of such advance by the Custodian to be fully secured. If the Client is indebted to the Custodian for overdrafts or for any other reason, the Custodian shall be entitled to collect from the Accounts sufficient cash for reimbursement, and if such cash is insufficient, to sell the Securities in the Accounts, upon prior written notice to the Client, to the extent necessary to obtain reimbursement for the advance amount then outstanding. The Custodian shall be entitled to all the rights and remedies of a pledgee and secured creditor as if the Client is in default under applicable laws, rules or regulations as then in effect. Subject to any legal or regulatory restrictions, such security interest shall be superior to any and all other liens, security interests or claims and shall not be subject to any right of set-off or retention, counterclaim, lien or security of equal status. The Client shall not take any action with respect to the Securities which is inconsistent with the rights granted to

Custodian hereunder, other than as necessary for Client to conduct its business in the ordinary course and as contemplated by this Agreement, and shall take any and all additional action which may be reasonably requested by the Custodian and required to assure the priority of such security interest in favor of the Custodian.

**5.5     Setoff.** The Custodian has the right to debit any cash in the Accounts for any amount payable by the Client in connection with any and all obligations of the Client to Custodian whether or not relating to or arising under this Agreement. In addition to the rights of the Custodian under applicable law and other agreements, at any time when the Client shall not have honored any and all of its obligations to the Custodian, the Custodian shall have the right without notice to the Client to retain or set-off against such obligations of the Client any cash the Custodian or a BNY Mellon Affiliate may directly or indirectly hold for the Client, and any obligations (whether or not matured) that the Custodian or a BNY Mellon Affiliate may have to the Client in any currency. Any such asset of, or obligation to, the Client may be transferred to the Custodian and any BNY Mellon Affiliate in order to effect the above rights.

## **SECTION 6 – TAXES, REPORTS AND RECORDS**

**6.1     Tax Obligations.** The Client shall be liable for all taxes, assessments, duties and other governmental charges, including interest and penalties, with respect to any cash and Securities held on behalf of the Client and any transaction related thereto. To the extent that the Custodian has received relevant and necessary information with respect to the Account, the Custodian shall perform the following services with respect to Tax Obligations:

a.       The Custodian shall, upon receipt of sufficient information, file claims for exemptions or refunds with respect to withheld foreign (non-United States) taxes in instances in which such claims are appropriate;

b.       The Custodian shall withhold appropriate amounts, as required by United States tax laws, with respect to amounts received on behalf of nonresident aliens upon receipt of Written Instructions; and

c.       The Custodian shall provide to the Client such information received by the Custodian that could, in the Custodian's reasonable belief, assist the Client or its designee in the submission of any reports or returns with respect to Tax Obligations. An Authorized Person shall inform the Custodian in writing as to which party or parties shall receive information from the Custodian.

**6.2     Pricing and Other Data.** In providing Market Data related to the Account in connection with this Agreement, the Custodian is authorized to use Data Providers. The Custodian may follow Authorized Instructions in providing pricing or other Market Data, even if such instructions direct the Custodian to override its usual procedures and Market Data sources. The Custodian shall be entitled to rely without inquiry on all Market Data (and all Authorized Instructions related to Market Data) provided to it, and the Custodian shall not be liable for any Losses incurred as a result of

Market Data that contains errors or that is inaccurate or incomplete. The Client acknowledges that certain pricing or valuation information may be based on calculated amounts rather than actual market transactions and may not reflect actual market values, and that the variance between such calculated amounts and actual market values may be material. The Custodian shall not be required to inquire into the pricing of any Securities or other assets even though the Custodian may receive different prices for the same Securities or assets. Market Data may be the intellectual property of the Data Providers, which may impose additional terms and conditions upon the Client's use of the Market Data. The additional terms and conditions can be found on the Data Terms Website. The Client agrees to those terms as they are posted in the Data Terms Website from time to time. Certain Third Party Service Providers may not utilize the Client's directed price due to system constraints or differing data sources. Performance measurement and analytic services may use different data sources than those used by the Custodian to provide Market Data for the Account, which may result in differences between custodial reports and performance measurement and analytic reports.

**6.3 Statements and Reports.** The Custodian shall make available to the Client a monthly report of all transfers to or from the Accounts and a statement of all holdings in the Accounts as of the last Business Day of each month. The Client may elect to receive certain information electronically through the Internet to an email address specified by it for such purpose. By electing to use the Internet for this purpose, the Client acknowledges that such transmissions are not encrypted and therefore are not secure. The Client further acknowledges that there are other risks inherent in communicating through the Internet such as the possibility of virus contamination and disruptions in service, and agrees that the Custodian shall not be responsible for any loss, damage or expense suffered or incurred by the Client or any person claiming by or through the Client as a result of the use of such methods.

**6.4 Review of Reports.** If, within ninety (90) days after the Custodian makes available to the Client a statement with respect to the Accounts, the Client has not given the Custodian written notice of any exception or objection thereto, the statement shall be deemed to have been approved, and in such case, the Custodian shall not be liable for any claims concerning such statements.

**6.5 Inspection of Books and Records.** The Client shall have the right, at its own expense and with reasonable prior written notice to the Custodian, to inspect the Custodian's books and records directly relating to the Account during normal business hours or to designate an accountant to make such inspection.

**6.6 Required Disclosure.** With respect to Securities that are registered under the Securities Exchange Act of 1934, as amended (the "Exchange Act") or that are issued by an issuer registered under the Investment Company Act of 1940, as amended, Section 14(b) of the Exchange Act and Rule 14b-2 promulgated thereunder require the Custodian to disclose to issuers of such Securities, upon their request, the name, address and securities position of the Custodian's clients who are "beneficial owners" (as defined in the Exchange Act) of the issuer's Securities, unless the beneficial owner objects to such

disclosure. The Exchange Act defines a "beneficial owner" as any person who has or shares the power to vote a security (pursuant to an agreement or otherwise) or who directs the voting of a security. The Client represents that it is the beneficial owner of the Securities. As beneficial owner, the Client has designated on the signature page hereof whether it objects to the disclosure of its name, address and securities position to any U.S. issuer that requests such information pursuant to the Exchange Act for the specific purpose of direct communications between such issuer and the Client.

With respect to Securities issued outside the United States, the Custodian shall disclose information required by any Depository, the laws or regulations of the relevant jurisdiction, rules of the relevant stock exchange or organizational documents of an issuer. The Custodian is also authorized to supply any information regarding the Accounts that is required by any law, regulation or rules now or hereafter in effect. The Client agrees to supply the Custodian with any required information if it is not otherwise reasonably available to the Custodian.

**6.7 Centralized Functions.** The Bank of New York Mellon Corporation is a global financial organization that provides services to clients through its affiliates and subsidiaries in multiple jurisdictions (the "BNY Mellon Group"). The BNY Mellon Group may centralize functions, including audit, accounting, risk, legal, compliance, sales, administration, product communication, relationship management, storage, compilation and analysis of customer-related data, and other functions (the "Centralized Functions") in one or more affiliates, subsidiaries and third-party service providers. Solely in connection with the Centralized Functions, (i) the Client consents to the disclosure of, and authorizes the Custodian to disclose, information regarding the Client and its accounts ("Customer-Related Data") to the BNY Mellon Group and to its third-party service providers who are subject to confidentiality obligations with respect to such information and (ii) the Custodian may store the names and business addresses of the Client's employees on the systems or in the records of the BNY Mellon Group or its service providers. In addition, the BNY Mellon Group may aggregate Customer-Related Data with other data collected and/or calculated by the BNY Mellon Group, and the BNY Mellon Group will own all such aggregated data, provided that the BNY Mellon Group shall not distribute the aggregated data in a format that identifies Customer-Related Data with the Client. The Client is authorized to consent to the foregoing and confirms that the disclosure to and storage by the BNY Mellon Group of such information does not violate any relevant data protection legislation. In addition, the Custodian may disclose Customer-Related Data as required by law or at the request of any governmental or regulatory authority.

## **SECTION 7 – PROVISIONS REGARDING CUSTODIAN**

**7.1 Standard of Care.** In performing its duties under this Agreement, the Custodian shall exercise the standard of care and diligence that a professional custodian would observe in these affairs.



**7.2 Duties.** The duties of the Custodian shall only be those specifically undertaken pursuant to this Agreement and shall be subject to such other limits on liability as are set out herein.

**7.3 Limitation on Liability.**

a. The Custodian shall not be liable for Losses except to the extent that such Losses are a direct result of the Custodian's negligence or willful misconduct.

b. The Custodian shall not be liable to the Client for indirect, consequential or special damages arising in connection with this Agreement even if the Custodian has been advised of the possibility of such damages;

c. The Custodian shall not be responsible for the title, validity or genuineness of any Securities or evidence of title thereto received by it or delivered by it pursuant to this Agreement or for Securities held hereunder being freely transferable or deliverable without encumbrance in any relevant market;

d. The Custodian shall not be responsible for the failure to receive payment of, or the late payment of, income or other payments due to the Account;

e. The Custodian shall have no duty to take any action to collect any amount payable on Securities in default or if payment is refused after due demand and presentment;

f. The Custodian may obtain the advice of counsel and shall be fully protected with respect to anything done or omitted by it in good faith in conformity with such advice;

g. The Custodian shall have no duty or responsibility to inquire into, make recommendations, supervise, or determine the suitability of any transactions affecting any Account and shall have no liability with respect to the Client's or an Authorized Person's decision to invest in Securities or to hold cash in any currency;

h. The Custodian shall have no responsibility if the rules or procedures imposed by Depositories, exchange controls, asset freezes or other laws, rules, regulations or orders at any time prohibit or impose burdens or costs on the transfer of Securities or cash to, by or for the account of the Client; and

i. The Custodian shall have no liability for any Losses arising from the insolvency of any Person, including but not limited to a Subcustodian, Depository, broker, bank, and a counterparty to the settlement of a transaction or to a foreign exchange transaction, except as provided in Sections 2.2 and 2.3 above.

**7.4 Gains.** Where an error or omission has occurred under this Agreement, the Custodian may take such remedial action as it considers appropriate under the circumstances and, provided that the Client is put in the same or equivalent position as it

would have been in if the error or omission had not occurred, any favorable consequences of the Custodian's remedial action shall be solely for the account of the Custodian, without any duty to report to the Client any loss assumed or benefit received by it as a result of taking such action.

**7.5 Force Majeure.** Notwithstanding anything in this Agreement to the contrary, the Custodian shall not be responsible or liable for any failure to perform under this Agreement or for any Losses to the Account resulting from any event beyond the reasonable control of the Custodian.

**7.6 Fees.** The Client shall pay to the Custodian the fees and charges as may be specifically agreed upon from time to time and such other fees and charges at the Custodian's standard rates for such services as may be applicable. The Client shall also reimburse the Custodian for out-of-pocket expenses that are a normal incident of the services provided hereunder.

**7.7 Indemnification.** The Client shall indemnify and hold harmless the Custodian from and against all Losses, including reasonable counsel fees and expenses, relating to or arising out of the performance of the Custodian's obligations under this Agreement, except to the extent resulting from the Custodian's negligence or willful misconduct. The parties agree that the foregoing shall include reasonable counsel fees and expenses incurred by the Custodian in its successful defense of claims that are asserted by the Client against the Custodian relating to or arising out of the performance of the Custodian's obligations under this Agreement. This section shall survive the termination of this Agreement.

## **SECTION 8 – AMENDMENT; TERMINATION; ASSIGNMENT**

**8.1 Amendment.** This Agreement may be amended only by written agreement between the Client and the Custodian.

**8.2 Termination.** Either party may terminate this Agreement by giving to the other party a notice in writing specifying the date of such termination, which shall be not less than ninety (90) days after the date of such notice. Upon termination hereof, the Client shall pay to the Custodian such compensation as may be due to Custodian, and shall likewise reimburse the Custodian for other amounts payable or reimbursable to the Custodian hereunder. Custodian shall follow such reasonable Written Instructions concerning the transfer of custody of records, Securities and other items as the Client shall give; provided that (a) the Custodian shall have no liability for shipping and insurance costs associated therewith, and (b) full payment shall have been made to the Custodian of its compensation, costs, expenses and other amounts to which it is entitled hereunder. If any Securities or cash remain in any Account after termination, the Custodian may deliver to the Client such Securities and cash. Except as otherwise provided herein, all obligations of the parties to each other hereunder shall cease upon termination of this Agreement.

**8.3 Successors and Assigns.** This Agreement is not assignable by either party without the prior written consent of the other, except that (i) the Custodian may assign this Agreement to any BNY Mellon Affiliate, and (ii) any entity, that shall by merger, consolidation, purchase, or otherwise, succeed to substantially all the institutional custody business of the Custodian shall, upon such succession and without any appointment or other action by the Client, be and become successor custodian hereunder. The Custodian agrees to provide notice of such successor custodian to the Client. Any assignment in violation of this provision shall be voidable at the option of the non-assigning party. This Agreement shall be binding upon, and inure to the benefit of, the Client and the Custodian and their respective successors and permitted assigns.

## **SECTION 9 – ADDITIONAL PROVISIONS**

**9.1 Non-Custody Assets.** As an accommodation to the Client, the Custodian may provide consolidated recordkeeping services pursuant to which the Custodian reflects on statements securities and other assets not held by the Custodian. Non-Custody Assets shall be designated on the Custodian's books as "assets not held in custody" or by other similar characterization. The Client acknowledges and agrees that it shall have no security entitlement against the Custodian with respect to Non-Custody Assets, that the Custodian shall rely, without independent verification, on information provided by the Client or its designee regarding Non-Custody Assets (including but not limited to positions and market valuations), and that the Custodian shall have no responsibility whatsoever with respect to Non-Custody Assets or the accuracy of any information maintained on the Custodian's books or set forth on account statements concerning Non-Custody Assets.

**9.2 Appropriate Action.** The Custodian is hereby authorized and empowered to take any action with respect to an Account that it deems necessary or appropriate to perform its obligations specifically set forth in this Agreement.

**9.3 Governing Law.** This Agreement shall be construed in accordance with and governed by the substantive laws of the state of New York without regard to its conflict of laws provisions. The parties consent to the jurisdiction of a state or federal court situated in New York City, New York in connection with any dispute hereunder. The Client irrevocably waives any objection it may now or hereafter have to venue in such court and any claim that a proceeding brought in such court has been brought in an inconvenient forum. The parties hereby expressly waive, to the full extent permitted by applicable law, any right to trial by jury with respect to any judicial proceeding arising from or related to this Agreement.

**9.4 Sovereign Immunity.** To the extent that in any jurisdiction the Client 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 Client irrevocably agrees not to claim, and it hereby waives, such immunity.

**9.5 Representations.** Each party represents and warrants to the other that it has full authority to enter into this Agreement upon the terms and conditions hereof and

that the individual executing this Agreement on its behalf has the requisite authority to bind such party to this Agreement, and that the Agreement constitutes a binding obligation of such party enforceable in accordance with its terms.

**9.6 USA PATRIOT Act.** The Client hereby acknowledges that the Custodian is subject to federal laws, including the Customer Identification Program ("CIP") requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which the Custodian must obtain, verify and record information that allows the Custodian to identify the Client. Accordingly, prior to opening an Account hereunder, the Custodian will ask the Client to provide certain information including, but not limited to, the Client's name, physical address, tax identification number and other information that will help the Custodian to identify and verify the Client's identity, such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information. The Client agrees that the Custodian cannot open an Account hereunder unless and until the Custodian verifies the Client's identity in accordance with the Custodian's CIP.

**9.7 Non-Fiduciary Status.** The Client hereby acknowledges and agrees that the Custodian is not a fiduciary by virtue of accepting and carrying out its obligations under this Agreement and has not accepted any fiduciary duties, responsibilities or liabilities with respect to its services hereunder.

**9.8 Notices.** Notices shall be in writing and shall be addressed to the Custodian or the Client at the address set forth on the signature page or such other address as either party may designate in writing to the other. All notices shall be effective upon receipt.

**9.9 Entire Agreement.** This Agreement and any related fee agreement constitute the entire agreement with respect to the matters dealt with herein, and supersede all previous agreements, whether oral or written, and documents with respect to such matters.

**9.10 No Third-Party Beneficiaries.** All of the understandings, agreements, representations and warranties contained herein are solely for the benefit of the Client and the Custodian, and there are no other parties who are intended to be benefited by this Agreement.

**9.11 Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and said counterparts when taken together shall constitute but one and the same instrument and may be sufficiently evidenced by one set of counterparts.

[Signature page follows]

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

Authorized Signer of:

COMMONWEALTH INSURANCE  
COMPANY OF AMERICA

Authorized Officer of:

THE BANK OF NEW YORK MELLON

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

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

Address for Notice:

Commonwealth Insurance Company of America

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Address for Notice:

The Bank of New York Mellon

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Pursuant to Section 6.6, as Beneficial Owner:

☐ Client OBJECTS to disclosure

☐ Client DOES NOT OBJECT to disclosure

IF NO BOX IS CHECKED, CUSTODIAN SHALL RELEASE SUCH INFORMATION UNTIL IT RECEIVES A CONTRARY WRITTEN INSTRUCTION FROM THE CLIENT.

## Biographical Affidavits

**COMMONWEALTH INSURANCE COMPANY OF AMERICA**

**ITEM 13**

**BIOGRAPHICAL AFFIDAVITS**

**TAB**

<b>John J. Bator .....</b>	<b>A</b>
<b>Nicholas C. Bentley .....</b>	<b>B</b>
<b>Nina L. Caroselli .....</b>	<b>C</b>
<b>Frank J. DeMaria .....</b>	<b>D</b>
<b>Henry W. Edmiston .....</b>	<b>E</b>
<b>Richard J. Fabian .....</b>	<b>F</b>
<b>James K. Kelly .....</b>	<b>G</b>
<b>V. Prem Watsa .....</b>	<b>H</b>

Applicant Name (Company): Commonwealth Insurance Company  
of America

NAIC No. 10220  
FEIN: 91-1673817

### BIOGRAPHICAL AFFIDAVIT

To the extent permitted by law, this affidavit will be kept confidential by the state insurance regulatory authority.

(Print or Type)

Full name, address and telephone number of the present or proposed entity under which this biographical statement is being required (Do Not Use Group Names).

Commonwealth Insurance Company of America, 250 Commercial Street, Suite 5000, Manchester, NH 03101

In connection with the above-named entity, I herewith make representations and supply information about myself as hereinafter set forth. (Attach addendum or separate sheet if space hereon is insufficient to answer any question fully.) IF ANSWER IS "NO" OR "NONE," SO STATE.

1. Affiant's Full Name (Initials Not Acceptable): First: John Middle: Joseph Last: Bator

2. a. Are you a citizen of the United States?

Yes ☒ No ☐

b. Are you a citizen of any other country?

Yes ☐ No ☒

If yes, what country? N/A

3. Affiant's occupation or profession: Chief Financial Officer / Treasurer

4. Affiant's business address: 250 Commercial Street, Suite 5000, Manchester, NH 03101

Business telephone: 603-656-2200 Business Email: john\_bator@trg.com

5. Education and training:

<u>College/University</u>	<u>City/State</u>	<u>Dates Attended (MM/YY)</u>	<u>Degree Obtained</u>
<u>University of Hartford</u>	<u>Connecticut</u>	<u>1982-1986</u>	<u>B.S.</u>

<u>Graduate Studies</u>	<u>College/University</u>	<u>City/State</u>	<u>Dates Attended (MM/YY)</u>	<u>Degree Obtained</u>
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<u>Other Training: Name</u>	<u>City/State</u>	<u>Dates Attended (MM/YY)</u>	<u>Degree/Certification Obtained</u>
<u>Wharton Business School</u>	<u>Pennsylvania</u>	<u>09/05-10/05</u>	<u>Advanced Management Program</u>

Note: If affiant attended a foreign school, please provide full address and telephone number of the college/university. If applicable, provide the foreign student Identification Number in the space provided in the Biographical Affidavit Supplemental Information.

*JP*  
*No results found*  
*FI 9/8/2014*  
*RIRS N/A*



Applicant Name (Company): See Page One

NAIC No. See Page One

FEIN: See Page One

6. List of memberships in professional societies and associations:

<u>Name of Society/Association</u>	<u>Contact Name</u>	<u>Address of Society/Association</u>	<u>Telephone Number of Society/Association</u>
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None

7. Present or proposed position with the applicant entity: Director, CFO, SVP

8. List complete employment record for the past twenty (20) years, whether compensated or otherwise (up to and including present jobs, positions, partnerships, owner of an entity, administrator, manager, operator, directorates or officerships). Please list the most recent first. Attach additional pages if the space provided is insufficient. It is only necessary to provide telephone numbers and supervisory information for the past ten (10) years.

**See Exhibit A (Employment History) and Exhibit B (Current and Prior Positions)**

Beginning/Ending  
Dates (MM/YY): \_\_\_\_\_ - \_\_\_\_\_ Employer's Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_ Phone: \_\_\_\_\_ Offices/Positions Held: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Supervisor/Contact: \_\_\_\_\_

Beginning/Ending  
Dates (MM/YY): \_\_\_\_\_ - \_\_\_\_\_ Employer's Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_ Phone: \_\_\_\_\_ Offices/Positions Held: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Supervisor/Contact: \_\_\_\_\_

Beginning/Ending  
Dates (MM/YY): \_\_\_\_\_ - \_\_\_\_\_ Employer's Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_ Phone: \_\_\_\_\_ Offices/Positions Held: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Supervisor/Contact: \_\_\_\_\_

Beginning/Ending  
Dates (MM/YY): \_\_\_\_\_ - \_\_\_\_\_ Employer's Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Province: \_\_\_\_\_

Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_ Phone: \_\_\_\_\_ Offices/Positions Held: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Supervisor/Contact: \_\_\_\_\_

Applicant Name (Company): See Page One

NAIC No. See Page One

FEIN: See Page One

9. a. Have you ever been in a position which required a fidelity bond?

Yes ☐ No ☒

If any claims were made on the bond, give details: \_\_\_\_\_

- b. Have you ever been denied an individual or position schedule fidelity bond, or had a bond canceled or revoked?

Yes ☐ No ☒

If yes, give details: \_\_\_\_\_

10. List any professional, occupational and vocational licenses (including licenses to sell securities) issued by any public or governmental licensing agency or regulatory authority or licensing authority that you presently hold or have held in the past. For any non-insurance regulatory issuer, identify and provide the name, address and telephone number of the licensing authority or regulatory body having jurisdiction over the license (s) issued. If your professional license number is your Social Security Number (SSN) or embeds your SSN or any sequence of more than five numbers that are reasonably identifiable as your SSN, then write SSN for that portion of the professional license number that is represented by your SSN. (For example, "SSN", "12-SSN-345" or "1234-SSN" (last 6 digits)). Attach additional pages if the space provided is insufficient:

None

Organization/Issuer of License: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_ Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_

License Type: \_\_\_\_\_ License #: \_\_\_\_\_ Date Issued (MM/YY): \_\_\_\_\_

Date Expired (MM/YY): \_\_\_\_\_ Reason for Termination: \_\_\_\_\_

Non-Insurance Regulatory Phone Number (if known): \_\_\_\_\_

Organization/Issuer of License: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State/Province: \_\_\_\_\_ Country: \_\_\_\_\_ Postal Code: \_\_\_\_\_

License Type: \_\_\_\_\_ License #: \_\_\_\_\_ Date Issued (MM/YY): \_\_\_\_\_

Date Expired (MM/YY): \_\_\_\_\_ Reason for Termination: \_\_\_\_\_

Non-Insurance Regulatory Phone Number (if known): \_\_\_\_\_

11. In responding to the following, if the record has been sealed or expunged, and the affiant has personally verified that the record was sealed or expunged, an affiant may respond "no" to the question. Have you ever:

- a. Been refused an occupational, professional, or vocational license or permit by any regulatory authority, or any public administrative, or governmental licensing agency?

Yes ☐ No ☒

- b. Had any occupational, professional, or vocational license or permit you hold or have held, been subject to any judicial, administrative, regulatory, or disciplinary action?

Applicant Name (Company): See Page One

NAIC No. See Page One

FEIN: See Page One

Yes ☐ No ☒

- c. Been placed on probation or had a fine levied against you or your occupational, professional, or vocational license or permit in any judicial, administrative, regulatory, or disciplinary action?

Yes ☐ No ☒

- d. Been charged with, or indicted for, any criminal offense(s) other than civil traffic offenses?

Yes ☐ No ☒

- e. Pled guilty, or nolo contendere, or been convicted of, any criminal offense(s) other than civil traffic offenses?

Yes ☐ No ☒

- f. Had adjudication of guilt withheld, had a sentence imposed or suspended, had pronouncement of a sentence suspended, or been pardoned, fined, or placed on probation, for any criminal offense(s) other than civil traffic offenses?

Yes ☐ No ☒

- g. Been subject to a cease and desist letter or order, or enjoined, either temporarily or permanently, in any judicial, administrative, regulatory, or disciplinary action, from violating any federal, state law or law of another country regulating the business of insurance, securities or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities or banking?

Yes ☐ No ☒

- h. Been, within the last ten (10) years, a party to any civil action involving dishonesty, breach of trust, or a financial dispute?

Yes ☐ No ☒

- i. Had a finding made by the Comptroller of any state or the Federal Government that you have violated any provisions of small loan laws, banking or trust company laws, or credit union laws, or that you have violated any rule or regulation lawfully made by the Comptroller of any state or the Federal Government?

Yes ☐ No ☒

- j. Had a lien or foreclosure action filed against you or any entity while you were associated with that entity?

Yes ☐ No ☒

If the response to any question above is yes, please provide details including dates, locations, disposition, etc. Attach a copy of the complaint and filed adjudication or settlement as appropriate.

N/A

12. List any entity subject to regulation by an insurance regulatory authority that you control directly or indirectly. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls,