

**GLOBAL CUSTODY, INVESTMENT CONSULTING, AND SECURITIES
LENDING CONTRACT**

BETWEEN

STATE OF FLORIDA, DEPARTMENT OF FINANCIAL SERVICES

AND

This **CONTRACT** is entered into by and between the State of Florida, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0399 (hereinafter called the “Department”) and _____, a banking corporation (hereinafter called “Bank”).

WITNESSETH THAT:

WHEREAS, the Department has determined that it is in need of certain services as described herein; and

WHEREAS, Bank, as an independent contractor of the Department, has the expertise and ability to faithfully perform such services;

NOW THEREFORE, in consideration of the services to be performed and payments to be made, together with the mutual covenants and conditions hereinafter set forth, the parties agree as follows:

ARTICLE I.

1.1 Definitions. Unless the context clearly requires otherwise, the following words shall have the meanings set forth below when used in this Contract:

- A. “Authorized Investment” shall mean any type of instrument, security, participation or other property in which Cash Collateral may be invested or reinvested, as described in Section 5.5(E) of this Contract and the Securities Lending Investment Guidelines within the Comprehensive

Investment Policy, Schedule 1 to this Contract, which may be amended from time to time by written notice from a Department Authorized Person.

- B. “Bank Authorized Representative” shall mean any employees or designated agents of Bank identified on Appendix III, attached hereto (which may be amended from time to time by delivery of a revised Appendix III) who are designated as the principal points of contact for the Department under this Contract. Until such time as the Department receives written notice from Bank to the contrary, it shall continue to treat any person identified on the then current Appendix III as a Bank Authorized Representative.
- C. “Book-Entry System” shall mean the Treasury/Reserve Automated Debt Entry System maintained at The Federal Reserve Bank of New York.
- D. “Borrower” shall mean an entity that maintains at least two short-term ratings of A-1 from S&P, P-1 from Moody’s or F-1 from Fitch.
- E. “Business Day” shall have the meaning assigned thereto in the applicable MSLA.
- F. “Cash Collateral” shall mean fed funds or New York Clearing House funds as may be pledged by a Borrower in connection with a particular Loan.
- G. “Collateral” shall mean the types of collateral acceptable to the Department as set forth in Schedule 3 to this Contract entitled Permissible Collateral, together with Cash Collateral.

- H. “Collateral Account” shall mean, as the case may be, an account maintained by Bank with itself, with any Depository or with any Triparty Institution and designated as a Collateral Account for the purpose of holding Collateral, Authorized Investments, and Proceeds in connection with Loans hereunder.
- I. “Collateral Amount” shall have the meaning assigned thereto in Section 5.5(C) of this Contract.
- J. “Collateral Requirement” shall have the meaning assigned thereto in Section 5.5(C) of this Contract.
- K. “Contract” shall mean the agreement embodied in this executed document with all the Appendixes and Schedules.
- L. “Demand Accounts” shall have the meaning assigned thereto in Section 3.3. *[Depends on the structure of the Bank whether a Demand Account will be used].*
- M. “Department Authorized Person” shall mean, except to the extent that Bank is advised to the contrary by Proper Instruction, any Department Authorized Representative as represented on Appendix II, attached hereto (which may be amended from time to time by delivery of a revised Appendix II), subject to the extent of authority designated for such Department Authorized Representative on Appendix II. An Authorized Person shall continue to be so until such time as Bank receives Proper Instructions that any such person is no longer a Department Authorized Representative.

- N. “Depository” shall mean the Book Entry System, the Depository Trust Company (DTC), Euroclear, Clearstream Banking S.A., and any other securities depository or clearing agency (and each of their respective successors and nominees) registered with the Securities and Exchange Commission or otherwise able to act as a securities depository, book entry system or clearing agency, and the Book-Entry System.
- P. “Distributions” shall have the meaning assigned thereto in Sections 3.9 and 5.3 of this Contract.
- Q. “Federal Funds Effective Rate” shall mean, for any day, the rate per annum (based on a year of 360 days and actual days elapsed) and rounded upward to the nearest 1/100 of one percent (.01%) announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the “Federal Funds Effective Rate” as of the date hereof; provided, if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the “Federal Funds Effective Rate” for such day shall be the Federal Funds Effective Rate for the last day on which such rate was announced.
- R. “Free” shall mean that a security transaction was settled by receiving or making delivery before any payment.

- S. “Investment Advisor” shall mean any investment management company that manages a portion of the Department’s investment portfolio.
- T. “Investment Advisor Authorized Person” shall mean except to the extent that Bank is advised to the contrary by Proper Instructions, any Investment Advisor authorized representative as represented on Appendix VI, attached hereto (which may be amended from time to time by delivery of a revised Appendix VI). The Investment Advisor Authorized Person shall have general investment authority over the assets assigned to it, including, but not limited to the authority to give Bank trade instructions, data for reconciliation, pricing information, proxy and corporate action instructions, and performance information, but shall not have authority to move funds. An Investment Advisor Authorized Person shall continue to be so until such time as Bank receives Proper Instructions that any such person is no longer an Investment Advisor Authorized Person.
- U. “Loan” shall mean a loan of Securities hereunder and under the applicable MSLA.
- V. “Loan Fee” shall mean the amount payable by a Borrower to Bank pursuant to the applicable MSLA in connection with Loans collateralized other than by Cash Collateral.
- W. “Loaned Securities” shall mean Securities that are the subject of a Loan pursuant to Article V hereof.

- X. “Market Value” shall have the meaning assigned thereto in the applicable MSLA, and shall include, in the case of fixed income securities, accrued but unpaid interest.
- Y. “MSLA” shall mean a master securities lending agreement or global master securities lending agreement between Bank and a Borrower, pursuant to which Bank lends securities on behalf of its securities lending customers (including the Department) from time to time. A copy of Bank’s current standard forms of MSLA, are annexed as Schedule 2. The Department acknowledges and agrees that certain provisions of any MSLA with a particular Borrower may differ from the Bank’s then current master form of Borrower Agreement as a result of the customary negotiation process between the Bank and a Borrower, provided, however, that the Bank shall not amend or modify any MSLA in any manner which is inconsistent with the provisions of this Contract or materially adverse to the Department without the prior written consent of the Department.
- Z. “Oral Instructions” shall be given the meaning as defined in Section 4.2.
- AA. “Proceeds” shall mean interest, dividends and other payments and Distributions received by Bank in connection with Authorized Investments.
- BB. “Proper Instructions” shall mean Oral Instructions and Written Instructions.
- CC. “Rebate” shall mean the amount payable by Bank on behalf of the Department to a Borrower in connection with Loans collateralized by

Cash Collateral, which shall be a percentage of the Cash Collateral as agreed by the Borrower and Bank.

- DD. “Securities” shall mean government securities (including U.S. Government Securities), equity securities, bonds, debentures, other corporate debt securities, notes, mortgages, options, futures or other obligations, and any certificates, warrants or other instruments representing rights to receive, purchase, or subscribe for the same, or evidencing or representing any other rights or interests therein and held pursuant to the Contract.
- EE. “Subcustodian” shall mean a bank or other financial institution (other than a Depository) which is utilized by Bank in connection with the purchase, sale, or custody of Securities hereunder and identified to the Department from time to time.
- FF. “Securities Accounts” shall have the meaning assigned thereto in Section 3.2.
- GG. “Securities Lending Revenue” shall mean the difference if positive between (1) the aggregate of (a) all interest, dividends and other distributions earned from investments of cash collateral, and (b) all securities loan fees payable by borrowers, and (2) the aggregate Rebates paid to Borrowers with respect to Cash Collateral. Securities Lending Revenue shall accrue daily.
- II. “Term Loan” shall have the meaning assigned thereto in Section 5.5(I) of this Contract.

- JJ. “Triparty Institution” shall mean a financial institution with which Bank shall have previously entered a triparty agreement among itself, such Triparty Institution and a particular Borrower providing, among other things, for the holding of Collateral in a Collateral Account at such Triparty Institution in Bank’s name and for the substitution of Collateral.
- KK. “U.S. Government Security” shall mean book-entry securities issued by the U.S. Treasury and any other securities issued or fully guaranteed by the United States government or any agency, instrumentality or establishment of the U.S. government, including, without limitation, securities commonly known as “Ginnie Maes,” “Fannie Maes” and “Freddie Macs”.
- LL. “Written Instructions” shall be given the meaning as defined in Section 4.2.

1.2 The Contract.

- A. Bank agrees to render the services or other units of deliverables as set forth in this Contract. Bank’s performance shall be subject to all the terms, conditions, and understandings set forth in said Contract and the attachments, and PUR Forms 1001, General Instructions to Respondents, and PUR 1000, General Conditions, which (except as modified by these Special Conditions) are incorporated and are available online at:
http://dms.myflorida.com/business_operations/state_purchasing/documents/forms_references_resources/purchasing_forms.

A. Solicitation Terms and Conditions. The provisions of this Contract, including the State of Florida, Department of Financial Services, Division of Treasury Invitation to Negotiate, dated [REDACTED], and Bank's response thereto, dated [REDACTED] and all its attachments, shall be read as a whole. In case of conflict between provisions, provisions shall have the order of precedence listed below, where the top listed item has the highest precedence:

- This contract document as amended by any written amendments
- ITN
- Attachments to the ITN
- General Instruction to Respondents (PUR 1001)
- General Contract Conditions (PUR 1000)
- Any purchase order under the Contract
- Bank's Response

B. Contract Modification. This Contract may be amended only by a written agreement between both parties.

C. Statutory Notices. The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this Contract. An entity or affiliate who has been placed on the public entity crimes list or the discriminatory vendor list may not submit a Reply on a contract to provide any goods or services to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity pursuant to limitations under Chapter 287, Florida Statutes.

D. Compliance with Federal, State and Local Laws. Bank and all its agents shall comply with all applicable federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, worker's compensation, licenses and registration requirements.

1.3 Delivery Schedule. The services or other units of deliverables specified in this Contract. Bank's performance shall be subject to all the terms, conditions, and understandings set forth in said Contract and the attachments.

1.4 Purpose of Contract. The purpose of the Contract is generally described as administering funds for the Department through Bank taking custody of Securities, effecting settlements of purchases and sales of assets as directed by Department or Investment Advisor Authorized Person(s), collecting and crediting income which becomes due and payable on assets held, surrendering matured and called Securities, executing duly authorized funds movements, providing information retrieval technology and reporting as described in the Contract, conducting a securities lending program, providing investment consulting and risk management services and external manager reviews, provide performance reporting and providing those additional services specified in this Contract.

1.5 Scope of Services. The Scope of Work is as follows:

- Comprehensive Safekeeping Services in US and Non-US Markets (Euroclear only);
- Accurate and Timely Trade Settlement and Income Collection in US and Non-US Markets;
- Compliance Reporting for Custody and Securities Lending Accounts against the Department's Comprehensive Investment Policy (**Schedule I**);
- Comprehensive Cash Reporting system and ability to handle automatic cash movements;
- Electronic funds transfers available through a web-base system which includes Automatic Clearing House (ACH) debit block;

- Support for both Externally Managed and Internally Managed Operations and Portfolios;
- Provide Mutual Fund accounting and operations functions for one custody account;
- Accommodate and Support for External Portfolio Management in reconciling accounts that are managed outside the Department on a monthly basis;
- Comprehensive and interactive accounting reporting system;
- Daily Best Available (same day valuation with a soft-close) Accounting and Valuation Services;
- Audited Monthly Fund Accounting with Custodian-managed Tolerance-based Reconciliation Process;
- Support for GASB Reporting Requirements on a Standard and Customized Basis;
- Custodial program for Securities Lending and reinvestment of cash collateral in accordance with investment guidelines. Audited Monthly Fund Accounting through the custodian accounting system;
- Certain Investment Performance Measurement and Analytics Services including rate-of-return measurement, portfolio characteristics, risk metrics and attribution services for various Portfolios, Composites and Benchmarks and Attribution Aggregates;
- Investment consultant to review risk within the Department's investments, review investment policies, keep Department abreast of current events as well as participate in semi-annual External Investment Manager meetings;
- Accommodate and Support all levels of this account with minimal points of contact for the Department as well as acting as a whole entity instead of having contacts at each business unit;
- Comprehensive Disaster Preparedness systems and plan;
- Corporate Actions Processing Support in US and Non-US Markets;
- Class Action and Bankruptcy Proof of Claim Filing Services and reporting;
- Comprehensive Technology/Systems Support and Development of Interfaces/Transmissions as necessary;
- Comprehensive continual training program;

- All fees for services will be paid from a percentage of securities lending earnings only.

As detailed in the Minimum Requirements as attached in Appendix IV and additional Scope of Work detail negotiated.

1.6 Miscellaneous.

- A. This Contract, and any referenced or attached appendix, attachment or schedule embodies the entire agreement of the parties. There are no other provisions, terms, conditions, or obligations. This Contract supersedes all previous oral or written communications, representations or agreements on this subject.
- B. In all cases, venue shall be in Leon County, Florida.
- C. The laws and rules of the State of Florida govern this Contract.
- D. Bank agrees that no funds received by it under this Contract will be expended for the purpose of lobbying the Legislature or a state agency pursuant to Section 216.347, Florida Statutes, except that pursuant to the requirements of section 287.058(6), Florida Statutes, during the term of any executed contract between Bank and the state, Bank may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that contract.
- E. Bank is an independent contractor, and is not an employee of the Department.
- F. All services contracted for are to be performed solely by Bank and may not be subcontracted or assigned without the prior written consent of the Department.

- G. The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Contract, including without limitation, the obligations regarding confidentiality, proprietary interests, and limitations of liability shall survive termination, cancellation or expiration of this Contract.
- H. Bank hereby agrees to protect, indemnify, defend and hold harmless the Department from and against any and all costs, claims, demands, damages, losses and liabilities arising from or in any way related to Bank's breach of this Contract or the negligent acts or omissions of Bank.
- I. The Department shall not be deemed to assume any liability for the acts, omissions to act or negligence of Bank, its agents, servants, and employees, nor shall Bank disclaim its own negligence to the Department or any third party.
- J. If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.
- K. Representations of each party. Each party to this Contract represents and warrants to the other that: (i) it has the power to execute and deliver this Contract, to enter into the transactions contemplated hereby, and to perform its obligations hereunder; (ii) it has taken all necessary action to authorize such execution, delivery, and performance; (iii) this Contract constitutes a legal, valid, and binding obligation enforceable against it; and

(iv) the execution, delivery, and performance by it of this Contract shall at all times comply with all applicable laws and regulations.

- L. **Electronic Accessibility.** If applicable, Section 508 of the Rehabilitation Act Amendments, 29 USC Sec. 794, compliance information on the supplies and services in this contract are available on a website indicated by the Bank in the Response or resulting Contract. The Electronic and Information Technology standard can be found at: <http://www.section508.gov/>.

ARTICLE II.

2.1 Term and Renewal. This Contract shall begin February 1, 2013 and expires January 31, 2018. This Contract may be renewed until January 31, 2023 or an earlier date at the option of the Department. No other costs for the renewal may be charged. Any renewal is subject to the same terms and conditions as the original Contract and shall be contingent upon satisfactory performance evaluations by the Department and subject is to the availability of funds.

2.2 Termination Without Cause by the Department. The Department may terminate the Contract for any reason, without cause, by giving 120 days notice in writing to Bank. Bank may terminate the Contract for any reason, without cause, by giving 180 days notice in writing to the Department. If the Contract is terminated under this paragraph by the Department, the Department shall pay to Bank all charges for services rendered in compliance with the Contract up to and including the effective date of termination, provided, however, that charges shall not exceed the fees for services specified in Appendix I of this Contract.

2.3 Termination for Cause by the Department. Except as provided in Article XIV of the Contract, the Department may terminate the Contract whenever Bank shall default in the

performance of its duties and responsibilities under the Contract and shall fail to cure such default within a period of 30 days or such period as stated below or as may be reasonable under the circumstances from the date of receipt of a written notice of default from the Department. If Bank defaults in the performance of its duties and obligations under the Contract, the Department may exercise any and all rights available to it in law or equity, including but not limited to, the termination of the Contract and the withholding of payments due to Bank. The Department may declare Bank in default in the event of any one or more of the following circumstances:

- A. The Department may choose to terminate the Contract if Bank is acquired by another bank provided, however, that a termination under this paragraph shall be effective upon the 31st day after receipt of the notice by Bank.
- B. The Department may also terminate the Contract upon 30 days written notice if it determines that such termination is necessary for the protection of the assets in the Accounts.
- C. Termination by the Department for violation of Chapter 119, Florida Statutes. The Department may at its option also unilaterally terminate this Contract in the event that the Department requests in writing that Bank allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, which are made or received by Bank in conjunction with this Contract, and Bank refuses to allow such access.

- D. As provided in section 287.135, Florida Statutes, the Department may at its option terminate the Contract immediately in the event the Bank as a company as defined in such statute, is found to have submitted a false certification as provided under s. 287.135 (5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (See <http://www.state.gov/s/ct>), or has been engaged in business operations in Cuba or Syria, if legally prohibited from doing so by Section 287.135, F.S.
- E. Public Records Violation. Bank shall comply with the record keeping standards of the Rules 1B-24 and -26, Florida Administrative Code. Unless the record is exempt for section 24(a) of Article I of the State Constitution and section 119.07(1), Florida Statutes, the Department may immediately, and without prior notice, cancel this Contract in the event that Bank fails to provide the Department with access to any record created or received by Bank.
- F. Late Performance. If the Department determines that Bank fails to fulfill an obligation under this Contract within the period stated in Article III, and shall fail to cure such default within a period of 15 days, the Department may cancel this Contract by sending Bank written notice, which states the effective date of cancellation pursuant to the non-performance sanctions of Section 2.10.
- G. Unauthorized Aliens. The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A (e) of

the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this Contract, which may be immediate and without prior notice.

- H. Public Entity Crimes. An entity or affiliate who has been placed on the public entity crimes list or the discriminatory vendor list may not submit a reply on a contract to provide any goods or services to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity pursuant to limitations under Chapter 287, Florida Statutes. If Bank is placed on the public entity crimes list or the discriminatory vendor list then the Department may immediately, and without prior notice, cancel this Contract.
- I. Failure to pay any and all entities, individuals, and the like furnishing labor or materials, or failure to make payment to any other entities as required herein in connection with the Contract.
- J. Other Material Breaches: If the Department sends written notice to Bank notifying Bank of any of the following, and Bank fails to cure the condition within 5 calendar days from the date of the notice, the Department may cancel this Contract by sending Bank written notice, which states the effective date of cancellation: any material breach of this Contract not otherwise addressed by another cancellation provision in this Contract; discontinues the performance of the work; fails to resume work that has been discontinued; becomes insolvent or is declared bankrupt

which status is not resolved within 30 days; makes an assignment for the benefit of creditors without the approval of the Department; makes or has made an intentional material misrepresentation or omission in any materials provided to the Department; fails to maintain the required insurance.

K. One or more of the following circumstances, uncorrected for more than thirty (30) days unless within the specified thirty (30) day period, the Bank (including its receiver or trustee in bankruptcy) provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill its obligations under the Contract:

- (1) Entry of an order for relief under Title 11 of the United States Code;
- (2) The making by the Bank of a general assignment for the benefit of creditors;
- (3) The appointment of a general receiver or trustee in bankruptcy of the Bank's business or property;
- (4) An action by the Bank under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation; or
- (5) Entry of an order revoking the certificate of authority granted to the Bank by the State or other licensing authority.

L. The Bank makes or has made an intentional material misrepresentation or omission in any materials provided to the Department or fails to maintain the required insurance.

2.4 Bank's Termination for Cause. Bank may terminate the Contract whenever the Department shall default in the performance of its duties and responsibilities under the Contract and shall fail to cure such default within a period of 30 days from the date of receipt of a written notice of default from Bank. A termination under this paragraph shall be effective upon the 31st

day after receipt of the notice by the Department, provided, however, that Bank must discharge its obligations under the Dispute Resolution Process described in Appendix V prior to any such termination.

2.5 Transition Procedure Upon Termination. Immediately after issuance of a notice of termination under this Article, the parties shall develop a procedure to ensure a smooth transition from operations under the Contract including audits of the Securities accounts as well as all securities lending accounts and instructions regarding the transfer to a successor custodian of the funds and Securities held in the Securities accounts. The Department may withdraw money or assets in kind from the Securities Accounts or the Demand Accounts at any time subject to Bank's right to receive payment of all sums due to it under this Contract. Bank will affect the withdrawal and transfer in an expeditious manner to be agreed upon by both parties.

2.6 Transition. Notwithstanding any contrary provision in this Contract, Bank agrees that, at the Department's direction, it shall take all reasonable and appropriate action to effect an orderly transition of the outstanding Securities loans and Cash Collateral investments specified by the Department and Securities and cash upon termination of this Contract for any reason. Bank further agrees that, in an effort to avoid any financial loss to the Department, it shall conduct such transition with the same degree of care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use. Bank agrees to provide information with respect to the periods during which Securities are held in the Securities Account in order for the Department to carry out or participate in class actions. In connection with the foregoing, the Department acknowledges that it may well not be possible for Bank's securities lending department to arrange for the transition of all loans and cash collateral investments, including, for example, because successor provider

may not have all the same borrowers in its program as does Lending Agent, may not permit all the same types of collateral (or certain collateral may not be movable in kind), and the terms of the successor provider's borrowing agreements may be different from the terms of the Lending Agent's borrower agreements. If said Securities are non-transferable, Bank's securities lending department will cease the lending of the Securities and sell the Securities in the cash collateral account with daily e-mails to the Department of pre-trade information.

2.7 Additions, Deletions and Substitutions. In the event services are required to be performed or equipment required to be purchased, the Department and Bank will reserve the right to negotiate the terms covering the required services or equipment by adding or deleting any item on a periodic basis as necessary when deemed in the best interest of the Department. Bank will be responsible for submitting a request for changes to any provision of this Contract on a timely basis with sufficient documentation to allow evaluation of the request (a "Change Order Request") substantially in the form attached as Appendix VII, Change Order Request. The Department will consider any such changes requested by Bank provided such changes are in accordance with the conditions and specifications contained in Appendix VII. The Department reserves the right to accept or reject changes proposed by Bank by giving written notice within a reasonable time. If Bank fails to so notify and obtain approval from the Department before commencing performance of activities relating to changes in the scope of the project, or fails to provide its supporting documents for materials and services, such activities shall be considered to be performed gratuitously by Bank, and Bank shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities.

2.8 The Department's Data. All data collected, stored, or otherwise utilized by Bank in conjunction with the execution of the duties and responsibilities specified in this Contract,

shall remain the sole property of the Department, other than data that in the ordinary course of business becomes part of Bank's books and records or data that belongs to Bank's vendors. If at any time the contract is canceled, terminated or expires, Bank is obligated to return all such data (other than data that has become part of Bank's books and records or data that belongs to Bank's vendors) to the Department at no additional cost and in a medium specified by the Department.

2.9 Bank's Responsibility. The Department will consider Bank to be the sole point of contact with regards to this Contract. Bank will assume sole responsibility for providing the products and/or services offered in its proposal, whether or not Bank is the supplier of said products and services or any component.

2.10 Remedies for Failure to Comply with Minimum Requirements and Incentives for Performance.

A. The parties acknowledge that failure to comply with the Minimum Requirements (Appendix IV) may interfere with the timely and proper operations of the Department's investment section, and result in injury to the Department. Therefore, in the event Bank fails to comply with the Minimum Requirements (Appendix IV), the Department may terminate the Contract upon 30 days written notice pursuant to Section 2.3 above subject to the following qualifications as to reports:

1. There will be a (3) three month probation period allowed to meet report format requirements. Thereafter, if reports do not meet required format, the Department may begin the termination of this Contract pursuant to 2.3 above.

2 Items of information provided during a calendar month which are to be included in audited reports at the end of a calendar month are provided subject to audit and may not be relied upon by the Department.

B. In compliance with Section 287.058(1)(h), F.S., the compensation received by the Provider will be directly proportional to the amount of earnings generated by the services provided through this contract. In the event that the Provider fails to meet the earnings projections provided by the Provider during the procurement process and specified in the Provider's response, the compensation of the Provider will be reduced in accordance with the agreed upon payment schedule provided in Appendix I.

C. Service

1. Client Relationship Manager, Operations/Administrative lead, Client Service Officer, and Technical lead and a back-up for each position will be assigned to the account. Bank will not remove any such key personnel from their assigned roles without giving the Department prior written notice. The Department can request a change in personnel after 90 days.
2. Upon removal of any key personnel Bank shall, where circumstances permit and it is commercially reasonable to do so, identify a replacement to the Department to shadow the key personnel he or she is replacing for a period of at least thirty (30) days prior to such key personnel's removal at Bank's expense. In the event the Department determines that any identified

replacement is unacceptable, Bank shall make a commercially reasonable effort to identify another replacement.

ARTICLE III.

3.1 Relationship Established. The Department hereby appoints Bank as custodian of all Securities and cash at any time delivered to, and reasonably acceptable to, Bank during the term of this Contract, and authorizes Bank to hold Securities in registered form in the Department's name or the name of Bank's nominees (subject to Section 3.4(B) below). Bank hereby accepts such appointment and agrees to establish and maintain one or more Securities accounts and cash accounts as herein provided. This Article excludes the securities lending activity which is discussed in Article V.

3.2 Custody Account(s). Bank shall open and maintain one (1) or more Securities accounts, segregated from Bank's proprietary assets and assets that Bank maintains for other customers (the "Securities Accounts"). Each Securities Account shall consist of a "Securities account" (within the meaning of Article 8 of the Uniform Commercial Code) and a cash account maintained by Bank in connection therewith. The Securities Accounts shall be maintained for the sole benefit of and in the name of the Department. At the request of the Department, Bank will establish separate Accounts to hold those Securities and funds managed by the several appointed Investment Advisors.

3.3 Demand Accounts. Bank shall open and maintain two (2) or more demand deposit accounts (within the meaning of Article 9 of the Uniform Commercial Code) for the sole benefit and in the name of the Department. *[Depends on the structure of the Bank whether a Demand Account will be used].*

3.4 Nature of Accounts and Demand Accounts. *[Depends on the structure of the Bank whether a Demand Account will be used].*

- A. Bank and the Department hereby expressly agree that Bank shall act as custodian and “securities intermediary” (as such term is defined in the Uniform Commercial Code) with respect to Securities deposited or credited to the Securities Accounts and will act as a “bank” (as such term is defined in the Uniform Commercial Code) with respect to the demand accounts and any other cash account in which cash is deposited or credited. Further, Bank hereby acknowledges and agrees that it shall exercise each of its duties and responsibilities hereunder consistent with the standards established under this Contract.
- B. Use of Nominee. Bank may hold any or all of the assets in the accounts in the name of a nominee in such form as will facilitate the passage of title. However, no such registration or use of nominee shall release Bank of liability for any loss resulting from a negligent act or omission of Bank or any of its nominees, to the extent provided in Article IX of this Contract.
- C. Use of Depositories and Subcustodians. The Department hereby authorizes Bank on a continuous and on-going basis to deposit in the Book-Entry System and applicable Depositories all Securities eligible for deposit therein and to utilize the Book-Entry System and Depositories to the extent possible in connection with its receipt and delivery of Securities, Collateral, Approved Investments and monies under this Contract. Where Securities, Collateral and Approved Investments eligible for deposit in the Book-Entry System or a Depository are transferred to the Bank hereunder, Bank shall identify as belonging to the Department a quantity of Securities in a fungible

bulk of Securities shown on Bank's account on the books of the Book-Entry System or the applicable Depository. Securities, Collateral and Approved Investments deposited in the Book-Entry System or a Depository will be represented in accounts which include only assets held by Bank for the customers, including but not limited to accounts in which Bank acts in a fiduciary or agency capacity. Securities, Collateral and cash deposited by Bank in a Depository will be held subject to the terms, conditions and rules of such Depository. The Department further authorizes Bank to utilize Subcustodians to hold Collateral and Securities which are not primarily cleared and settled in the United States. Securities, Collateral and cash held with a Subcustodian shall be held subject to the terms and conditions of Bank's agreement with such Subcustodian. Subcustodians may be authorized to hold Securities in central securities depositories or clearing agencies in which such Subcustodians participate. Unless otherwise required by local law or practice or by the terms of a particular Subcustodian agreement, Securities and cash held by a Subcustodian shall be held in a commingled account in the name of Bank as agent or fiduciary for its the customers. Bank will identify on its books and records the Securities and cash belonging to the Department, whether held directly or indirectly through Depositories or Subcustodians.

3.5 Confidentiality.

- A. To the extent permitted by law, Bank agrees to the fullest extent possible to keep confidential all matters relating to the Department ("Confidential

Information”) unless expressly permitted by the Department to release such Confidential Information, provided, however, that any such Confidential Information may be disclosed by Bank (A) to any directors, officers, employees, accountants, attorneys or agents of Bank or its affiliates for whom it is necessary or appropriate to know such information to effect the proper performance by Bank of its services hereunder, and (B) as required by applicable law, regulation or judicial or regulatory process, the rules of any stock exchange or regulatory or self-regulatory organization, the Book-Entry System or any Depository or the terms of the organizational documents of the issuer of any Security or the terms of the Security itself.

- B. The Department and Bank will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Bank will protect, by password or encryption software compatible with the State’s, all electronic documents and web-based information that is confidential and exempt from the State’s Public Records Act. Each party will limit disclosure of the other party’s Confidential Information to employees and subcontractors who must have access thereto in order to fulfill the purposes of this Contract. Disclosure to, and use by, a subcontractor is permissible where:

1. use of a subcontractor is authorized under this Contract,

2. such disclosure is necessary or otherwise naturally occurs in connection with work that is within such subcontractor's scope of responsibility, and
 3. Bank obligates the subcontractor in a written Contract to protect the Department's Confidential Information in confidence. At the Department's request, any employee of Bank and of any Subcontractor having access or continued access to the Department's Confidential Information may be required to execute an acknowledgment that the employee has been advised of the employee's obligation to protect such Confidential Information from unauthorized use or disclosure.
- C. No overseas transfer of the Department's Data. Bank may not use any services outside of the United States ("Offshore Services"), offshore businesses, service, subcontractors, facilities, equipment, personnel or processing capabilities in carrying out the terms of this Contract in a manner that would allow the overseas dissemination of any account information nor allow network access or data transfer, provided that the foregoing shall not prohibit Bank, or an affiliate of Bank, from using its systems, capabilities of personnel, or permitting its personnel access through a network or otherwise. Any subcontracting of services must be approved in advance by the Department. Confidential data must be exchanged over trusted paths, shall be marked "SENSITIVE" or "CONFIDENTIAL", must be in compliance with the Department of Financial Services, Administrative

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(Appendix VIII) and can be secured by one of the following methods:

- (1) Stored on a diskette and locked in a secured cabinet
- (2) Protected by a password and stored on the network in a secure location with restricted access, or
- (3) Password protected and/or data encrypted.

Bank may use Offshore Services for its other administrative activities, not associated with handling any of the State's data or access to the State's network. The Department will enforce certain restrictions regarding network access and data transfer. The provisions of this Section 3.5 shall not apply (i) to Bank's use of Subcustodians and to Bank providing to Subcustodians the type and extent of account data Bank generally provides to such Subcustodians with respect to its customers and extending network access and data transfer in connection with such use, and (ii) to such disclosures by Bank to Borrowers as may be required from time to time under the applicable MSLA.

- D. Loss of Data. In the event of loss of any Department data or record where such loss is due to the negligence of Bank or any of its subcontractors or agents, Bank shall be responsible for recreating such lost data in the manner and on the schedule set by the Department at Bank's sole expense, in addition to any other damages the Department may be entitled to by law or the Contract.

3.6 Security and Confidentiality

A. Bank, its employees, subcontractors and agents shall comply with all security procedures of the Department in performance of this Contract.

The Bank shall provide immediate notice to the Department in the event it becomes aware of any security breach and any unauthorized transmission of State data or of any allegation or suspected violation of security procedures of the Department. Except as required by law or legal process, and after notice to the Department, Bank shall not divulge to third parties any confidential information obtained by Bank, its employees, subcontractors or agents in the course of performing the Services. Bank shall not be required to keep confidential information that is publicly available through no fault of Bank, material that Bank developed independently without relying on the State's confidential information or information that is otherwise obtainable under state law as a public record.

B. The Bank shall ensure all access is promptly terminated for every Provider staff upon completion of assignments.

The Bank is responsible for security of all Bank services outlined within the Contract. Data containing any confidential or exempt information shall be readily identifiable. The Bank will initiate internal CSIRT procedures as defined by the Bank's security policies.

C. "State Data" means any data or information of or concerning the State or the Department that is provided to or obtained by the Bank or Bank's Personnel in connection with the negotiation and execution of the Contract or the performance of the Bank's obligations under the Contract, including

any such data and information that either (i) is created, generated, collected or processed by Bank's Personnel in the performance of the Bank's obligations under the Contract, including data processing input and output, Performance measurements, asset information, reports, third party service and product Contracts, and the Bank's charges to the Department, or (ii) resides in or is accessed through the Department's operating environment or the Bank's Service delivery infrastructure; as well as any data and information derived from the foregoing.

3.7 No Investment Discretion. Except as provided in Sections 3.13 and 3.14 and Article V of this Contract, Bank shall not sell, purchase, exchange, transfer, deliver against receipt of payment, or otherwise acquire or dispose of Securities or other assets in the Securities Accounts without the instruction of one or more Department Authorized Persons or Investment Advisor Authorized Persons, as provided in Appendix II and Appendix VI, respectively, of this Contract, and Bank shall have no investment discretion with respect to the assets in the Securities Accounts.

3.8 Transfer of Securities. Bank shall not receive in or deliver out Securities Free except (A) in situations involving the establishment of a new Account when Securities may be delivered in Free or (B) following termination of this Contract when Securities will be delivered out Free as the Department shall direct, or (C) pursuant to specific Written Instructions initiated by a person identified as a Department Authorized Person in Appendix II. For the purpose of this Contract, any delivery or receipt of Securities for the purpose of securities lending transactions as contemplated by Article V hereof or in connection with repurchase or reverse repurchase transactions will not be considered a Free delivery or receipt of Securities.

Notwithstanding the foregoing, the Department acknowledges that when the Bank is instructed to deliver Securities against payment, delivery of such Securities and receipt of payment therefore may not be completed simultaneously. The Department assumes full responsibility for all risks involved in connection with the Bank's delivery of Securities pursuant to Proper Instructions in accordance with local market practice.

3.9 Treatment of Income and Other Distributions on Securities. With respect to all Securities held in the Securities Account, Bank shall provide the following services, unless otherwise instructed to the contrary:

- A. Receive all income and other payments and advise the Department as promptly as practicable of any such amounts due but not paid;
- B. Present for payment and receive the amount paid upon all Securities which may mature and advise the Department as promptly as practicable of any such amounts due but not paid;
- C. Forward to the Department or the applicable Investment Advisor copies or summaries of all information or documents that it may receive from an issuer of Securities which, in the opinion of Bank, are intended for the beneficial owner of Securities;
- D. Execute, as custodian, any certificates of ownership, affidavits, declarations or other certificates under any tax laws now or hereafter in effect in connection with the collection of bond and note coupons;
- E. Hold directly, or through the Book Entry System, a Depository or a Subcustodian all rights and similar Securities issued with respect to any Securities credited to the Securities Account hereunder.

3.10 Voting Rights. With respect to Securities held in the Securities Account, except for any Securities that are eligible for Loans pursuant to Article V hereof, Bank shall, unless otherwise instructed to the contrary by the Department:

- A. Notify the Department or applicable Investment Advisor of such rights or discretionary actions or of the date or dates by when such rights must be exercised or such action must be taken, provided that Bank has received from the issuer or the relevant Depository, or with respect to Securities primarily cleared and settled outside of the United States from a nationally or internationally recognized bond or corporate action service to which Bank subscribes, a timely notice of such rights or discretionary corporate action or of the date or dates such rights must be exercised or such action must be taken. Absent actual receipt of such notice, Bank shall have no liability for failing to so notify the Department.
- B. Whenever Securities (including, but not limited to, warrants, options, tenders, options to tender or non mandatory puts or calls) confer optional rights on the Department or provide for discretionary action or alternative courses of action by the Department, the Department or the applicable Investment Advisor shall be responsible for making any decisions relating thereto and for directing Bank to act. In order for Bank to act, it must receive Written Instructions, not later than noon (New York time) at least two (2) Business Days prior to the last scheduled date to act with respect to such Securities (or such earlier date or time as Bank may notify the Department or the applicable Investment Advisor). Absent Bank's timely

receipt of such Written Instructions, Bank shall not be liable for failure to take any action relating to or to exercise any rights conferred by such Securities. Bank must notify the Department or the applicable Investment Advisor of these optional rights within 24 hours after being notified by the issuer or the relevant Depository.

- C. All voting rights with respect to Securities, however registered, shall be exercised by the Bank, based upon Proper Instruction from the Department or its designee or the applicable Investment Advisor, and subject to the limitations of local market practice. Bank's only duty shall be to deliver to the Department or the applicable Investment Advisor any documents (including proxy statements, annual reports and signed proxies) received by Bank relating to the exercise of such voting rights.
- D. Bank shall advise the Department or the applicable Investment Advisor within 24 hours upon Bank's receipt of notification of the partial redemption, partial payment or other action affecting less than all Securities of the relevant class. Department understands that it will not receive any such notification with respect to Securities that are on loan pursuant to the terms of Article V. If Bank or a Depository holds any such Securities in which the Department has an interest as part of a fungible mass, Bank or such 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.

3.11 Taxes.

- A. The Department is exempted from payment of Florida state sales and use taxes and income taxes and Federal excise tax and income tax. Bank, however, shall not be exempted from paying Florida state sales and use taxes to the appropriate governmental agencies or for payment by Bank to suppliers for taxes on materials used to fulfill its contractual obligations with the Department. Bank shall not use the Department's exemption number in securing such materials. Bank shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Contract.
- B. The Department shall be liable for all taxes, assessments, duties and other governmental charges, including any interest or penalty with respect thereto ("Taxes"), with respect to any cash or Securities held on behalf of the Department or any transaction related thereto. The Department and Bank agree that Bank shall not be liable for the amount of any Tax that Bank or any withholding agent is required under applicable laws (whether by assessment or otherwise) to pay on behalf of, or in respect of income earned by or payments or distributions made to or for the account of the Department (including any payment of Tax required by reason of an earlier failure to withhold). Bank shall, or shall instruct the applicable withholding agent, to withhold the amount of any Tax which is required to be withheld under applicable law upon collection of any Distribution made with respect to any Security and any Proceeds or income from the sale, loan or other transfer of any Security. In the event that Bank is required under applicable

law to pay any Tax on behalf of the Department, Bank is hereby authorized upon direction from a Department Authorized Person to withdraw cash from any cash account in the amount required to pay such Tax and to use such cash for the timely payment of such Tax in the manner required by applicable law. If the aggregate amount of cash in all cash accounts is not sufficient to pay such Tax, Bank shall promptly notify the Department of the additional amount of cash required, and the Department shall directly deposit such additional amount in the appropriate cash account promptly after receipt of such notice, for use by Bank as specified herein. In the event that Bank reasonably believes that the Department is eligible, pursuant to applicable law or to the provisions of any tax treaty, for a reduced rate of, or exemption from, any Tax which is otherwise required to be withheld or paid on behalf of the Department under any applicable law, Bank shall, or shall instruct the applicable withholding agent to, either withhold or pay such Tax at such reduced rate or refrain from withholding or paying such Tax, as appropriate; provided that Bank shall have received from the Department all documentary evidence of residence or other qualification for such reduced rate or exemption required to be received under such applicable law or treaty. In the event that Bank reasonably believes that a reduced rate of, or exemption from, any Tax is obtainable only by means of an application for refund, Bank shall have no responsibility for the accuracy or validity of any forms or documentation provided by the Department to Bank hereunder. The Department and Bank hereby agree that Bank shall not be liable with

respect to any liability arising from any under-withholding or underpayment of any Tax which results from the inaccuracy or invalidity of any such forms or other documentation, and such obligation to pay all such taxes shall be a continuing obligation of the Department, its successors and assigns, notwithstanding the termination of this Contract.

3.12 Pricing Information. To the extent that Bank has agreed to provide pricing or other information services in connection with this Contract, Bank is authorized to utilize any vendor (including brokers and dealers of Securities) reasonably believed by Bank to be reliable to provide such information, and each such vendor shall for all purposes under this Contract be deemed to be an independent contractor and not a subcontractor or assignee of Bank. The Department understands that certain pricing information with respect to complex financial instruments (e.g., derivatives) 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 or may not be material. Where vendors do not provide information for particular Securities or other property, a Department Authorized Person or an Investment Advisor Authorized Person may advise Bank regarding the fair market value of, or provide other information with respect to, such Securities or property as determined by it in good faith and Bank shall not be liable for any loss or damage suffered or incurred as a result of errors or omissions of any such pricing service.

3.13 Reviews by Bank of Accounts, Investment Purchases and Bank's Liability. Bank shall review all accounts and investment purchases in accordance with Section 2 of the Minimum Requirement (Appendix IV). Notwithstanding any other provision of this Contract, Bank shall have liability under this Section 3.12 for losses, excluding consequential or special damages,

only to the extent directly caused by Bank's gross negligence or willful misconduct and shall not be otherwise liable for any losses or unfavorable results resulting from investment decisions or its compliance with the Department's or an Investment Advisor's instructions. The Department agrees that it will exhaust its remedies against the Investment Advisor that directed the investment in Securities that were not permitted under the Comprehensive Investment Policy, Schedule 1 prior to asserting any claim against Bank. Without limiting the foregoing, to the extent Bank may have liability under this Section 3.12, it shall be subrogated to the Department's rights, including, without limitation, any rights of indemnification, against an Investment Advisor or other third party in respect of the matter giving rise to Bank's liability hereunder.

3.14 Investment Advisors. At the direction of the Department as set forth in Written Instructions, Bank will acknowledge specifically identified firms to serve as investment advisors ("Investment Advisors") with respect to their separately established custody accounts as provided in Section 3.2 of this Contract. The Department acknowledges that Bank shall not in any way be liable as a result of or in connection with the choice of, or continuation of, any one or more of the Investment Advisors. Except as provided in Section 3.12, the Department acknowledges that Bank is not liable for losses experienced on investments or for acting in accordance with the instructions of an Investment Advisor with respect to the related separately established Securities Accounts. The Department agrees to inform Bank of any changes in the terms of the Appendices, and until it receives written notice of such changes from the Department, Bank may rely on all such Appendices as attached at the time of execution of this Contract.

3.15 Short-Term Investment Fund. As directed by the Department, Bank will sweep available cash balances of certain Accounts, which will be determined by the Department, into a short-term investment vehicle approved by the Department for the investment of cash balances.

3.16 Overdrafts or Indebtedness. Security Interest. If Bank in its sole discretion advances funds to the Department or there shall arise for whatever reason an overdraft in a Securities Account or a demand account (including, without limitation, overdrafts incurred in connection with the settlement of Securities transactions or funds transfers) or if the Department is otherwise indebted to Bank, such advance, overdraft or indebtedness shall be deemed to be an advance, overdraft or indebtedness within the meaning of, and subject to, the Minimum Requirements (Appendix IV).

ARTICLE IV.

4.1 Authorized Representatives of the Department. Proper Instructions shall be given to Bank by Department Authorized Persons or Investment Advisor Authorized Persons.

4.2 Instructions.

A. (1) Written Instructions. “Written Instructions” shall mean written communications actually received by Bank from a Department Authorized Person or an Investment Advisor Authorized Person by letter, memorandum, telegram, cable, telecopy facsimile, computer, video (CRT) terminal or other on-line system, or any other method reasonably acceptable to Bank and whereby Bank is able to verify with a reasonable degree of certainty the identity of the sender of such communications or which communications are transmitted with proper testing or authentication pursuant to terms and conditions which Bank may specify.

(2) Oral Instructions. “Oral Instructions” shall mean oral communications actually received by Bank from a Department Authorized Person or an Investment Advisor Authorized Person. Oral Instructions shall promptly thereafter be confirmed in writing (which confirmation may be by facsimile or e-mail), but the Department and Bank agree that Bank is not liable for the failure of a Department Authorized Person or Investment Advisor Authorized Person to send such confirmation in writing, the failure of such confirmation to conform to the Oral Instructions received, or Bank’s failure to produce such confirmation at any subsequent time to the extent such failure to produce is due to the Department’s or an Investment Advisor’s failure to timely follow up Oral Instructions with written confirmation.

B. Unless otherwise expressly provided, all Proper Instructions shall continue in full force and effect until canceled or superseded.

ARTICLE V.

5.1 Securities Lending Activities. This Article V shall apply to the Loan of Securities by Bank as agent for the Department.

5.2 Appointment and Authority.

A. Appointment of Bank as Securities Lending Agent. The Department hereby appoints Bank as its agent to lend Securities in the Securities Accounts on the Department’s behalf on a fully disclosed basis to Borrowers from time to time in accordance with the terms of this Article and on such terms and conditions as Bank shall determine and Bank may exercise all rights and powers provided under any MSLA or as may be incidental thereto, and

Bank hereby accepts appointment as such agent and agrees to so act subject to the provisions of this Article V and the applicable provisions of Appendix IV.

- B. Authority. The Department hereby authorizes and empowers Bank to execute in the Department's name and on its behalf and at its risk all agreements and documents as may be necessary to carry out any of the powers granted to Bank under this Article. The Department grants Bank the authority set forth in this Article notwithstanding its awareness that Bank, in its individual capacity or acting in a fiduciary capacity for other accounts, may have participated in transactions with the same institutions to which Bank may be lending Securities hereunder, which transactions may give rise to actual or potential conflict of interest situations. Bank shall not be bound to: (1) account to the Department for any sum received or profit made by Bank for its own account or the account of any other person or (2) disclose or refuse to disclose any information or take any other action if the same would or might in Bank's judgment, made in good faith, constitute a breach of any law or regulation or be otherwise actionable with respect to Bank; provided that, in circumstances mentioned in clause (2) above, Bank shall promptly inform the Department of the relevant facts (except where doing so would, or might in Bank's judgment, made in good faith, constitute a breach of any law or regulation or be otherwise actionable as aforesaid).
- C. Loan Opportunities. Bank shall treat the Department equitably with other lenders of like circumstances in making lending opportunities available to it

hereunder, taking into account the demand for specific Securities, availability of Securities, types of Collateral, eligibility of Borrowers, limitations on investments of Cash Collateral and such other factors as Bank deems appropriate. Bank shall nevertheless have the right to decline to make any Loans pursuant to any MSLA and to discontinue lending under any MSLA in its sole discretion and with notice to the Department.

5.3 Representations and Warranties. The Department represents and warrants to Bank that: (A) it is lending Securities as principal and shall not transfer, assign or encumber its interest in, or rights with respect to, any Securities available for Loan hereunder; and (B) it is the beneficial owner of all Securities or otherwise has the right to lend all such Securities; and (C) it is entitled to receive all interest, dividends and other distributions (“Distributions”) made by the issuer with respect to Securities available for Loan hereunder. The Department shall promptly identify to Bank by Written Instructions any Securities that are not (or are no longer) subject to the representations contained in this Section 5.3.

5.4 Borrowers.

A. MSLA. The Department authorizes Bank to lend Securities in the Securities Account to Borrowers thereunder pursuant to a MSLA agreement between the Bank and such Borrower. Bank will deliver any revised MSLA agreement for Department’s approval if said agreement is revised in any manner which is inconsistent with the provisions of this Contract or otherwise materially adverse to the Department.

- B. Borrowers. Securities may be lent to any Borrower that maintains at least two short-term ratings of A-1 from S&P, P-1 from Moody's or F-1 from Fitch.

5.5 Loans.

- A. Securities to be lent; Lending opportunities; Loan initiation. All Securities (unless excluded) held in custody in the Securities Accounts that are issued, settled or traded in the markets that have been approved by Bank from time to time for purposes of Bank's discretionary securities lending program, shall be subject to the terms of this Article V. From time to time, Bank may lend to Borrowers Securities held in the Securities Accounts (except Securities that the Department has advised Bank pursuant to Written Instructions are unavailable for Loans because such Securities are no longer subject to the representation set forth in Section 5.3 or are subject to a securities lending program operated by a third party provider) and shall deliver such Securities against receipt of Collateral in accordance with the applicable MSLA. Bank shall have the right to decline to make any Loans to any Borrower and to discontinue lending to any Borrower in its sole discretion and without notice to the Department.
- B. Receipt of Collateral; Collateral substitution. For each Loan, Bank shall or a Triparty Institution shall receive and hold all Collateral required by the applicable MSLA in a Collateral Account, and Bank is hereby authorized and directed, without obtaining any further approval from the Department, to invest and reinvest all or substantially all Cash Collateral in accordance

with Section 5.5(E). Bank shall credit, or where applicable shall have a Triparty Institution credit, all Collateral, Authorized Investments and Proceeds to the appropriate Collateral Account and Bank shall mark its books and records to identify the Department's interest therein, it being understood, however, that all monies credited to a Collateral Account may for purposes of investment be commingled with cash collateral held for other lenders of Securities on whose behalf Bank may act. Bank may, in its sole discretion, liquidate any Authorized Investment and credit the net proceeds to the appropriate Collateral Account. Bank may accept substitutions of Collateral in accordance with the applicable MSLA, and shall credit, or where applicable shall have a Triparty Institution credit, all such substitutions to the appropriate Collateral Account.

- C. Mark to market procedures. (1) Bank shall require initial Collateral for a Loan in an amount determined by applying the then applicable "Collateral Requirement" (as defined below) to (x) the Market Value of the Security that is the subject of the Loan plus (y) in the case of fixed income Securities, any accrued but unpaid interest thereon. The Collateral Requirement with respect to a given Security shall be an amount equal to 102% of market value where the Securities and the Collateral are denominated in the same currency plus accrued but unpaid interest thereon in the case of fixed income Securities) as determined as of the close of trading on the preceding Business Day.

(2) With respect to each Loan of Securities, if the aggregate Market Value of the Collateral held by Bank on behalf of the Department for such Loan on any Business Day is less than the aggregate Market Value of the Securities which are the subject of such Loan (together with accrued but unpaid interest in the case of fixed income Securities), Bank shall demand on behalf of the Department that the Borrower provide additional Collateral in accordance with the applicable MSLA. Such additional Collateral, together with the Collateral then held by Bank on behalf of the Department for such Loan, shall be not less than the applicable Collateral Requirement. Bank shall not be required to Loan, or demand additional Collateral in respect of a Loan, except where the aggregate Market Value of the Collateral held in respect of such Loan falls below the aggregate Market Value of such Loan (plus accrued but unpaid interest thereon in the case of Loans of fixed income Securities). In accordance with general market practice, the Market Value of certain Securities (including, without limitation, U.S. Government Securities), whether on Loan or received as Collateral, may be determined on a same day basis by reference to recognized pricing services. Bank may from time to time establish *de minimis* guidelines with respect to Collateral pursuant to which a mark (and demand for additional Collateral) will not be made even where otherwise required hereunder.

D. Changes in procedures applicable to Collateral. The procedures with respect to Collateral set forth in Sections 5.5(B) and (C) above reflect Bank's current practice and may be changed by Bank from time to time based on

general market conditions (including volatility of Securities on Loan and of Securities constituting Collateral), the Market Value of Securities on Loan to a given Borrower, and in accordance with general market practice and regulatory requirements. Bank shall notify the Department of material changes to the foregoing procedures. Any material changes in such procedures must be approved by the Department in writing, prior to implementation.

- E. Investment of Cash Collateral. Bank is hereby authorized and directed, without obtaining any further approval from the Department, to invest and reinvest Cash Collateral in accordance with the Comprehensive Investment Policy annexed to this Agreement as Schedule 1. Authorized Investments are made for the account and risk of the Department. In connection therewith, the Department shall pay to Bank on demand in cash an amount equal to any deficiency in the amount of Collateral available for return to a Borrower pursuant to an applicable MSLA. Bank is authorized to select brokers and dealers for the execution of trades in connection with the investment of Cash Collateral, which broker or dealer may be an affiliate of Bank, provided that a competitive execution price is obtained. The Department has the ability to direct the Bank on the Investments but will not have trading authority over the account. Bank shall not be required to comply with any instruction of Department with respect to the delivery or transfer of, or settlement of transactions with respect to, the same.
- F. Distributions and Voting Rights.

(1) Bank shall credit the Department's account on payable date with an amount equivalent to all cash Distributions with respect to Securities on Loan that the Department would have received had such Securities not been on Loan over record date. To the extent that amounts equivalent to cash Distributions are not delivered to Bank by a Borrower and Bank has so credited the Department's account with such Distributions, Bank shall be subrogated to the Department's rights against Borrower as provided in Section 5.6. In connection with the foregoing, the Department shall promptly return any amount so credited upon oral or written notice from Bank: (a) that the Distribution to which such payment relates has not been paid by the issuer of the Securities or the paying agent therefore (as applicable) in the ordinary course of business or (b) that such amount was incorrectly calculated or credited. If the Department does not promptly return any such amount upon receipt of such notice, Bank shall be entitled, upon written notice to the Department, to reverse such credit by debiting the Department's account for the amount previously credited.

(2) (a) Any non-cash Distribution on Loaned Securities which is in the nature of a stock split or a stock dividend shall be added to the existing Loan to which such dividend relates as of the date such non-cash Distribution is payable and shall be subject to the provisions of this Article and the applicable MSLA. (b) Any non-cash Distribution which is in the nature of warrants or rights to purchase shares made with respect to any Loaned Securities shall be deemed to be a new Loan made by the Department to

Borrower (and shall be considered to constitute Loaned Securities) as of the date such non-cash Distribution is payable and shall be subject to the provisions of this Article; provided that the Department may, by giving Bank ten (10) Business Days' notice prior to the date of such non-cash Distribution (or such different period of time as Bank may advise the Department from time to time) direct Bank to request that the Borrower deliver such non-cash Distribution to Bank pursuant to the applicable MSLA, in which case Bank shall credit such non-cash Distribution to the appropriate Account. (c) If upon Bank's request on behalf of the Department, a Borrower fails to deliver the non-cash Distribution on its payable date, the indemnity provisions and corresponding subrogation rights set forth in Section 5.6 shall apply.

(3) During the term of any Loan, Bank shall permit the Loaned Securities to be registered in the name of and be voted by the Borrower. The Department shall not be entitled to participate in any dividend reinvestment program or to vote proxies with respect to any Loaned Security or Securities deposited or credited to the Securities Accounts that are eligible for Loan (whether or not actually on Loan) as of the applicable record date for such Securities.

- I. Termination of a Loan. (1) Loans shall be terminable by the Bank on demand. With the prior approval of the Department, however, Loans may be made on the basis of a reasonably anticipated termination date ("Term Loan") and without providing for the right of substitution of equivalent

Securities. Termination of a Term Loan prior to its anticipated termination date by either the Department or a Borrower may result in the terminating party having to pay the non-terminating party damages based on the cost of obtaining a replacement loan. (2) Bank shall terminate any Loan of Securities to a Borrower as soon as practicable after: (a) receipt by Bank of a notice of termination of the respective MSLA; (b) receipt by Bank of Written Instructions directing it to terminate a Loan; (c) said Borrower being downgraded and not complying with ratings; (d) receipt by Bank of Written Instructions advising that the Security subject to a Loan is no longer subject to the representations contained in Section 5.3 of this Agreement; (e) receipt by Bank of notice advising that an Event of Default (as defined in the applicable MSLA) has occurred and is continuing beyond any applicable grace period; (f) whenever Bank, in its sole discretion, elects to terminate such Loan other than a Term Loan; or (g) termination of this Agreement or Bank's services under this Article. (3) If Securities which are the subject of a Loan being terminated, are to be sold by the Department, Written Instructions shall be given to Bank no later than 10 a.m. Eastern Time on trade date in the local market for such Securities or at such earlier time as Bank may advise the Department from time to time with respect to particular markets. Bank shall not be liable for any fails occurring on a settlement date for sale of Securities if timely notice is not given by the Department as provided in this paragraph, and shall not be liable in any

event (except as provided in Section 5.6) for failure of a Borrower to return Securities on Loan in a timely fashion.

- J. Recordkeeping and Reports. Bank shall establish and maintain such records as are reasonably necessary to account for Loans that are made and the income derived therefrom. Bank shall provide the Department with a monthly statement describing the Loans made during the preceding month, and the income derived from Loans, during the period covered by such statement. Each party shall comply with the reasonable requests of the other party for information necessary to the requester's performance of its duties hereunder.

5.6 Guarantee and Subrogation.

- A. Bank shall indemnify the Department against any loss resulting from the failure of any Borrower to remit, when due, amounts equivalent to any cash Distributions on Loaned Securities by crediting the Department's Account in cash on the due date with an amount equal to the amount of interest or other Distributions due but not received by Bank.
- B. Bank shall indemnify the Department against any loss resulting from a failure of a Borrower to make a timely return of a Loan of Securities or in failing to maintain the required amount of Collateral securing the Loan by liquidating Collateral and then, following receipt from the Department of any amounts described in Section 5.5(E) of this Article V, crediting the Department's Account, within a reasonable time, but not exceeding 10 days, following the termination of the Loan with either the Securities in kind or, at

the option of Bank if the security has not been sold by the Department, an amount in cash equal to the Market Value of the unreturned Loaned Securities as of the close of business on the day the Department's Account is so credited.

- C. Bank shall indemnify the Department against any loss resulting from a failure of a Repurchase Agreement Counterparty to make a timely reversal of trade or in failing to maintain the required amount of Repurchase Agreement Collateral and then, following receipt from the Department of any amounts described in Section 5.5(E) of this Article V, crediting the Department's Account, within a reasonable time, but not exceeding 10 days, following the termination of the Repurchase Agreement with cash.
- D. In the event that the Bank should be required to make any payment or incur any loss or expense in connection with the Loaned Securities pursuant to B and C above, in amounts equivalent to Distributions, Collateral, Proceeds, and/or Authorized Investments or otherwise pursuant to this Contract, the Bank shall be subrogated and succeed to all such rights and remedies of the Department against the Borrower under the applicable MSLA and to the Collateral securing the Borrower's obligations to the Bank under such MSLA, and the Department hereby assigns to Bank all such rights, and agrees to execute all documents and take all other action reasonably requested by Bank to give effect to such rights of subrogation. This indemnity set forth in A, B and C above shall not apply to any loss resulting from a failure on the part of a Borrower to return Loaned Securities where

such failure is caused by a loss or decrease in value of the Authorized Investments and such Authorized Investments were made by Bank in accordance with the terms of this Agreement and without negligence.

- E. Bank shall indemnify the Department under paragraphs A, B and C of this Section only in the manner and to the extent expressly specified in this Section 5.6 and, for the avoidance of doubt, under no circumstances shall the Bank be liable for any indirect, consequential, or special damages arising under or in connection with this Article V.
- F. (1) Notwithstanding anything contained herein to the contrary, upon the occurrence of an Event of Default (as defined in the applicable MSLA), Bank may, and shall upon receipt of a Written Instructions from the Department, take all such action in respect thereof as may be requested in such Written Instructions; provided, however, that Bank shall have the right to decline to follow any such Written Instructions if Bank reasonably and in good faith shall determine that the actions requested therein would expose Bank to liability or expense. Bank will communicate such determination to the Department by means of a written notice of its refusal to act on such request.
- (2) Bank shall have no obligation to take any actions pursuant to Section 5.6 (A), (B), (C) or (D) of this Article if it believes that such action will violate any applicable statute, regulation, rule, order or judgment. Furthermore, except as provided in Sections 5.6 (A), (B), (C) or (D) of this Article, Bank shall have no other liability to the Department relating to any

Borrower's failure to return Loaned Securities and no duty or obligation to take action to effect payment by a Borrower of any amounts owed by such Borrower pursuant to the MSLA. Bank shall have no obligation to make any payment hereunder so long as a stay order is in effect with respect to the Borrower under applicable bankruptcy laws or under the Securities Investor Protection Act of 1970, as amended.

(3) Either party may terminate the provisions of Section 5.6(A), (B), (C) or (D) of this Article with respect to any Borrower at any time by delivery of a notice to the other party specifying a termination date not earlier than the date of receipt of such notice by the other party. No such termination shall be effective with respect to the existing rights of either party under Sections 5.6(A), (B), (C) or (D) of this Article or in any Loans outstanding as of the effective date of such notice.

(4) Bank may offset any amounts payable by the Department under this Agreement against amounts payable by Bank under Section 5.6(A), (B), (C) or (D) of this Article.

G. Notwithstanding any provision in this Agreement to the contrary, with respect to any Loan collateralized by Cash Collateral entrusted to the Department, Bank's sole obligation shall be to credit the applicable Demand account with cash in an amount equal to (X) the Market Value of the Loaned Securities not returned, minus (Y) the aggregate amount of Cash Collateral entrusted to the Department and not previously returned to Bank, minus (Z) any amounts owed by the Department pursuant to Section 5.5(E)

of this Article. Upon Bank's making of any such payment, the Department shall be entitled to retain and become the owner of such entrusted Cash Collateral without any obligations to Bank with respect thereto.

5.7 Legal proceedings. Bank may refrain from bringing any legal action or proceeding arising out of or in connection with any Loan until it shall have received such security as it may require for all costs, expenses (including legal fees) and liabilities which it shall or may expend or incur in relation thereto.

ARTICLE VI.

6.1 Minimum Requirements and Other Activities. The Statement of Minimum Requirements, attached to this Contract as Appendix IV and incorporated by this reference, defines additional responsibilities of Bank under this Contract. Appendix IV may be amended by mutual written agreement between the parties to define and authorize additional responsibilities.

ARTICLE VII.

7.1 Travel Expenses. Any travel costs or out-of-pocket expenses incurred by Bank required by any activity under this Contract shall be borne by Bank and not reimbursed under this Contract.

7.2 Securities Lending Compensation. Bank will be compensated on a monthly basis in accordance with Appendix I.

7.3 Invoices/Compensation. All payments for professional services and authorized expenses will be paid to Bank only upon the timely and satisfactory completion of the services. The Department has the authority to pay for services according to Section 17.57, Florida Statute. Bank will submit to the Department a monthly notification of the earnings retained and fee for investment management in reference to the securities lending earnings. Since the earnings are

split and paid by the 15th calendar day of the following month, the Department reserves the right to dispute all earnings retained and investment management fee. Bank must provide the reports listed in Minimum Requirements (Appendix IV), Securities Lending so that the Department can verify the correct earnings.

7.4 Section 215.422, Florida Statute. Section 215.422, F.S., attached as part of Appendix V, Dispute Resolution, shall control the resolution of any dispute arising from the payment of any invoices.

7.5 Acceptance: The Department reserves the right to reject deliverables as outlined in the Minimum Requirements as incomplete, inadequate or unacceptable due in whole or in part to Bank's lack of satisfactory performance under the terms of this Contract. The Department, at its option, may allow additional time within which Bank may remedy the objections noted by the Department and the Department may, after having given Bank a reasonable opportunity to complete, make adequate or acceptable said deliverables, including but not limited to reports, declare this Contract to be in default. All status reports must be submitted timely showing tasks or activities worked on, attesting to the level of services provided, hours spent on each task/activity, and upcoming major tasks or activities. Failure to use the appropriate technical requirements as identified in the Minimum Requirements will result in automatic task rejection and may not be invoiced or paid until correction of the task. Failure to complete the required duties as outlined in the Minimum Requirements may result in the rejection of the invoice.

7.6 Amendments to Appendix I. The fee schedule may not be amended except by mutual agreement of the parties set forth as a written amendment and properly executed.

ARTICLE VIII.

8.1 Compensation and Expenses of Investment Advisors. Upon direction from the Department, Bank shall pay on a monthly basis from the Accounts the compensation of the Investment Advisors, which will be reviewed by the Department. The Department will notify Bank of any discrepancies within 15 days after payment.

ARTICLE IX.

9.1 Standard of Care. Bank agrees to perform its duties under the Contract with the care, skill, prudence, and diligence of a reasonably careful, skillful, prudent and diligent expert in administering custody services.

9.2 Force Majeure. Notwithstanding anything in this Contract to the contrary, the Bank shall not be responsible or liable for any failure to perform under this Contract or for any losses to any Account resulting from any event beyond the reasonable control of the Bank.

9.3 Background and employment eligibility verification. Bank shall be responsible or liable for complying with the following:

- A. Under the Governor's Executive Order 11-116, the Contractor must participate in the federal E-Verify Program for Employment Verification under the terms provided in the "Memorandum of Understanding" with the federal Department of Homeland Security governing the program if any new employees are hired to work on this Contract during the term of the Contract. The Contractor agrees to provide to the Department, within thirty days of hiring new employees to work on this Contract, documentation of such enrollment in the form of a copy of the E-Verify "Edit Company

Profile” screen, which contains proof of enrollment in the E-Verify Program. Information on “E-Verify” is available at the following website:

http://www.dhs.gov/files/programs/gc_1185221678150.shtm

B. The Contractor further agrees that it will require each subcontractor that performs work under this contract to enroll and participate in the E-Verify Program upon hiring new employees during the term of this Contract. The Contractor shall obtain from the subcontractor(s) a copy of the “Edit Company Profile” screen indicating enrollment in the E-Verify Program and make such record(s) available to the Department upon request.

C. Compliance with the terms of this Employment Eligibility Verification provision will be an express condition of the Contract and the Department may treat a failure to comply as a material breach of the Contract.

D. The Contractor is responsible for payment of costs if any, and retaining records relating to, employment eligibility verification, which records are exempt from Chapter 119, F.S.

9.4 MyFloridaMarketPlace. Unless exempted under Rule 60A-1.030-.032, each vendor doing business with the State of Florida shall submit reports and be assessed a Transaction Fee of one percent (1.0%), on its payments under a Contract, which must be remitted within 40 days after receipt of payment for which such fees are due or the vendor shall pay interest at the rate established under Sec. 55.03(1), Florida Statutes, on the unpaid balance from the expiration of the 40-day period until the fees are remitted. (see PUR 1000 ¶14).

9.5 Duty of Continuing Disclosure of Legal Proceedings. Provide a statement fully describing any investigatory or regulatory action that has been undertaken and/or filed against your company or any of your affiliated subcontractors (that will be associated with performing any of the duties or responsibilities contemplated by this Contract) in the last three years. Additionally, describe any litigation that has been filed against your company where the damages are \$15 billion or above. If an action has been filed, please identify the court, administrative tribunal, or agency before which the action was instituted, the applicable case or file number, and the status or disposition for such reported action. If no litigation or regulatory action has been taken against your company or subcontractors, provide a statement to that effect. This statement is due to the Department annually.

A regulatory investigation, dispute, action, or other litigation shall be a basis for rejection of a Response if the Department determines that such a circumstance poses any risk that the Bank may be compromised in its ability to perform the services sought in the ITN, or would tend to undermine the public trust, or would cause a lack of confidence in the propriety of the Bank, or would otherwise result in a perceived detriment to the State.

9.9 No Advertising or Endorsements. The Bank's services to the Department may be generally stated and described in the Bank's professional resume. The Bank may not give the impression in any event or manner that the Department recommends or endorses the Bank.

9.6 Export Control. Bank certifies that by entering into this contract, it is, and during the term will ensure it remains, in compliance with the U.S. export control laws. This statement is due to the Department annually.

9.7 Authorization of Business Third Parties to Access State Data. The Department hereby authorizes the Bank to provide access to Business Third Parties, and individuals directly or indirectly accessing the State Data on behalf of Business Third Parties, to the State Data and the Bank represents that such access shall be in accord with the following: (i) each Business Third Party shall respond affirmatively to nondisclosure requirements protecting the Department's Confidential Information as set forth in a Nondisclosure Acknowledgment; (ii) all Business Third Parties accessing the State Data shall be licensed as Named Users; (iii) Business Third Parties are expressly limited to screen access to the State Data; (iv) in no circumstances may Business Third Parties have access to modify State Data; (v) in no circumstances shall Business Third Parties Use the State Data in their operations or management of the business of such Business Third Parties; and (vi) such use shall not constitute an unauthorized exportation of any Confidential Information under U.S. Government laws and regulations.

The Department will assist the Bank in resolving software malfunctions by providing the Bank: temporary remote electronic access to the Department's system (within the parameters allowed by the Department's Project Management Office) for the sole purpose of conducting maintenance in accordance with the Contract; information and evidence of the malfunction; and appropriately qualified personnel available to answer questions and perform remedial functions.

ARTICLE X.

10.1 Limitation of Liability. The Department's maximum liability for any damages, regardless of form of action, shall in no event exceed the contract price for the relevant products or services giving rise to the liability, prorated over a three year term from the installation of products or the date of performance of the applicable services.

10.2 Both Parties recognize that the Department, as an agency of the State of Florida, is prohibited from entering into indemnification agreements. Subject to that prohibition, the Parties agree that the Bank shall not be responsible for damages resulting solely and exclusively from the Department's negligence.

10.3 The provisions of the ITN and its incorporated PUR 1000, section 20 shall apply but, for the avoidance of doubt, the limitations and exclusions of liability will not apply to exclude or limit the recovery of any damages required by Rule 60A-1.006, F.A.C., or attributable to any of the following:

1. fraud, intentional torts, willful misconduct (including intentional breach of contract), unlawful conduct, or negligence of or by the Bank (or an entity or person for whom the Bank is responsible);
2. the Bank's (or an entity's or person's for whom the Bank is responsible) violation of applicable law or regulation; or
3. the Bank's cessation or abandonment of any Services without providing Exit Transition Services substantially in accordance with the Contract.

10.4 To the extent permitted by Florida law, the Department and Bank agree that Bank, its agents, employees and affiliates are not liable for any and all claims, demands and causes of action of whatever kind or nature asserted by a third party resulting from failure of the Department in its performance under this Contract, or its agents, employees or affiliates, in accordance with this Contract, including but not limited to reasonable, costs, penalties, damages

and expenses. Neither this Section nor any other provision in this Contract shall operate to provide an indemnification by the Department of Bank or any other person.

10.5 Liability. Bank shall be liable for direct losses, excluding consequential or special damages, resulting from Bank's negligence or willful misconduct. However, Bank shall have no liability for any losses or unfavorable results arising from its compliance with the Department's or Investment Advisor's Proper Instructions except as provided in Section 3.12 of this Contract.

ARTICLE XI.

11.1 Subcontractors. Bank is authorized to use the services of the following entities to provide services required by the Contract: _____. Use of the foregoing by Bank shall not be deemed to be any assignment of any duties or services by Bank, none of the foregoing shall be or be deemed to be subcontractors or agents of Bank, and each shall for all purposes hereunder be and be deemed to be independent contractors. Bank shall not subcontract or assign any of its obligations or responsibilities under the Contract to any third party without a formal written amendment of the Contract. In no event shall Bank have any liability or obligation with respect to any costs, damages, expenses, liabilities or claims (including attorneys' and accountants' fees) which are sustained or incurred by the Department by reason of the acts or omissions of any of the foregoing independent contractors.

ARTICLE XII.

12.1 Access by the Department's Auditors. Bank must provide the Department's internal audit staff reasonable access to relevant safekeeping areas and to all data relating to the Accounts, including access and review of all relevant portions of Bank's external audit Statement on Standards for Attestation Engagements Statement (SSAE) 16.

12.2 Access by State Auditors. Bank shall provide audit access as described in Section 12.1 of this Contract to the State of Florida Office of the Auditor General.

ARTICLE XIII.

13.1 Required Insurance. Bank shall maintain at a minimum the types and amounts of insurance and blanket bonds of the type and in the amounts described in Appendix IX for the duration of the contract. The Bank shall provide to the Department a copy of such insurance policy's Declarations Page or policy at the Department's request.

13.2 Failure to Maintain Insurance. In the event Bank fails to maintain insurance and blanket bonds required by this Article, the Department may terminate the Contract for cause as provided by Article II.

ARTICLE XIV.

14.1 Successor Institutions. In the event that Bank shall combine with another bank or be adjudged bankrupt or insolvent, or a receiver, liquidator, or conservator of Bank, or its property, shall be appointed, or if any public officer shall take charge or control of Bank or its property, then any receiver, liquidator, conservator, public officer, or successor bank shall, without any further act, be bound by and vested with all rights, powers, duties and obligations of Bank under this Contract.

14.2 Bankruptcy, Insolvency, Etc. In the event that Bank shall enter into a voluntary proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts, or shall be adjudged bankrupt or insolvent, or a receiver, liquidator, or conservator of Bank, or its property, shall be appointed, or if any public officer shall take charge or control of Bank or its property then, in such event, the Department may immediately, and without further notice to

Bank, terminate the Contract, and be entitled to immediately receive from Bank all funds and Securities held in the Accounts.

14.3 Successors and Assigns. This Contract shall not be assignable by either party but shall bind the successors in interest of the Department and Bank.

ARTICLE XV.

15.1 Instructions. Unless otherwise expressly provided, all Proper Instructions shall continue in full force and effect until canceled or superseded. The Department shall be responsible for safeguarding any test keys, identification codes or other security devices which Bank may make available to the Department or its Department Authorized Persons.

15.2 Nonexclusive Contract. This Contract is not an exclusive license to provide the services described in the Invitation to Negotiate or the Contract. The Department may, without limitation and without recourse by the Bank, contract with other vendors to provide the same or similar services. The Department retains the right to perform the service or activity, directly or with another contractor, if service levels are not being achieved.

15.3 Notices and Contract Administration. Except as provided in Article IV, until notice to the contrary, all notices and correspondence required by the Contract shall be in writing and delivered to the following representatives of the Department and Bank or their successors in office:

A. The Department contract manager is Cherie Jeffries located at 200 East Gaines Street, Tallahassee, Florida 32399-0344; phone 850-413-2779.

B. Bank contract manager is
_____.

C. All written and verbal approvals referenced in this Contract must be obtained from the parties' contract managers or designees. Notices required to be in writing must be delivered or sent to the intended recipient by hand delivery, certified mail or receipted courier and shall be deemed received on the date received or the date of the certification or receipt.

ARTICLE XVI.

16.1 Severability. The provisions of the Contract are severable and if any provision or part of the Contract or the application of this Contract to any person or circumstance shall ever be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of the Contract and the application of such provision or part of the Contract to other persons or circumstances shall not be affected thereby.

ARTICLE XVII.

17.1 Entirety; Applicable Law. The Contract and any referenced or attached appendix, attachment or schedule constitutes the entire agreement between the Department and Bank for the accomplishment of the purposes of the Contract and is not intended to confer any rights upon any other person except as expressly provided in this Contract. The respective duties and responsibilities of the Department and Bank shall be limited to those expressly stated in this Contract. This Contract shall be construed in accordance with and governed by the laws of the State of Florida and all applicable laws of the United States of America. Venue for any legal action regarding the Contract shall be in Leon County, Florida. This Contract may be amended only by a writing signed by the Department and Bank.

17.2 Captions of Subdivisions. The captions of these subdivisions are for convenience of reference only and shall neither affect the interpretation nor in any way define, limit or describe the scope or intent of the Contract.

ARTICLE XVIII.

18.1 Signatures. To ensure that the individuals executing the Contract have legal authorization to do so and that these authorizations will legally bind Bank and the Department to the Contract, Bank and the Department shall submit the following documents at the time of execution:

A certified copy of the relevant provisions of the By-Laws of Bank with respect to the due authorization of the person who signs the Contract on behalf of Bank.

An executed document from the State Chief Financial Officer on official letterhead which authorizes the person who signs the agreement to execute contracts on behalf of the State Chief Financial Officer.

IN WITNESS THEREOF, the parties have executed the Contract as of the date set forth
opposite their signatures:

Florida Department of Financial Services

Date: _____

By: _____

Title: _____

Bank

Date: _____

By: _____

Title: _____

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**APPENDIX V –
DISPUTE RESOLUTION PROCESS**

A. Sec. 215,422, Florida Statutes, quoted below, shall control the resolution of any dispute arising from the payment of any invoices. For all other disputes, the process in Appendix V, section B shall apply.

215.422 Payments, warrants, and invoices; processing time limits; dispute resolution; agency or judicial branch compliance.--

(1) An invoice submitted to an agency of the state or the judicial branch, required by law to be filed with the Chief Financial Officer, shall be recorded in the financial systems of the state, approved for payment by the agency or the judicial branch, and filed with the Chief Financial Officer not later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services, except that in the case of a bona fide dispute the invoice recorded in the financial systems of the state shall contain a statement of the dispute and authorize payment only in the amount not disputed. The Chief Financial Officer may establish dollar thresholds and other criteria for all invoices and may delegate to a state agency or the judicial branch responsibility for maintaining the official invoices and documents for invoices which do not exceed the thresholds or which meet the established criteria. Such records shall be maintained in accordance with the requirements established by the Secretary of State. The transmission of an approved invoice recorded in the financial systems of the state to the Chief Financial Officer shall constitute filing of a request for payment of invoices for which the Chief Financial Officer has delegated to an agency custody of official records. Approval and inspection of goods or services shall take no longer than 5 working days unless the bid specifications, purchase order, or contract specifies otherwise. If an invoice filed within the 20-day period is returned by The Department of Financial Services because of an error, it shall nevertheless be deemed timely filed. The 20-day filing requirement may be waived in whole or in part by The Department of Financial Services on a showing of exceptional circumstances in accordance with rules and regulations of the department. For the purposes of determining the receipt of invoice date, the agency or the judicial branch is deemed to receive an invoice on the date on which a proper invoice is first received at the place designated by the agency or the judicial branch. The agency or the judicial branch is deemed to receive an invoice on the date of the invoice if the agency or the judicial branch has failed to annotate the invoice with the date of receipt at the time the agency or the judicial branch actually received the invoice or failed at the time the order is placed or contract made to designate a specific location to which the invoice must be delivered.

(2) The Department of Financial Services shall approve payment of an invoice no later than 10 days after the agency's filing of the approved invoice. However, this requirement may be waived in whole or in part by The Department of Financial Services on a showing of exceptional circumstances in accordance with rules and regulations of the department. If the 10-day period contains fewer than 6 working days, The Department of Financial Services shall be deemed in compliance with this subsection if the payment is approved within 6 working days without regard to the actual number of calendar days.

(3)(a) Each agency of the state or the judicial branch which is required by law to file invoices with the Chief Financial Officer shall keep a record of the date of receipt of the invoice; dates of receipt, inspection, and approval of the goods or services; date of filing of the approved invoice; and date of issuance of the warrant in payment thereof. If the invoice is not filed or the warrant is not issued within the time required, an explanation in writing by the agency head or the Chief Justice shall be submitted to The Department of Financial Services in a manner prescribed by it. Agencies and the judicial branch shall continue to deliver or mail state payments promptly.

(b) If a warrant in payment of an invoice is not issued within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods and services, the agency or judicial branch shall pay to the vendor, in addition to the amount of the invoice, interest at a rate as established pursuant to s. [55.03](#)(1) on the unpaid balance from the expiration of such 40-day period until such time as the warrant is issued to the vendor. Such interest shall be added to the invoice at the time of

submission to the Chief Financial Officer for payment whenever possible. If addition of the interest penalty is not possible, the agency or judicial branch shall pay the interest penalty payment within 15 days after issuing the warrant. The provisions of this paragraph apply only to undisputed amounts for which payment has been authorized. Disputes shall be resolved in accordance with rules developed and adopted by the Chief Justice for the judicial branch, and rules adopted by The Department of Financial Services or in a formal administrative proceeding before an administrative law judge of the Division of Administrative Hearings for state agencies, provided that, for the purposes of ss. [120.569](#) and [120.57](#)(1), no party to a dispute involving less than \$1,000 in interest penalties shall be deemed to be substantially affected by the dispute or to have a substantial interest in the decision resolving the dispute. In the case of an error on the part of the vendor, the 40-day period shall begin to run upon receipt by the agency or the judicial branch of a corrected invoice or other remedy of the error. For purposes of this section, the nonsubmittal of the appropriate federal taxpayer identification documentation to The Department of Financial Services by the vendor will be deemed an error on the part of the vendor, and the vendor will be required to submit the appropriate federal taxpayer documentation in order to remedy the error. The provisions of this paragraph do not apply when the filing requirement under subsection (1) or subsection (2) has been waived in whole by The Department of Financial Services. The various state agencies and the judicial branch shall be responsible for initiating the penalty payments required by this subsection and shall use this subsection as authority to make such payments. The budget request submitted to the Legislature shall specifically disclose the amount of any interest paid by any agency or the judicial branch pursuant to this subsection. The temporary unavailability of funds to make a timely payment due for goods or services does not relieve an agency or the judicial branch from the obligation to pay interest penalties under this section.

(c) An agency or the judicial branch may make partial payments to a contractor upon partial delivery of goods or services or upon partial completion of construction when a request for such partial payment is made by the contractor and approved by the agency. Provisions of this section and rules of The Department of Financial Services shall apply to partial payments in the same manner as they apply to full payments.

(4) If the terms of the invoice provide a discount for payment in less than 30 days, agencies of the state and the judicial branch shall preferentially process it and use all diligence to obtain the saving by compliance with the invoice terms.

(5) All purchasing agreements between a state agency or the judicial branch and a vendor, applicable to this section, shall include a statement of the vendor's rights and the state's responsibilities under this section. The vendor's rights shall include being provided with the telephone number of the vendor ombudsman within The Department of Financial Services, which information shall also be placed on all agency or judicial branch purchase orders.

(6) The Department of Financial Services shall monitor each agency's and the judicial branch's compliance with the time limits and interest penalty provisions of this section. The department shall provide a report to an agency or to the judicial branch if the department determines that the agency or the judicial branch has failed to maintain an acceptable rate of compliance with the time limits and interest penalty provisions of this section. The department shall establish criteria for determining acceptable rates of compliance. The report shall also include a list of late invoices or payments, the amount of interest owed or paid, and any corrective actions recommended. The department shall perform monitoring responsibilities, pursuant to this section, using The Department of Financial Services' financial systems provided in s. [215.94](#). Each agency and the judicial branch shall be responsible for the accuracy of information entered into The Department of Management Services' procurement system and The Department of Financial Services' financial systems for use in this monitoring.

(7) There is created a vendor ombudsman within The Department of Financial Services who shall be responsible for the following functions:

(a) Performing the duties of the department pursuant to subsection (6).

(b) Reviewing requests for waivers due to exceptional circumstances.

(c) Disseminating information relative to the prompt payment policies of this state and assisting vendors in receiving their payments in a timely manner.

(d) Performing such other duties as determined by the department.

(8) The Department of Financial Services is authorized and directed to adopt and promulgate rules and regulations to implement this section and for resolution of disputes involving amounts of less than \$1,000 in interest penalties for state agencies. No agency or the judicial branch shall adopt any rule or policy that is inconsistent with this section or The Department of Financial Services' rules or policies.

(9) Each agency and the judicial branch shall include in the official position description of every officer or employee who is responsible for the approval or processing of vendors' invoices or distribution of warrants to vendors that the requirements of this section are mandatory.

(10) Persistent failure to comply with this section by any agency of the state or the judicial branch shall constitute good cause for discharge of employees duly found responsible, or predominantly responsible, for failure to comply.

(11) Travel and other reimbursements to state officers and employees must be the same as payments to vendors under this section, except payment of Class C travel subsistence. Class C travel subsistence shall be paid in accordance with the schedule established by the Chief Financial Officer pursuant to s. [112.061\(5\)\(b\)](#). This section does not apply to payments made to state agencies, the judicial branch, or the legislative branch.

(12) In the event that a state agency or the judicial branch contracts with a third party, uses a revolving fund, or pays from a local bank account to process and pay invoices for goods or services, all requirements for financial obligations and time processing set forth in this section shall be applicable and the state agency or the judicial branch shall be responsible for paying vendors the interest assessed for untimely payment. The state agency or the judicial branch may, through its contract with a third party, require the third party to pay interest from the third party's funds.

(13) Notwithstanding the provisions of subsections (3) and (12), in order to alleviate any hardship that may be caused to a health care provider as a result of delay in receiving reimbursement for services, any payment or payments for hospital, medical, or other health care services which are to be reimbursed by a state agency or the judicial branch, either directly or indirectly, shall be made to the health care provider not more than 35 days from the date eligibility for payment of such claim is determined. If payment is not issued to a health care provider within 35 days after the date eligibility for payment of the claim is determined, the state agency or the judicial branch shall pay the health care provider interest at a rate of 1 percent per month calculated on a calendar day basis on the unpaid balance from the expiration of such 35-day period until such time as payment is made to the health care provider, unless a waiver in whole has been granted by The Department of Financial Services pursuant to subsection (1) or subsection (2).

(14) The Chief Financial Officer may adopt rules to authorize advance payments for goods and services, including, but not limited to, maintenance agreements and subscriptions. Such rules shall provide objective criteria for determining when it is in the best interest of the state to make payments in advance and shall also provide for adequate protection to ensure that such goods or services will be provided.

(15) Nothing contained in this section shall be construed to be an appropriation. Any interest which becomes due and owing pursuant to this section shall only be payable from the appropriation charged for such goods or services.

(16) Notwithstanding the provisions of s. [24.120\(3\)](#), applicable to warrants issued for payment of invoices submitted by The Department of the Lottery, the Chief Financial Officer may, by written agreement with The Department of the Lottery, establish a shorter time requirement than the 10 days provided in subsection (2) for warrants issued for payment. Pursuant to such written agreement, The Department of the Lottery shall reimburse the Chief Financial Officer for costs associated with processing invoices under the agreement.

B. For all other disputes, the following process shall apply:

1 In General

(a) Any claim, counterclaim, or dispute between The Department and Bank relating to this Contract shall be resolved as set forth herein.

- (b) For all Bank claims seeking an increase in the amounts payable to Bank under this Contract, or the time for Bank's performance, Bank shall submit an affidavit executed by Bank's Project Director or his designee certifying that
- i) the claim is made in good faith,
 - ii) the amount claimed accurately reflects the adjustments in the amounts payable to Bank or the time for Bank's performance for which Bank believes The Department is liable and covers all costs of every type to which Bank is entitled from the occurrence of the claimed event, and
 - iii) the supporting data provided with such an affidavit are current and complete to Bank's best knowledge and belief.

2 Informal Dispute Resolution

- (a) All operational disputes between the parties shall be resolved under the procedures developed by the contract manager. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with The Department's Project Sponsor, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:
- i) The representatives of Bank and The Department shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to this Contract will be honored in order that each of the parties may be fully advised of the other's position.
 - iii) The specific format for the discussions will be left to the discretion of the designated Department and Bank representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
 - iv) Following the completion of this process, The Department, or designee, shall issue a written opinion regarding the issue(s) in dispute. The opinion regarding the dispute shall be considered The Department's final action.

(b) This Section 2 will not be construed to prevent a party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to Section 3.

3 Injunctive Relief

The only circumstance in which disputes between The Department and Bank will not be subject to the provisions of Section 2 is where a party makes a good faith determination that a breach of the terms of this Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

4 Continued Performance

Each party agrees to continue performing its obligations under this Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate this Contract as provided in Article II, as the case may be.

APPENDIX VI
INVESTMENT ADVISOR AUTHORIZED PERSON

Appendix VII

CHANGE ORDER REQUEST FORM

This document must be completed and submitted to the appropriate Project Manager to commence any change order.

Submitted by: Date:

Describe the change being requested:

Identify by Requirement number the function most closely matching the functional requirements in the Statement of Need that is impacted:

Describe the reason for the requested change:

[include identification of duties of the parties associated with the need for the change]

Describe the impact, if any, on existing Deliverables and/or Milestones:

Describe additional or reduction in Work Products and/or Deliverables and/or Milestones required as a result of the requested change, if any:

Describe the impact, if any, to the existing Project Schedule. Provide a revised Project Schedule, if appropriate:

State the estimated change, if any, to the project fees/expenditures. Provide the rationale/methodology used to calculate any change:

Additional Comments:

FOR ENGINEERING CHANGES (No cost impact)

(Attach documents reflecting (a) the redistribution of costs and (b) the difference in price if any from the product or service offered with the Proposal); for schedule delays, only day for day schedule delay is available if the vendor did not cause delay.)

Approved or Disapproved: _____

DIVISION DIRECTOR: (Signature) (Date)

FOR CONTRACT CHANGES

(If adding costs, attach documentation reflecting (a) detailed quote for the new service or product and (b) why the proposed new function differs from the functional requirements in the Statement of Need. In the event Bank does not attach to its invoice for the Change, its supporting documents for materials and, for services, detailed time keeping records

by category reflected in Exhibit B-2 for the work, the price for the work will be at the lowest rate applied to the year the Change Order was sought, as shown on Contract Exhibit B-2, Amendment Labor Rates.)

If adding costs, the change is also contingent on the following approvals:

BUDGET OFFICE:

(Signature)

(Date)

CONTRACT ADMINISTRATOR:

(Signature)

(Date)

LEGAL:

(Signature)

(Date)

The Change Order is legally binding upon proper execution by duly authorized representatives from each of the referenced parties on the date last executed herein.

APPENDIX VIII

DEPARTMENT OF FINANCIAL SERVICES, ADMINISTRATIVE POLICIES AND PROCEDURES,
INFORMATION TECHNOLOGY SECURITY

SAME AS ATTACHMENT N OF ITN

APPENDIX IX INSURANCE

The following insurance coverage shall be maintained. All coverage shall be continually renewed prior to expiration dates. All policies are stand-alone policies and loss limits shall not be combined.

Insurance will be negotiated during the ITN process; however, the Bank must meet the following minimum requirements, or otherwise, meet the needs of the Department with regard to insurance.

During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract, which, at a minimum, shall be: workers' compensation and employer's liability insurance per Florida statutory limits (currently \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate) covering all employees engaged in any Contract work; commercial general liability coverage on an occurrence basis in the minimum amount of \$500,000 (defense cost shall be in excess of the limit of liability), naming the State as an additional insured; and automobile liability insurance covering all vehicles, owned or otherwise, used in the Contract work, with minimum combined limits of \$500,000, including hired and non-owned liability, and \$5,000 medical payment. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of the Contract. The Contract shall not limit the types of insurance Contractor may desire to obtain or be required to obtain by law. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized to write policies in Florida.

SCHEDULE 1

COMPREHENSIVE INVESTMENT POLICY

Same as Attachment I of the ITN

SCHEDULE 2

MASTER SECURITIES LOAN AGREEMENT



Master Securities Loan Agreement

2000 Version

Dated as of: _____

Between: _____

and _____

1. Applicability.

From time to time the parties hereto may enter into transactions in which one party ("Lender") will lend to the other party ("Borrower") certain Securities (as defined herein) against a transfer of Collateral (as defined herein). Each such transaction shall be referred to herein as a "Loan" and, unless otherwise agreed in writing, shall be governed by this Agreement, including any supplemental terms or conditions contained in an Annex or Schedule hereto and in any other annexes identified herein or therein as applicable hereunder. Capitalized terms not otherwise defined herein shall have the meanings provided in Section 25.

2. Loans of Securities.

2.1 Subject to the terms and conditions of this Agreement, Borrower or Lender may, from time to time, seek to initiate a transaction in which Lender will lend Securities to Borrower. Borrower and Lender shall agree on the terms of each Loan (which terms may be amended during the Loan), including the issuer of the Securities, the amount of Securities to be lent, the basis of compensation, the amount of Collateral to be transferred by Borrower, and any additional terms. Such agreement shall be confirmed (a) by a schedule and receipt listing the Loaned Securities provided by Borrower to Lender in accordance with Section 3.2, (b) through any system that compares Loans and in which Borrower and Lender are participants, or (c) in such other manner as may be agreed by Borrower and Lender in writing. Such confirmation (the "Confirmation"), together with the Agreement, shall constitute conclusive evidence of the terms agreed between Borrower and Lender with respect to the Loan to which the Confirmation relates, unless with respect to the Confirmation specific objection is made promptly after receipt thereof. In the event of any inconsistency between the terms of such Confirmation and this Agreement, this Agreement shall prevail unless each party has executed such Confirmation.

2.2 Notwithstanding any other provision in this Agreement regarding when a Loan commences, unless otherwise agreed, a Loan hereunder shall not occur until the Loaned Securities and the Collateral therefor have been transferred in accordance with Section 15.

3. Transfer of Loaned Securities.

- 3.1 Unless otherwise agreed, Lender shall transfer Loaned Securities to Borrower hereunder on or before the Cutoff Time on the date agreed to by Borrower and Lender for the commencement of the Loan.
- 3.2 Unless otherwise agreed, Borrower shall provide Lender, for each Loan in which Lender is a Customer, with a schedule and receipt listing the Loaned Securities. Such schedule and receipt may consist of (a) a schedule provided to Borrower by Lender and executed and returned by Borrower when the Loaned Securities are received, (b) in the case of Securities transferred through a Clearing Organization which provides transferors with a notice evidencing such transfer, such notice, or (c) a confirmation or other document provided to Lender by Borrower.
- 3.3 Notwithstanding any other provision in this Agreement, the parties hereto agree that they intend the Loans hereunder to be loans of Securities. If, however, any Loan is deemed to be a loan of money by Borrower to Lender, then Borrower shall have, and Lender shall be deemed to have granted, a security interest in the Loaned Securities and the proceeds thereof.

4. Collateral.

- 4.1 Unless otherwise agreed, Borrower shall, prior to or concurrently with the transfer of the Loaned Securities to Borrower, but in no case later than the Close of Business on the day of such transfer, transfer to Lender Collateral with a Market Value at least equal to the Margin Percentage of the Market Value of the Loaned Securities.
- 4.2 The Collateral transferred by Borrower to Lender, as adjusted pursuant to Section 9, shall be security for Borrower's obligations in respect of such Loan and for any other obligations of Borrower to Lender hereunder. Borrower hereby pledges with, assigns to, and grants Lender a continuing first priority security interest in, and a lien upon, the Collateral, which shall attach upon the transfer of the Loaned Securities by Lender to Borrower and which shall cease upon the transfer of the Loaned Securities by Borrower to Lender. In addition to the rights and remedies given to Lender hereunder, Lender shall have all the rights and remedies of a secured party under the UCC. It is understood that Lender may use or invest the Collateral, if such consists of cash, at its own risk, but that (unless Lender is a Broker-Dealer) Lender shall, during the term of any Loan hereunder, segregate Collateral from all securities or other assets in its possession. Lender may Retransfer Collateral only (a) if Lender is a Broker-Dealer or (b) in the event of a Default by Borrower. Segregation of Collateral may be accomplished by appropriate identification on the books and records of Lender if it is a "securities intermediary" within the meaning of the UCC.
- 4.3 Except as otherwise provided herein, upon transfer to Lender of the Loaned Securities on the day a Loan is terminated pursuant to Section 6, Lender shall be obligated to transfer the Collateral (as adjusted pursuant to Section 9) to Borrower no later than the Cutoff Time on such day or, if such day is not a day on which a transfer of such Collateral may be effected under Section 15, the next day on which such a transfer may be effected.
- 4.4 If Borrower transfers Collateral to Lender, as provided in Section 4.1, and Lender does not transfer the Loaned Securities to Borrower, Borrower shall have the absolute right to the return of the Collateral; and if Lender transfers Loaned Securities to Borrower and

Borrower does not transfer Collateral to Lender as provided in Section 4.1, Lender shall have the absolute right to the return of the Loaned Securities.

- 4.5 Borrower may, upon reasonable notice to Lender (taking into account all relevant factors, including industry practice, the type of Collateral to be substituted, and the applicable method of transfer), substitute Collateral for Collateral securing any Loan or Loans; provided, however, that such substituted Collateral shall (a) consist only of cash, securities or other property that Borrower and Lender agreed would be acceptable Collateral prior to the Loan or Loans and (b) have a Market Value such that the aggregate Market Value of such substituted Collateral, together with all other Collateral for Loans in which the party substituting such Collateral is acting as Borrower, shall equal or exceed the agreed upon Margin Percentage of the Market Value of the Loaned Securities.
- 4.6 Prior to the expiration of any letter of credit supporting Borrower's obligations hereunder, Borrower shall, no later than the Extension Deadline, (a) obtain an extension of the expiration of such letter of credit, (b) replace such letter of credit by providing Lender with a substitute letter of credit in an amount at least equal to the amount of the letter of credit for which it is substituted, or (c) transfer such other Collateral to Lender as may be acceptable to Lender.

5. Fees for Loan.

- 5.1 Unless otherwise agreed, (a) Borrower agrees to pay Lender a loan fee (a "Loan Fee"), computed daily on each Loan to the extent such Loan is secured by Collateral other than cash, based on the aggregate Market Value of the Loaned Securities on the day for which such Loan Fee is being computed, and (b) Lender agrees to pay Borrower a fee or rebate (a "Cash Collateral Fee") on Collateral consisting of cash, computed daily based on the amount of cash held by Lender as Collateral, in the case of each of the Loan Fee and the Cash Collateral Fee at such rates as Borrower and Lender may agree. Except as Borrower and Lender may otherwise agree (in the event that cash Collateral is transferred by clearing house funds or otherwise), Loan Fees shall accrue from and including the date on which the Loaned Securities are transferred to Borrower to, but excluding, the date on which such Loaned Securities are returned to Lender, and Cash Collateral Fees shall accrue from and including the date on which the cash Collateral is transferred to Lender to, but excluding, the date on which such cash Collateral is returned to Borrower.
- 5.2 Unless otherwise agreed, any Loan Fee or Cash Collateral Fee payable hereunder shall be payable:
 - (a) in the case of any Loan of Securities other than Government Securities, upon the earlier of (i) the fifteenth day of the month following the calendar month in which such fee was incurred and (ii) the termination of all Loans hereunder (or, if a transfer of cash in accordance with Section 15 may not be effected on such fifteenth day or the day of such termination, as the case may be, the next day on which such a transfer may be effected); and
 - (b) in the case of any Loan of Government Securities, upon the termination of such Loan and at such other times, if any, as may be customary in accordance with market practice.

Notwithstanding the foregoing, all Loan Fees shall be payable by Borrower immediately in the event of a Default hereunder by Borrower and all Cash Collateral Fees shall be payable immediately by Lender in the event of a Default by Lender.

6. Termination of the Loan.

- 6.1 (a) Unless otherwise agreed, either party may terminate a Loan on a termination date established by notice given to the other party prior to the Close of Business on a Business Day. The termination date established by a termination notice shall be a date no earlier than the standard settlement date that would apply to a purchase or sale of the Loaned Securities (in the case of a notice given by Lender) or the non-cash Collateral securing the Loan (in the case of a notice given by Borrower) entered into at the time of such notice, which date shall, unless Borrower and Lender agree to the contrary, be (i) in the case of Government Securities, the next Business Day following such notice and (ii) in the case of all other Securities, the third Business Day following such notice.
- (b) Notwithstanding paragraph (a) and unless otherwise agreed, Borrower may terminate a Loan on any Business Day by giving notice to Lender and transferring the Loaned Securities to Lender before the Cutoff Time on such Business Day if (i) the Collateral for such Loan consists of cash or Government Securities or (ii) Lender is not permitted, pursuant to Section 4.2, to Retransfer Collateral.
- 6.2 Unless otherwise agreed, Borrower shall, on or before the Cutoff Time on the termination date of a Loan, transfer the Loaned Securities to Lender; provided, however, that upon such transfer by Borrower, Lender shall transfer the Collateral (as adjusted pursuant to Section 9) to Borrower in accordance with Section 4.3.

7. Rights in Respect of Loaned Securities and Collateral.

- 7.1 Except as set forth in Sections 8.1 and 8.2 and as otherwise agreed by Borrower and Lender, until Loaned Securities are required to be redelivered to Lender upon termination of a Loan hereunder, Borrower shall have all of the incidents of ownership of the Loaned Securities, including the right to transfer the Loaned Securities to others. Lender hereby waives the right to vote, or to provide any consent or to take any similar action with respect to, the Loaned Securities in the event that the record date or deadline for such vote, consent or other action falls during the term of the Loan.
- 7.2 Except as set forth in Sections 8.3 and 8.4 and as otherwise agreed by Borrower and Lender, if Lender may, pursuant to Section 4.2, Retransfer Collateral, Borrower hereby waives the right to vote, or to provide any consent or take any similar action with respect to, any such Collateral in the event that the record date or deadline for such vote, consent or other action falls during the term of a Loan and such Collateral is not required to be returned to Borrower pursuant to Section 4.5 or Section 9.

8. Distributions.

- 8.1 Lender shall be entitled to receive all Distributions made on or in respect of the Loaned Securities which are not otherwise received by Lender, to the full extent it would be so entitled if the Loaned Securities had not been lent to Borrower.

- 8.2 Any cash Distributions made on or in respect of the Loaned Securities, which Lender is entitled to receive pursuant to Section 8.1, shall be paid by the transfer of cash to Lender by Borrower, on the date any such Distribution is paid, in an amount equal to such cash Distribution, so long as Lender is not in Default at the time of such payment. Non-cash Distributions that Lender is entitled to receive pursuant to Section 8.1 shall be added to the Loaned Securities on the date of distribution and shall be considered such for all purposes, except that if the Loan has terminated, Borrower shall forthwith transfer the same to Lender.
- 8.3 Borrower shall be entitled to receive all Distributions made on or in respect of non-cash Collateral which are not otherwise received by Borrower, to the full extent it would be so entitled if the Collateral had not been transferred to Lender.
- 8.4 Any cash Distributions made on or in respect of such Collateral, which Borrower is entitled to receive pursuant to Section 8.3, shall be paid by the transfer of cash to Borrower by Lender, on the date any such Distribution is paid, in an amount equal to such cash Distribution, so long as Borrower is not in Default at the time of such payment. Non-cash Distributions that Borrower is entitled to receive pursuant to Section 8.3 shall be added to the Collateral on the date of distribution and shall be considered such for all purposes, except that if each Loan secured by such Collateral has terminated, Lender shall forthwith transfer the same to Borrower.
- 8.5 Unless otherwise agreed by the parties:
- (a) If (i) Borrower is required to make a payment (a "Borrower Payment") with respect to cash Distributions on Loaned Securities under Sections 8.1 and 8.2 ("Securities Distributions"), or (ii) Lender is required to make a payment (a "Lender Payment") with respect to cash Distributions on Collateral under Sections 8.3 and 8.4 ("Collateral Distributions"), and (iii) Borrower or Lender, as the case may be ("Payor"), shall be required by law to collect any withholding or other tax, duty, fee, levy or charge required to be deducted or withheld from such Borrower Payment or Lender Payment ("Tax"), then Payor shall (subject to subsections (b) and (c) below), pay such additional amounts as may be necessary in order that the net amount of the Borrower Payment or Lender Payment received by the Lender or Borrower, as the case may be ("Payee"), after payment of such Tax equals the net amount of the Securities Distribution or Collateral Distribution that would have been received if such Securities Distribution or Collateral Distribution had been paid directly to the Payee.
 - (b) No additional amounts shall be payable to a Payee under subsection (a) above to the extent that Tax would have been imposed on a Securities Distribution or Collateral Distribution paid directly to the Payee.
 - (c) No additional amounts shall be payable to a Payee under subsection (a) above to the extent that such Payee is entitled to an exemption from, or reduction in the rate of, Tax on a Borrower Payment or Lender Payment subject to the provision of a certificate or other documentation, but has failed timely to provide such certificate or other documentation.
 - (d) Each party hereto shall be deemed to represent that, as of the commencement of any Loan hereunder, no Tax would be imposed on any cash Distribution paid to it with respect to (i) Loaned Securities subject to a Loan in which it is acting as

Lender or (ii) Collateral for any Loan in which it is acting as Borrower, unless such party has given notice to the contrary to the other party hereto (which notice shall specify the rate at which such Tax would be imposed). Each party agrees to notify the other of any change that occurs during the term of a Loan in the rate of any Tax that would be imposed on any such cash Distributions payable to it.

- 8.6 To the extent that, under the provisions of Sections 8.1 through 8.5, (a) a transfer of cash or other property by Borrower would give rise to a Margin Excess or (b) a transfer of cash or other property by Lender would give rise to a Margin Deficit, Borrower or Lender (as the case may be) shall not be obligated to make such transfer of cash or other property in accordance with such Sections, but shall in lieu of such transfer immediately credit the amounts that would have been transferable under such Sections to the account of Lender or Borrower (as the case may be).

9. Mark to Market.

- 9.1 If Lender is a Customer, Borrower shall daily mark to market any Loan hereunder and in the event that at the Close of Trading on any Business Day the Market Value of the Collateral for any Loan to Borrower shall be less than 100% of the Market Value of all the outstanding Loaned Securities subject to such Loan, Borrower shall transfer additional Collateral no later than the Close of Business on the next Business Day so that the Market Value of such additional Collateral, when added to the Market Value of the other Collateral for such Loan, shall equal 100% of the Market Value of the Loaned Securities.
- 9.2 In addition to any rights of Lender under Section 9.1, if at any time the aggregate Market Value of all Collateral for Loans by Lender shall be less than the Margin Percentage of the Market Value of all the outstanding Loaned Securities subject to such Loans (a "Margin Deficit"), Lender may, by notice to Borrower, demand that Borrower transfer to Lender additional Collateral so that the Market Value of such additional Collateral, when added to the Market Value of all other Collateral for such Loans, shall equal or exceed the Margin Percentage of the Market Value of the Loaned Securities.
- 9.3 Subject to Borrower's obligations under Section 9.1, if at any time the Market Value of all Collateral for Loans to Borrower shall be greater than the Margin Percentage of the Market Value of all the outstanding Loaned Securities subject to such Loans (a "Margin Excess"), Borrower may, by notice to Lender, demand that Lender transfer to Borrower such amount of the Collateral selected by Borrower so that the Market Value of the Collateral for such Loans, after deduction of such amounts, shall thereupon not exceed the Margin Percentage of the Market Value of the Loaned Securities.
- 9.4 Borrower and Lender may agree, with respect to one or more Loans hereunder, to mark the values to market pursuant to Sections 9.2 and 9.3 by separately valuing the Loaned Securities lent and the Collateral given in respect thereof on a Loan-by-Loan basis.
- 9.5 Borrower and Lender may agree, with respect to any or all Loans hereunder, that the respective rights of Lender and Borrower under Sections 9.2 and 9.3 may be exercised only where a Margin Excess or Margin Deficit exceeds a specified dollar amount or a specified percentage of the Market Value of the Loaned Securities under such Loans (which amount or percentage shall be agreed to by Borrower and Lender prior to entering into any such Loans).

- 9.6 If any notice is given by Borrower or Lender under Sections 9.2 or 9.3 at or before the Margin Notice Deadline on any day on which a transfer of Collateral may be effected in accordance with Section 15, the party receiving such notice shall transfer Collateral as provided in such Section no later than the Close of Business on such day. If any such notice is given after the Margin Notice Deadline, the party receiving such notice shall transfer such Collateral no later than the Close of Business on the next Business Day following the day of such notice.

10. Representations.

The parties to this Agreement hereby make the following representations and warranties, which shall continue during the term of any Loan hereunder:

- 10.1 Each party hereto represents and warrants that (a) it has the power to execute and deliver this Agreement, to enter into the Loans contemplated hereby and to perform its obligations hereunder, (b) it has taken all necessary action to authorize such execution, delivery and performance, and (c) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms.
- 10.2 Each party hereto represents and warrants that it has not relied on the other for any tax or accounting advice concerning this Agreement and that it has made its own determination as to the tax and accounting treatment of any Loan and any dividends, remuneration or other funds received hereunder.
- 10.3 Each party hereto represents and warrants that it is acting for its own account unless it expressly specifies otherwise in writing and complies with Section 11.1(b).
- 10.4 Borrower represents and warrants that it has, or will have at the time of transfer of any Collateral, the right to grant a first priority security interest therein subject to the terms and conditions hereof.
- 10.5 (a) Borrower represents and warrants that it (or the person to whom it relends the Loaned Securities) is borrowing or will borrow Loaned Securities that are Equity Securities for the purpose of making delivery of such Loaned Securities in the case of short sales, failure to receive securities required to be delivered, or as otherwise permitted pursuant to Regulation T as in effect from time to time.
- (b) Borrower and Lender may agree, as provided in Section 24.2, that Borrower shall not be deemed to have made the representation or warranty in subsection (a) with respect to any Loan. By entering into any such agreement, Lender shall be deemed to have represented and warranted to Borrower (which representation and warranty shall be deemed to be repeated on each day during the term of the Loan) that Lender is either (i) an “exempted borrower” within the meaning of Regulation T or (ii) a member of a national securities exchange or a broker or dealer registered with the U.S. Securities and Exchange Commission that is entering into such Loan to finance its activities as a market maker or an underwriter.
- 10.6 Lender represents and warrants that it has, or will have at the time of transfer of any Loaned Securities, the right to transfer the Loaned Securities subject to the terms and conditions hereof.

11. Covenants.

- 11.1 Each party agrees either (a) to be liable as principal with respect to its obligations hereunder or (b) to execute and comply fully with the provisions of Annex I (the terms and conditions of which Annex are incorporated herein and made a part hereof).
- 11.2 Promptly upon (and in any event within seven (7) Business Days after) demand by Lender, Borrower shall furnish Lender with Borrower's most recent publicly-available financial statements and any other financial statements mutually agreed upon by Borrower and Lender. Unless otherwise agreed, if Borrower is subject to the requirements of Rule 17a-5(c) under the Exchange Act, it may satisfy the requirements of this Section by furnishing Lender with its most recent statement required to be furnished to customers pursuant to such Rule.

12. Events of Default.

All Loans hereunder may, at the option of the non-defaulting party (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), be terminated immediately upon the occurrence of any one or more of the following events (individually, a "Default"):

- 12.1 if any Loaned Securities shall not be transferred to Lender upon termination of the Loan as required by Section 6;
- 12.2 if any Collateral shall not be transferred to Borrower upon termination of the Loan as required by Sections 4.3 and 6;
- 12.3 if either party shall fail to transfer Collateral as required by Section 9;
- 12.4 if either party (a) shall fail to transfer to the other party amounts in respect of Distributions required to be transferred by Section 8, (b) shall have been notified of such failure by the other party prior to the Close of Business on any day, and (c) shall not have cured such failure by the Cutoff Time on the next day after such Close of Business on which a transfer of cash may be effected in accordance with Section 15;
- 12.5 if an Act of Insolvency occurs with respect to either party;
- 12.6 if any representation made by either party in respect of this Agreement or any Loan or Loans hereunder shall be incorrect or untrue in any material respect during the term of any Loan hereunder;
- 12.7 if either party notifies the other of its inability to or its intention not to perform its obligations hereunder or otherwise disaffirms, rejects or repudiates any of its obligations hereunder; or
- 12.8 if either party (a) shall fail to perform any material obligation under this Agreement not specifically set forth in clauses 12.1 through 12.7, above, including but not limited to the payment of fees as required by Section 5, and the payment of transfer taxes as required by Section 14, (b) shall have been notified of such failure by the other party prior to the Close of Business on any day, and (c) shall not have cured such failure by the Cutoff Time on the next day after such Close of Business on which a transfer of cash may be effected in accordance with Section 15.

The non-defaulting party shall (except upon the occurrence of an Act of Insolvency) give notice as promptly as practicable to the defaulting party of the exercise of its option to terminate all Loans hereunder pursuant to this Section 12.

13. Remedies.

- 13.1 Upon the occurrence of a Default under Section 12 entitling Lender to terminate all Loans hereunder, Lender shall have the right, in addition to any other remedies provided herein, (a) to purchase a like amount of Loaned Securities (“Replacement Securities”) in the principal market for such Loaned Securities in a commercially reasonable manner, (b) to sell any Collateral in the principal market for such Collateral in a commercially reasonable manner and (c) to apply and set off the Collateral and any proceeds thereof (including any amounts drawn under a letter of credit supporting any Loan) against the payment of the purchase price for such Replacement Securities and any amounts due to Lender under Sections 5, 8, 14 and 16. In the event that Lender shall exercise such rights, Borrower’s obligation to return a like amount of the Loaned Securities shall terminate. Lender may similarly apply the Collateral and any proceeds thereof to any other obligation of Borrower under this Agreement, including Borrower’s obligations with respect to Distributions paid to Borrower (and not forwarded to Lender) in respect of Loaned Securities. In the event that (i) the purchase price of Replacement Securities (plus all other amounts, if any, due to Lender hereunder) exceeds (ii) the amount of the Collateral, Borrower shall be liable to Lender for the amount of such excess together with interest thereon at a rate equal to (A) in the case of purchases of Foreign Securities, LIBOR, (B) in the case of purchases of any other Securities (or other amounts, if any, due to Lender hereunder), the Federal Funds Rate or (C) such other rate as may be specified in Schedule B, in each case as such rate fluctuates from day to day, from the date of such purchase until the date of payment of such excess. As security for Borrower’s obligation to pay such excess, Lender shall have, and Borrower hereby grants, a security interest in any property of Borrower then held by or for Lender and a right of setoff with respect to such property and any other amount payable by Lender to Borrower. The purchase price of Replacement Securities purchased under this Section 13.1 shall include, and the proceeds of any sale of Collateral shall be determined after deduction of, broker’s fees and commissions and all other reasonable costs, fees and expenses related to such purchase or sale (as the case may be). In the event Lender exercises its rights under this Section 13.1, Lender may elect in its sole discretion, in lieu of purchasing all or a portion of the Replacement Securities or selling all or a portion of the Collateral, to be deemed to have made, respectively, such purchase of Replacement Securities or sale of Collateral for an amount equal to the price therefor on the date of such exercise obtained from a generally recognized source or the last bid quotation from such a source at the most recent Close of Trading. Subject to Section 18, upon the satisfaction of all obligations hereunder, any remaining Collateral shall be returned to Borrower.
- 13.2 Upon the occurrence of a Default under Section 12 entitling Borrower to terminate all Loans hereunder, Borrower shall have the right, in addition to any other remedies provided herein, (a) to purchase a like amount of Collateral (“Replacement Collateral”) in the principal market for such Collateral in a commercially reasonable manner, (b) to sell a like amount of the Loaned Securities in the principal market for such Loaned Securities in a commercially reasonable manner and (c) to apply and set off the Loaned Securities and any proceeds thereof against (i) the payment of the purchase price for such Replacement Collateral, (ii) Lender’s obligation to return any cash or other Collateral, and (iii) any amounts due to Borrower under Sections 5, 8 and 16. In such event, Borrower may treat the Loaned Securities as its own and Lender’s obligation to return a

like amount of the Collateral shall terminate; provided, however, that Lender shall immediately return any letters of credit supporting any Loan upon the exercise or deemed exercise by Borrower of its termination rights under Section 12. Borrower may similarly apply the Loaned Securities and any proceeds thereof to any other obligation of Lender under this Agreement, including Lender's obligations with respect to Distributions paid to Lender (and not forwarded to Borrower) in respect of Collateral. In the event that (i) the sales price received from such Loaned Securities is less than (ii) the purchase price of Replacement Collateral (plus the amount of any cash or other Collateral not replaced by Borrower and all other amounts, if any, due to Borrower hereunder), Lender shall be liable to Borrower for the amount of any such deficiency, together with interest on such amounts at a rate equal to (A) in the case of Collateral consisting of Foreign Securities, LIBOR, (B) in the case of Collateral consisting of any other Securities (or other amounts due, if any, to Borrower hereunder), the Federal Funds Rate or (C) such other rate as may be specified in Schedule B, in each case as such rate fluctuates from day to day, from the date of such sale until the date of payment of such deficiency. As security for Lender's obligation to pay such deficiency, Borrower shall have, and Lender hereby grants, a security interest in any property of Lender then held by or for Borrower and a right of setoff with respect to such property and any other amount payable by Borrower to Lender. The purchase price of any Replacement Collateral purchased under this Section 13.2 shall include, and the proceeds of any sale of Loaned Securities shall be determined after deduction of, broker's fees and commissions and all other reasonable costs, fees and expenses related to such purchase or sale (as the case may be). In the event Borrower exercises its rights under this Section 13.2, Borrower may elect in its sole discretion, in lieu of purchasing all or a portion of the Replacement Collateral or selling all or a portion of the Loaned Securities, to be deemed to have made, respectively, such purchase of Replacement Collateral or sale of Loaned Securities for an amount equal to the price therefor on the date of such exercise obtained from a generally recognized source or the last bid quotation from such a source at the most recent Close of Trading. Subject to Section 18, upon the satisfaction of all Lender's obligations hereunder, any remaining Loaned Securities (or remaining cash proceeds thereof) shall be returned to Lender.

- 13.3 Unless otherwise agreed, the parties acknowledge and agree that (a) the Loaned Securities and any Collateral consisting of Securities are of a type traded in a recognized market, (b) in the absence of a generally recognized source for prices or bid or offer quotations for any security, the non-defaulting party may establish the source therefor in its sole discretion, and (c) all prices and bid and offer quotations shall be increased to include accrued interest to the extent not already included therein (except to the extent contrary to market practice with respect to the relevant Securities).
- 13.4 In addition to its rights hereunder, the non-defaulting party shall have any rights otherwise available to it under any other agreement or applicable law.

14. Transfer Taxes.

All transfer taxes with respect to the transfer of the Loaned Securities by Lender to Borrower and by Borrower to Lender upon termination of the Loan and with respect to the transfer of Collateral by Borrower to Lender and by Lender to Borrower upon termination of the Loan or pursuant to Section 4.5 or Section 9 shall be paid by Borrower.

15. Transfers.

- 15.1 All transfers by either Borrower or Lender of Loaned Securities or Collateral consisting of “financial assets” (within the meaning of the UCC) hereunder shall be by (a) in the case of certificated securities, physical delivery of certificates representing such securities together with duly executed stock and bond transfer powers, as the case may be, with signatures guaranteed by a bank or a member firm of the New York Stock Exchange, Inc., (b) registration of an uncertificated security in the transferee’s name by the issuer of such uncertificated security, (c) the crediting by a Clearing Organization of such financial assets to the transferee’s “securities account” (within the meaning of the UCC) maintained with such Clearing Organization, or (d) such other means as Borrower and Lender may agree.
- 15.2 All transfers of cash hereunder shall be by (a) wire transfer in immediately available, freely transferable funds or (b) such other means as Borrower and Lender may agree.
- 15.3 All transfers of letters of credit from Borrower to Lender shall be made by physical delivery to Lender of an irrevocable letter of credit issued by a “bank” as defined in Section 3(a)(6)(A)-(C) of the Exchange Act. Transfers of letters of credit from Lender to Borrower shall be made by causing such letters of credit to be returned or by causing the amount of such letters of credit to be reduced to the amount required after such transfer.
- 15.4 A transfer of Securities, cash or letters of credit may be effected under this Section 15 on any day except (a) a day on which the transferee is closed for business at its address set forth in Schedule A hereto or (b) a day on which a Clearing Organization or wire transfer system is closed, if the facilities of such Clearing Organization or wire transfer system are required to effect such transfer.
- 15.5 For the avoidance of doubt, the parties agree and acknowledge that the term “securities,” as used herein (except in this Section 15), shall include any “security entitlements” with respect to such securities (within the meaning of the UCC). In every transfer of “financial assets” (within the meaning of the UCC) hereunder, the transferor shall take all steps necessary (a) to effect a delivery to the transferee under Section 8-301 of the UCC, or to cause the creation of a security entitlement in favor of the transferee under Section 8-501 of the UCC, (b) to enable the transferee to obtain “control” (within the meaning of Section 8-106 of the UCC), and (c) to provide the transferee with comparable rights under any applicable foreign law or regulation.

16. Contractual Currency.

- 16.1 Borrower and Lender agree that (a) any payment in respect of a Distribution under Section 8 shall be made in the currency in which the underlying Distribution of cash was made, (b) any return of cash shall be made in the currency in which the underlying transfer of cash was made, and (c) any other payment of cash in connection with a Loan under this Agreement shall be in the currency agreed upon by Borrower and Lender in connection with such Loan (the currency established under clause (a), (b) or (c) hereinafter referred to as the “Contractual Currency”). Notwithstanding the foregoing, the payee of any such payment may, at its option, accept tender thereof in any other currency; provided, however, that, to the extent permitted by applicable law, the obligation of the payor to make such payment will be discharged only to the extent of the amount of Contractual Currency that such payee may, consistent with normal banking

procedures, purchase with such other currency (after deduction of any premium and costs of exchange) on the banking day next succeeding its receipt of such currency.

- 16.2 If for any reason the amount in the Contractual Currency received under Section 16.1, including amounts received after conversion of any recovery under any judgment or order expressed in a currency other than the Contractual Currency, falls short of the amount in the Contractual Currency due in respect of this Agreement, the party required to make the payment will (unless a Default has occurred and such party is the non-defaulting party) as a separate and independent obligation and to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall.
- 16.3 If for any reason the amount in the Contractual Currency received under Section 16.1 exceeds the amount in the Contractual Currency due in respect of this Agreement, then the party receiving the payment will (unless a Default has occurred and such party is the non-defaulting party) refund promptly the amount of such excess.

17. ERISA.

Lender shall, if any of the Securities transferred to the Borrower hereunder for any Loan have been or shall be obtained, directly or indirectly, from or using the assets of any Plan, so notify Borrower in writing upon the execution of this Agreement or upon initiation of such Loan under Section 2.1. If Lender so notifies Borrower, then Borrower and Lender shall conduct the Loan in accordance with the terms and conditions of Department of Labor Prohibited Transaction Exemption 81-6 (46 Fed. Reg. 7527, Jan. 23, 1981; as amended, 52 Fed. Reg. 18754, May 19, 1987), or any successor thereto (unless Borrower and Lender have agreed prior to entering into a Loan that such Loan will be conducted in reliance on another exemption, or without relying on any exemption, from the prohibited transaction provisions of Section 406 of the Employee Retirement Income Security Act of 1974, as amended, and Section 4975 of the Internal Revenue Code of 1986, as amended). Without limiting the foregoing and notwithstanding any other provision of this Agreement, if the Loan will be conducted in accordance with Prohibited Transaction Exemption 81-6, then:

- 17.1 Borrower represents and warrants to Lender that it is either (a) a bank subject to federal or state supervision, (b) a broker-dealer registered under the Exchange Act or (c) exempt from registration under Section 15(a)(1) of the Exchange Act as a dealer in Government Securities.
- 17.2 Borrower represents and warrants that, during the term of any Loan hereunder, neither Borrower nor any affiliate of Borrower has any discretionary authority or control with respect to the investment of the assets of the Plan involved in the Loan or renders investment advice (within the meaning of 29 C.F.R. Section 2510.3-21(c)) with respect to the assets of the Plan involved in the Loan. Lender agrees that, prior to or at the commencement of any Loan hereunder, it will communicate to Borrower information regarding the Plan sufficient to identify to Borrower any person or persons that have discretionary authority or control with respect to the investment of the assets of the Plan involved in the Loan or that render investment advice (as defined in the preceding sentence) with respect to the assets of the Plan involved in the Loan. In the event Lender fails to communicate and keep current during the term of any Loan such information, Lender rather than Borrower shall be deemed to have made the representation and warranty in the first sentence of this Section 17.2.

- 17.3 Borrower shall mark to market daily each Loan hereunder pursuant to Section 9.1 as is required if Lender is a Customer.
- 17.4 Borrower and Lender agree that:
- (a) the term “Collateral” shall mean cash, securities issued or guaranteed by the United States government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than Borrower or an affiliate thereof;
 - (b) prior to the making of any Loans hereunder, Borrower shall provide Lender with (i) the most recent available audited statement of Borrower’s financial condition and (ii) the most recent available unaudited statement of Borrower’s financial condition (if more recent than the most recent audited statement), and each Loan made hereunder shall be deemed a representation by Borrower that there has been no material adverse change in Borrower’s financial condition subsequent to the date of the latest financial statements or information furnished in accordance herewith;
 - (c) the Loan may be terminated by Lender at any time, whereupon Borrower shall deliver the Loaned Securities to Lender within the lesser of (i) the customary delivery period for such Loaned Securities, (ii) five Business Days, and (iii) the time negotiated for such delivery between Borrower and Lender; provided, however, that Borrower and Lender may agree to a longer period only if permitted by Prohibited Transaction Exemption 81-6; and
 - (d) the Collateral transferred shall be security only for obligations of Borrower to the Plan with respect to Loans, and shall not be security for any obligation of Borrower to any agent or affiliate of the Plan.

18. Single Agreement.

Borrower and Lender acknowledge that, and have entered into this Agreement in reliance on the fact that, all Loans hereunder constitute a single business and contractual relationship and have been entered into in consideration of each other. Accordingly, Borrower and Lender hereby agree that payments, deliveries and other transfers made by either of them in respect of any Loan shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Loan hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted. In addition, Borrower and Lender acknowledge that, and have entered into this Agreement in reliance on the fact that, all Loans hereunder have been entered into in consideration of each other. Accordingly, Borrower and Lender hereby agree that (a) each shall perform all of its obligations in respect of each Loan hereunder, and that a default in the performance of any such obligation by Borrower or by Lender (the “Defaulting Party”) in any Loan hereunder shall constitute a default by the Defaulting Party under all such Loans hereunder, and (b) the non-defaulting party shall be entitled to set off claims and apply property held by it in respect of any Loan hereunder against obligations owing to it in respect of any other Loan with the Defaulting Party.

19. APPLICABLE LAW.

THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

20. Waiver.

The failure of a party to this Agreement to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. All waivers in respect of a Default must be in writing.

21. Survival of Remedies.

All remedies hereunder and all obligations with respect to any Loan shall survive the termination of the relevant Loan, return of Loaned Securities or Collateral and termination of this Agreement.

22. Notices and Other Communications.

Any and all notices, statements, demands or other communications hereunder may be given by a party to the other by telephone, mail, facsimile, e-mail, electronic message, telegraph, messenger or otherwise to the individuals and at the facsimile numbers and addresses specified with respect to it in Schedule A hereto, or sent to such party at any other place specified in a notice of change of number or address hereafter received by the other party. Any notice, statement, demand or other communication hereunder will be deemed effective on the day and at the time on which it is received or, if not received, on the day and at the time on which its delivery was in good faith attempted; provided, however, that any notice by a party to the other party by telephone shall be deemed effective only if (a) such notice is followed by written confirmation thereof and (b) at least one of the other means of providing notice that are specifically listed above has previously been attempted in good faith by the notifying party.

23. SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

23.1 EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR NEW YORK STATE COURT SITTING IN NEW YORK CITY, AND ANY APPELLATE COURT FROM ANY SUCH COURT, SOLELY FOR THE PURPOSE OF ANY SUIT, ACTION OR PROCEEDING BROUGHT TO ENFORCE ITS OBLIGATIONS HEREUNDER OR RELATING IN ANY WAY TO THIS AGREEMENT OR ANY LOAN HEREUNDER AND (B) WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, ANY DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AND ANY RIGHT OF JURISDICTION ON ACCOUNT OF ITS PLACE OF RESIDENCE OR DOMICILE.

23.2 EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY RIGHT THAT IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

24. Miscellaneous.

24.1 Except as otherwise agreed by the parties, this Agreement supersedes any other agreement between the parties hereto concerning loans of Securities between Borrower and Lender. This Agreement shall not be assigned by either party without the prior written consent of the other party and any attempted assignment without such consent shall be null and void. Subject to the foregoing, this Agreement shall be binding upon

and shall inure to the benefit of Borrower and Lender and their respective heirs, representatives, successors and assigns. This Agreement may be terminated by either party upon notice to the other, subject only to fulfillment of any obligations then outstanding. This Agreement shall not be modified, except by an instrument in writing signed by the party against whom enforcement is sought. The parties hereto acknowledge and agree that, in connection with this Agreement and each Loan hereunder, time is of the essence. Each provision and agreement herein shall be treated as separate and independent from any other provision herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

- 24.2 Any agreement between Borrower and Lender pursuant to Section 10.5(b) or Section 25.37 shall be made (a) in writing, (b) orally, if confirmed promptly in writing or through any system that compares Loans and in which Borrower and Lender are participants, or (c) in such other manner as may be agreed by Borrower and Lender in writing.

25. Definitions.

For the purposes hereof:

- 25.1 “Act of Insolvency” shall mean, with respect to any party, (a) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party’s seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (b) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (i) is consented to or not timely contested by such party, (ii) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (iii) is not dismissed within 15 days, (c) the making by such party of a general assignment for the benefit of creditors, or (d) the admission in writing by such party of such party’s inability to pay such party’s debts as they become due.
- 25.2 “Bankruptcy Code” shall have the meaning assigned in Section 26.1
- 25.3 “Borrower” shall have the meaning assigned in Section 1.
- 25.4 “Borrower Payment” shall have the meaning assigned in Section 8.5(a).
- 25.5 “Broker-Dealer” shall mean any person that is a broker (including a municipal securities broker), dealer, municipal securities dealer, government securities broker or government securities dealer as defined in the Exchange Act, regardless of whether the activities of such person are conducted in the United States or otherwise require such person to register with the U.S. Securities and Exchange Commission or other regulatory body.
- 25.6 “Business Day” shall mean, with respect to any Loan hereunder, a day on which regular trading occurs in the principal market for the Loaned Securities subject to such Loan, provided, however, that for purposes of determining the Market Value of any Securities hereunder, such term shall mean a day on which regular trading occurs in the principal market for the Securities whose value is being determined. Notwithstanding the

foregoing, (a) for purposes of Section 9, "Business Day" shall mean any day on which regular trading occurs in the principal market for any Loaned Securities or for any Collateral consisting of Securities under any outstanding Loan hereunder and "next Business Day" shall mean the next day on which a transfer of Collateral may be effected in accordance with Section 15, and (b) in no event shall a Saturday or Sunday be considered a Business Day.

- 25.7 "Cash Collateral Fee" shall have the meaning assigned in Section 5.1.
- 25.8 "Clearing Organization" shall mean (a) The Depository Trust Company, or, if agreed to by Borrower and Lender, such other "securities intermediary" (within the meaning of the UCC) at which Borrower (or Borrower's agent) and Lender (or Lender's agent) maintain accounts, or (b) a Federal Reserve Bank, to the extent that it maintains a book-entry system.
- 25.9 "Close of Business" shall mean the time established by the parties in Schedule B or otherwise orally or in writing or, in the absence of any such agreement, as shall be determined in accordance with market practice.
- 25.10 "Close of Trading" shall mean, with respect to any Security, the end of the primary trading session established by the principal market for such Security on a Business Day, unless otherwise agreed by the parties.
- 25.11 "Collateral" shall mean, whether now owned or hereafter acquired and to the extent permitted by applicable law, (a) any property which Borrower and Lender agree prior to the Loan shall be acceptable collateral and which is transferred to Lender pursuant to Sections 4 or 9 (including as collateral, for definitional purposes, any letters of credit mutually acceptable to Lender and Borrower), (b) any property substituted therefor pursuant to Section 4.5, (c) all accounts in which such property is deposited and all securities and the like in which any cash collateral is invested or reinvested, and (d) any proceeds of any of the foregoing; *provided, however*, that if Lender is a Customer, "Collateral" shall (subject to Section 17.4(a), if applicable) be limited to cash, U.S. Treasury bills and notes, an irrevocable letter of credit issued by a "bank" (as defined in Section 3(a)(6)(A)-(C) of the Exchange Act), and any other property permitted to serve as collateral securing a loan of securities under Rule 15c3-3 under the Exchange Act or any comparable regulation of the Secretary of the Treasury under Section 15C of the Exchange Act (to the extent that Borrower is subject to such Rule or comparable regulation) pursuant to exemptive, interpretive or no-action relief or otherwise. If any new or different Security shall be exchanged for any Collateral by recapitalization, merger, consolidation or other corporate action, such new or different Security shall, effective upon such exchange, be deemed to become Collateral in substitution for the former Collateral for which such exchange is made. For purposes of return of Collateral by Lender or purchase or sale of Securities pursuant to Section 13, such term shall include Securities of the same issuer, class and quantity as the Collateral initially transferred by Borrower to Lender, as adjusted pursuant to the preceding sentence.
- 25.12 "Collateral Distributions" shall have the meaning assigned in Section 8.5(a).
- 25.13 "Confirmation" shall have the meaning assigned in Section 2.1.
- 25.14 "Contractual Currency" shall have the meaning assigned in Section 16.1.

- 25.15 “Customer” shall mean any person that is a customer of Borrower under Rule 15c3-3 under the Exchange Act or any comparable regulation of the Secretary of the Treasury under Section 15C of the Exchange Act (to the extent that Borrower is subject to such Rule or comparable regulation).
- 25.16 “Cutoff Time” shall mean a time on a Business Day by which a transfer of cash, securities or other property must be made by Borrower or Lender to the other, as shall be agreed by Borrower and Lender in Schedule B or otherwise orally or in writing or, in the absence of any such agreement, as shall be determined in accordance with market practice.
- 25.17 “Default” shall have the meaning assigned in Section 12.
- 25.18 “Defaulting Party” shall have the meaning assigned in Section 18.
- 25.19 “Distribution” shall mean, with respect to any Security at any time, any distribution made on or in respect of such Security, including, but not limited to: (a) cash and all other property, (b) stock dividends, (c) Securities received as a result of split ups of such Security and distributions in respect thereof, (d) interest payments, (e) all rights to purchase additional Securities, and (f) any cash or other consideration paid or provided by the issuer of such Security in exchange for any vote, consent or the taking of any similar action in respect of such Security (regardless of whether the record date for such vote, consent or other action falls during the term of the Loan). In the event that the holder of a Security is entitled to elect the type of distribution to be received from two or more alternatives, such election shall be made by Lender, in the case of a Distribution in respect of the Loaned Securities, and by Borrower, in the case of a Distribution in respect of Collateral.
- 25.20 “Equity Security” shall mean any security (as defined in the Exchange Act) other than a “nonequity security,” as defined in Regulation T.
- 25.21 “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.
- 25.22 “Extension Deadline” shall mean, with respect to a letter of credit, the Cutoff Time on the Business Day preceding the day on which the letter of credit expires.
- 25.23 “FDIA” shall have the meaning assigned in Section 26.4.
- 25.24 “FDICIA” shall have the meaning assigned in Section 26.5.
- 25.25 “Federal Funds Rate” shall mean the rate of interest (expressed as an annual rate), as published in Federal Reserve Statistical Release H.15(519) or any publication substituted therefor, charged for federal funds (dollars in immediately available funds borrowed by banks on an overnight unsecured basis) on that day or, if that day is not a banking day in New York City, on the next preceding banking day.
- 25.26 “Foreign Securities” shall mean, unless otherwise agreed, Securities that are principally cleared and settled outside the United States.
- 25.27 “Government Securities” shall mean government securities as defined in Section 3(a)(42)(A)-(C) of the Exchange Act.
- 25.28 “Lender” shall have the meaning assigned in Section 1.

- 25.29 "Lender Payment" shall have the meaning assigned in Section 8.5(a).
- 25.30 "LIBOR" shall mean for any date, the offered rate for deposits in U.S. dollars for a period of three months which appears on the Reuters Screen LIBO page as of 11:00 a.m., London time, on such date (or, if at least two such rates appear, the arithmetic mean of such rates).
- 25.31 "Loan" shall have the meaning assigned in Section 1.
- 25.32 "Loan Fee" shall have the meaning assigned in Section 5.1.
- 25.33 "Loaned Security" shall mean any Security transferred in a Loan hereunder until such Security (or an identical Security) is transferred back to Lender hereunder, except that, if any new or different Security shall be exchanged for any Loaned Security by recapitalization, merger, consolidation or other corporate action, such new or different Security shall, effective upon such exchange, be deemed to become a Loaned Security in substitution for the former Loaned Security for which such exchange is made. For purposes of return of Loaned Securities by Borrower or purchase or sale of Securities pursuant to Section 13, such term shall include Securities of the same issuer, class and quantity as the Loaned Securities, as adjusted pursuant to the preceding sentence.
- 25.34 "Margin Deficit" shall have the meaning assigned in Section 9.2.
- 25.35 "Margin Excess" shall have the meaning assigned in Section 9.3.
- 25.36 "Margin Notice Deadline" shall mean the time agreed to by the parties in the relevant Confirmation, Schedule B hereto or otherwise as the deadline for giving notice requiring same-day satisfaction of mark-to-market obligations as provided in Section 9 hereof (or, in the absence of any such agreement, the deadline for such purposes established in accordance with market practice).
- 25.37 "Margin Percentage" shall mean, with respect to any Loan as of any date, a percentage agreed by Borrower and Lender, which shall be not less than 100%, unless (a) Borrower and Lender agree otherwise, as provided in Section 24.2, and (b) Lender is not a Customer. Notwithstanding the previous sentence, in the event that the writing or other confirmation evidencing the agreement described in clause (a) does not set out such percentage with respect to any such Loan, the Margin Percentage shall not be a percentage less than the percentage obtained by dividing (i) the Market Value of the Collateral required to be transferred by Borrower to Lender with respect to such Loan at the commencement of the Loan by (ii) the Market Value of the Loaned Securities required to be transferred by Lender to Borrower at the commencement of the Loan.
- 25.38 "Market Value" shall have the meaning set forth in Annex II or otherwise agreed to by Borrower and Lender in writing. Notwithstanding the previous sentence, in the event that the meaning of Market Value has not been set forth in Annex II or in any other writing, as described in the previous sentence, Market Value shall be determined in accordance with market practice for the Securities, based on the price for such Securities as of the most recent Close of Trading obtained from a generally recognized source agreed to by the parties or the closing bid quotation at the most recent Close of Trading obtained from such source, plus accrued interest to the extent not included therein (other than any interest credited or transferred to, or applied to the obligations of, the other party pursuant to Section 8, unless market practice with respect to the valuation of such Securities in

connection with securities loans is to the contrary). If the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation. The determinations of Market Value provided for in Annex II or in any other writing described in the first sentences of this Section 25.38 or, if applicable, in the preceding sentence shall apply for all purposes under this Agreement, except for purposes of Section 13.

- 25.39 "Payee" shall have the meaning assigned in Section 8.5(a).
- 25.40 "Payor" shall have the meaning assigned in Section 8.5(a).
- 25.41 "Plan" shall mean: (a) any "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 which is subject to Part 4 of Subtitle B of Title I of such Act; (b) any "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986; or (c) any entity the assets of which are deemed to be assets of any such "employee benefit plan" or "plan" by reason of the Department of Labor's plan asset regulation, 29 C.F.R. Section 2510.3-101.
- 25.42 "Regulation T" shall mean Regulation T of the Board of Governors of the Federal Reserve System, as in effect from time to time.
- 25.43 "Retransfer" shall mean, with respect to any Collateral, to pledge, repledge, hypothecate, rehypothecate, lend, relend, sell or otherwise transfer such Collateral, or to re-register any such Collateral evidenced by physical certificates in any name other than Borrower's.
- 25.44 "Securities" shall mean securities or, if agreed by the parties in writing, other assets.
- 25.45 "Securities Distributions" shall have the meaning assigned in Section 8.5(a).
- 25.46 "Tax" shall have the meaning assigned in Section 8.5(a).
- 25.47 "UCC" shall mean the New York Uniform Commercial Code.

26. Intent.

- 26.1 The parties recognize that each Loan hereunder is a "securities contract," as such term is defined in Section 741 of Title 11 of the United States Code (the "Bankruptcy Code"), as amended (except insofar as the type of assets subject to the Loan would render such definition inapplicable).
- 26.2 It is understood that each and every transfer of funds, securities and other property under this Agreement and each Loan hereunder is a "settlement payment" or a "margin payment," as such terms are used in Sections 362(b)(6) and 546(e) of the Bankruptcy Code.
- 26.3 It is understood that the rights given to Borrower and Lender hereunder upon a Default by the other constitute the right to cause the liquidation of a securities contract and the right to set off mutual debts and claims in connection with a securities contract, as such terms are used in Sections 555 and 362(b)(6) of the Bankruptcy Code.
- 26.4 The parties agree and acknowledge that if a party hereto is an "insured depository institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Loan hereunder is a "securities contract" and "qualified financial

contract,” as such terms are defined in the FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to the Loan would render such definitions inapplicable).

26.5 It is understood that this Agreement constitutes a “netting contract” as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”) and each payment obligation under any Loan hereunder shall constitute a “covered contractual payment entitlement” or “covered contractual payment obligation,” respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a “financial institution” as that term is defined in FDICIA).

26.6 Except to the extent required by applicable law or regulation or as otherwise agreed, Borrower and Lender agree that Loans hereunder shall in no event be “exchange contracts” for purposes of the rules of any securities exchange and that Loans hereunder shall not be governed by the buy-in or similar rules of any such exchange, registered national securities association or other self-regulatory organization.

27. DISCLOSURE RELATING TO CERTAIN FEDERAL PROTECTIONS.

27.1 WITHOUT WAIVING ANY RIGHTS GIVEN TO LENDER HEREUNDER, IT IS UNDERSTOOD AND AGREED THAT THE PROVISIONS OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970 MAY NOT PROTECT LENDER WITH RESPECT TO LOANED SECURITIES HEREUNDER AND THAT, THEREFORE, THE COLLATERAL DELIVERED TO LENDER MAY CONSTITUTE THE ONLY SOURCE OF SATISFACTION OF BORROWER’S OBLIGATIONS IN THE EVENT BORROWER FAILS TO RETURN THE LOANED SECURITIES.

27.2 LENDER ACKNOWLEDGES THAT, IN CONNECTION WITH LOANS OF GOVERNMENT SECURITIES AND AS OTHERWISE PERMITTED BY APPLICABLE LAW, SOME SECURITIES PROVIDED BY BORROWER AS COLLATERAL UNDER THIS AGREEMENT MAY NOT BE GUARANTEED BY THE UNITED STATES.

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Annex I

Party Acting as Agent

This Annex sets forth the terms and conditions governing all transactions in which a party lending or borrowing Securities, as the case may be ("Agent"), in a Loan is acting as agent for one or more third parties (each, a "Principal"). Unless otherwise defined, capitalized terms used but not defined in this Annex shall have the meanings assigned in the Securities Loan Agreement of which it forms a part (such agreement, together with this Annex and any other annexes, schedules or exhibits, referred to as the "Agreement") and, unless otherwise specified, all section references herein are intended to refer to sections of such Securities Loan Agreement.

- 1. Additional Representations and Warranties.** In addition to the representations and warranties set forth in the Agreement, Agent hereby makes the following representations and warranties, which shall continue during the term of any Loan: Principal has duly authorized Agent to execute and deliver the Agreement on its behalf, has the power to so authorize Agent and to enter into the Loans contemplated by the Agreement and to perform the obligations of Lender or Borrower, as the case may be, under such Loans, and has taken all necessary action to authorize such execution and delivery by Agent and such performance by it.
- 2. Identification of Principals.** Agent agrees (a) to provide the other party, prior to any Loan under the Agreement, with a written list of Principals for which it intends to act as Agent (which list may be amended in writing from time to time with the consent of the other party), and (b) to provide the other party, before the Close of Business on the next Business Day after agreeing to enter into a Loan, with notice of the specific Principal or Principals for whom it is acting in connection with such Loan. If (i) Agent fails to identify such Principal or Principals prior to the Close of Business on such next Business Day or (ii) the other party shall determine in its sole discretion that any Principal or Principals identified by Agent are not acceptable to it, the other party may reject and rescind any Loan with such Principal or Principals, return to Agent any Collateral or Loaned Securities, as the case may be, previously transferred to the other party and refuse any further performance under such Loan, and Agent shall immediately return to the other party any portion of the Loaned Securities or Collateral, as the case may be, previously transferred to Agent in connection with such Loan; *provided, however*, that (A) the other party shall promptly (and in any event within one Business Day of notice of the specific Principal or Principals) notify Agent of its determination to reject and rescind such Loan and (B) to the extent that any performance was rendered by any party under any Loan rejected by the other party, such party shall remain entitled to any fees or other amounts that would have been payable to it with respect to such performance if such Loan had not been rejected. The other party acknowledges that Agent shall not have any obligation to provide it with confidential information regarding the financial status of its Principals; Agent agrees, however, that it will assist the other party in obtaining from Agent's Principals such information regarding the financial status of such Principals as the other party may reasonably request.
- 3. Limitation of Agent's Liability.** The parties expressly acknowledge that if the representations and warranties of Agent under the Agreement, including this Annex, are true and correct in all material respects during the term of any Loan and Agent otherwise complies with the provisions of this Annex, then (a) Agent's obligations under the Agreement shall not include a guarantee of performance by its Principal or Principals and (b) the other party's remedies shall not include a right of setoff against obligations, if any, of Agent arising in other transactions in which Agent is acting as principal.

4. Multiple Principals.

- (a) In the event that Agent proposes to act for more than one Principal hereunder, Agent and the other party shall elect whether (i) to treat Loans under the Agreement as transactions entered into on behalf of separate Principals or (ii) to aggregate such Loans as if they were transactions by a single Principal. Failure to make such an election in writing shall be deemed an election to treat Loans under the Agreement as transactions on behalf of separate Principals.
- (b) In the event that Agent and the other party elect (or are deemed to elect) to treat Loans under the Agreement as transactions on behalf of separate Principals, the parties agree that (i) Agent will provide the other party, together with the notice described in Section 2(b) of this Annex, notice specifying the portion of each Loan allocable to the account of each of the Principals for which it is acting (to the extent that any such Loan is allocable to the account of more than one Principal), (ii) the portion of any individual Loan allocable to each Principal shall be deemed a separate Loan under the Agreement, (iii) the mark to market obligations of Borrower and Lender under the Agreement shall be determined on a Loan-by-Loan basis (unless the parties agree to determine such obligations on a Principal-by-Principal basis), and (iv) Borrower's and Lender's remedies under the Agreement upon the occurrence of a Default shall be determined as if Agent had entered into a separate Agreement with the other party on behalf of each of its Principals.
- (c) In the event that Agent and the other party elect to treat Loans under the Agreement as if they were transactions by a single Principal, the parties agree that (i) Agent's notice under Section 2(b) of this Annex need only identify the names of its Principals but not the portion of each Loan allocable to each Principal's account, (ii) the mark to market obligations of Borrower and Lender under the Agreement shall, subject to any greater requirement imposed by applicable law, be determined on an aggregate basis for all Loans entered into by Agent on behalf of any Principal, and (iii) Borrower's and Lender's remedies upon the occurrence of a Default shall be determined as if all Principals were a single Lender or Borrower, as the case may be.
- (d) Notwithstanding any other provision of the Agreement (including, without limitation, this Annex), the parties agree that any transactions by Agent on behalf of a Plan shall be treated as transactions on behalf of separate Principals in accordance with Section 4(b) of this Annex (and all mark to market obligations of the parties shall be determined on a Loan-by-Loan basis).

5. **Interpretation of Terms.** All references to "Lender" or "Borrower," as the case may be, in the Agreement shall, subject to the provisions of this Annex (including, among other provisions, the limitations on Agent's liability in Section 3 of this Annex), be construed to reflect that (i) each Principal shall have, in connection with any Loan or Loans entered into by Agent on its behalf, the rights, responsibilities, privileges and obligations of a "Lender" or "Borrower," as the case may be, directly entering into such Loan or Loans with the other party under the Agreement, and (ii) Agent's Principal or Principals have designated Agent as their sole agent for performance of Lender's obligations to Borrower or Borrower's obligations to Lender, as the case may be, and for receipt of performance by Borrower of its obligations to Lender or Lender of its obligations to Borrower, as the case may be, in connection with any Loan or Loans under the Agreement (including, among other things, as Agent for each Principal in connection with transfers of securities, cash or other property and as agent for giving and receiving all notices under the Agreement). Both Agent and its Principal or Principals shall be deemed "parties" to the Agreement and all references to a "party" or "either party" in the Agreement shall be deemed revised accordingly (and any

Default by Agent under the Agreement shall be deemed a Default by Lender or Borrower, as the case may be).

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Annex II

Market Value

Unless otherwise agreed by Borrower and Lender:

1. If the principal market for the Securities to be valued is a national securities exchange in the United States, their Market Value shall be determined by their last sale price on such exchange at the most recent Close of Trading or, if there was no sale on the Business Day of the most recent Close of Trading, by the last sale price at the Close of Trading on the next preceding Business Day on which there was a sale on such exchange, all as quoted on the Consolidated Tape or, if not quoted on the Consolidated Tape, then as quoted by such exchange.
2. If the principal market for the Securities to be valued is the over-the-counter market, and the Securities are quoted on The Nasdaq Stock Market ("Nasdaq"), their Market Value shall be the last sale price on Nasdaq at the most recent Close of Trading or, if the Securities are issues for which last sale prices are not quoted on Nasdaq, the last bid price at such Close of Trading. If the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation.
3. Except as provided in Section 4 of this Annex, if the principal market for the Securities to be valued is the over-the-counter market, and the Securities are not quoted on Nasdaq, their Market Value shall be determined in accordance with market practice for such Securities, based on the price for such Securities as of the most recent Close of Trading obtained from a generally recognized source agreed to by the parties or the closing bid quotation at the most recent Close of Trading obtained from such a source. If the relevant quotation did not exist at such Close of Trading, then the Market Value shall be the relevant quotation on the next preceding Close of Trading at which there was such a quotation.
4. If the Securities to be valued are Foreign Securities, their Market Value shall be determined as of the most recent Close of Trading in accordance with market practice in the principal market for such Securities.
5. The Market Value of a letter of credit shall be the undrawn amount thereof.
6. All determinations of Market Value under Sections 1 through 4 of this Annex shall include, where applicable, accrued interest to the extent not already included therein (other than any interest credited or transferred to, or applied to the obligations of, the other party pursuant to Section 8 of the Agreement), unless market practice with respect to the valuation of such Securities in connection with securities loans is to the contrary.
7. The determinations of Market Value provided for in this Annex shall apply for all purposes under the Agreement, except for purposes of Section 13 of the Agreement.

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Annex III

Term Loans

This Annex sets forth additional terms and conditions governing Loans designated as “Term Loans” in which Lender lends to Borrower a specific amount of Loaned Securities (“Term Loan Amount”) against a pledge of cash Collateral by Borrower for an agreed upon Cash Collateral Fee until a scheduled termination date (“Termination Date”). Unless otherwise defined, capitalized terms used but not defined in this Annex shall have the meanings assigned in the Securities Loan Agreement of which it forms a part (such agreement, together with this Annex and any other annexes, schedules or exhibits, referred to as the “Agreement”).

1. The terms of this Annex shall apply to Loans of Equity Securities only if they are designated as Term Loans in a Confirmation therefor provided pursuant to the Agreement and executed by each party, in a schedule to the Agreement or in this Annex. All Loans of Securities other than Equity Securities shall be “Term Loans” subject to this Annex, unless otherwise agreed in a Confirmation or other writing.
2. The Confirmation for a Term Loan shall set forth, in addition to any terms required to be set forth therein under the Agreement, the Term Loan Amount, the Cash Collateral Fee and the Termination Date. Lender and Borrower agree that, except as specifically provided in this Annex, each Term Loan shall be subject to all terms and conditions of the Agreement, including, without limitation, any provisions regarding the parties’ respective rights to terminate a Loan.
3. In the event that either party exercises its right under the Agreement to terminate a Term Loan on a date (the “Early Termination Date”) prior to the Termination Date, Lender and Borrower shall, unless otherwise agreed, use their best efforts to negotiate in good faith a new Term Loan (the “Replacement Loan”) of comparable or other Securities, which shall be mutually agreed upon by the parties, with a Market Value equal to the Market Value of the Term Loan Amount under the terminated Term Loan (the “Terminated Loan”) as of the Early Termination Date. Such agreement shall, in accordance with Section 2 of this Annex, be confirmed in a new Confirmation at the commencement of the Replacement Loan and be executed by each party. Each Replacement Loan shall be subject to the same terms as the corresponding Terminated Loan, other than with respect to the commencement date and the identity of the Loaned Securities. The Replacement Loan shall commence on the date on which the parties agree which Securities shall be the subject of the Replacement Loan and shall be scheduled to terminate on the scheduled Termination Date of the Terminated Loan.
4. Borrower and Lender agree that, except as provided in Section 5 of this Annex, if the parties enter into a Replacement Loan, the Collateral for the related Terminated Loan need not be returned to Borrower and shall instead serve as Collateral for such Replacement Loan.
5. If the parties are unable to negotiate and enter into a Replacement Loan for some or all of the Term Loan Amount on or before the Early Termination Date, (a) the party requesting termination of the Terminated Loan shall pay to the other party a Breakage Fee computed in accordance with Section 6 of this Annex with respect to that portion of the Term Loan Amount for which a Replacement Loan is not entered into and (b) upon the transfer by Borrower to Lender of the Loaned Securities subject to the Terminated Loan, Lender shall transfer to Borrower Collateral for the Terminated Loan in accordance with and to the extent required under the Agreement, provided that no Default has occurred with respect to Borrower.

6. For purposes of this Annex, the term "Breakage Fee" shall mean a fee agreed by Borrower and Lender in the Confirmation or otherwise orally or in writing. In the absence of any such agreement, the term "Breakage Fee" shall mean, with respect to Loans of Government Securities, a fee equal to the sum of (a) the cost to the non-terminating party (including all fees, expenses and commissions) of entering into replacement transactions and entering into or terminating hedge transactions in connection with or as a result of the termination of the Terminated Loan, and (b) any other loss, damage, cost or expense directly arising or resulting from the termination of the Terminated Loan that is incurred by the non-terminating party (other than consequential losses or costs for lost profits or lost opportunities), as determined by the non-terminating party in a commercially reasonable manner, and (c) any other amounts due and payable by the terminating party to the non-terminating party under the Agreement on the Early Termination Date.

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Schedule A

Names and Addresses for Communications

Schedule B

Defined Terms and Supplemental Provisions

SCHEDULE 3

PERMISSIBLE COLLATERAL

1. Cash

2. U.S. Treasuries

3. Agencies

- a. Senior obligations of the Federal Farm Credit Banks
- b. Senior obligations of the Federal Home Loan Bank and its district banks
- c. Senior obligations of the Federal Home Loan Mortgage Corporation
- d. obligations guaranteed by the Government National Mortgage Association
- e. Senior obligations of the Federal National Mortgage Association
- f. Any other senior obligations which are guaranteed as to principal and interest by the full faith and credit of the U.S. Government or are obligations of U.S. Government agencies or instrumentalities that are rated in the highest category by Moody's, S&P or Fitch.