

STATE OF NEW YORK OFFICE OF THE STATE COMPTROLLER
MASTER CUSTODIAL SERVICES AGREEMENT WITH
JPMORGAN CHASE BANK, N.A.

NEW YORK STATE COMPTROLLER'S CONTRACT NUMBER C001103

THIS AGREEMENT is between the New York State Office of the State Comptroller, by the Department of Audit and Control, located at 110 State Street, Albany, New York, 12236 ("OSC") and JPMorgan Chase Bank, N.A. (the "Custodian" or "Contractor"), having a place of business at 383 Madison Avenue, New York, NY 10179 (OSC and Custodian, each, individually, a "Party," and together, the "Parties").

W I T N E S S E T H

WHEREAS, OSC approves the establishment of all New York State bank accounts for the funds of the State of New York ("State"), and with the New York State Department of Taxation and Finance ("DTF"), is responsible for the funds in segregated and investment accounts which hold collateral pledged to secure deposits as required under §§ 98, 98a, 105 and 106 of the New York State Finance Law ("SFL"); and

WHEREAS, OSC issued Request for Proposals 19-01 (the "RFP") on June 4, 2019, for the acquisition of master custodial banking services (including related collateral services) for State and local funds held by DTF's Division of Treasury, OSC's Short Term Investment Pool, OSC Cash Management, and other State agency accounts, which will be provided pursuant to the terms of this Agreement ("Services"); and

WHEREAS, the Custodian timely submitted a responsive proposal to provide the Services described in the RFP, and OSC has determined that the Custodian is responsible; and

WHEREAS, based upon the evaluation of the various proposals submitted in response to the RFP, it has been determined that the Custodian possesses the expertise and experience necessary to provide the Services described in the RFP to OSC and DTF's Division of Treasury, that its proposal offered the best value, and that it would be in the best interests of the State to retain the Custodian to perform the Services in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Custodian is not providing any legal, tax or investment advice as part of the Services;

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein set forth, the Parties hereto agree as follows:

I. TERM

This Agreement shall be for a period commencing on approval by the OSC Bureau of Contracts and shall continue for a period of seven years, which shall include any Transition Period (as defined in this Agreement), and subject to earlier termination as provided for in Section XXII (Termination and Suspension).

II. ENTIRETY OF AGREEMENT; CONFLICT OF DOCUMENTS AND CLAUSES

This Agreement shall be deemed inclusive of the following documents. Only documents expressly mentioned below shall be deemed a part of this Agreement. Except as expressly stated in Section II.D and II.E, below, direct conflicts between these documents shall be resolved in the following order of precedence and the order in which they are listed:

- A.** Appendix A – Standard Clauses for NYS Contracts, dated October 10, 2019;
- B.** The Agreement (this document), including Appendices B through H, and Attachment 1:
 - 1.** Appendix B – Form AC 3239-A (Contractor's EEO Staffing Plan of Anticipated Workforce) and Form AC 3239-B (Contractor's/Subcontractor's EEO Workforce Utilization Report);
 - 2.** Appendix C – OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment;
 - 3.** Appendix D – OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures;
 - 4.** Appendix E – Proposer's Certifications/Acknowledgements;
 - 5.** Appendix F – Proposer's Disclosure of Prior Non-Responsibility Determinations;
 - 6.** Appendix G – Change Control Procedure;
 - 7.** Appendix H – Undertaking for Bank Deposits and Assignment of Securities;
 - 8.** Attachment 1 – Pre-employment Screening Practice
- C.** Exhibit A – RFP19-01, including, the Questions and Answers and any Amendments;
- D.** Exhibit B – the Proposal (Exhibits B1 – Technical Proposal, B2 – Cost Proposal, and B3 – Administrative Proposal), excluding Banking Services Schedules, other standard Bank-related materials submitted by Custodian, and proposed Contract modifications submitted by the Custodian with its proposal. The Parties agree that with respect to any direct conflicts between Exhibit A and Exhibit B1 – Technical Proposal, Exhibit B1 will take precedence over Exhibit A solely as to operational practices for Custodian's delivery of Services in the RFP Sections/Requirements set forth below, where and to the extent, if any, that Custodian's operational practices are expressly set forth in Custodian's written response to the referenced requirement, and further provided that Exhibit B1 shall not take precedence over this Agreement or its Appendices, or any written amendments thereto. For purposes of this Section II.D, the following sections of the Bank's Exhibit B1-Technical Proposal shall take priority over direct conflicts only with Exhibit A – RFP 19-01, but only as specified herein:
 - 1.** Custodian's response to Requirement #2.1, with respect to transition and record-keeping services;
 - 2.** Custodian's response to Requirement #11.2;
 - 3.** Custodian's response to Requirement #11.3; and

4. Custodian's response to Requirement #11.5.

- E.** Exhibit C – Banking Services Schedules and other standard Bank-related materials submitted by the Custodian relative to its proposal, including Exhibit C.1 – Schedule A (Electronic Access), Schedule A.1 (Custodian's Privacy Policy), and Schedule A.2 (Cookie Policy), Exhibit C.2 – Schedule B (Accounting and Valuation Services), Exhibit 1-1 to Schedule B (Accounting Services), Exhibit 2 to Schedule B (Valuation Rules) and Exhibit C.3 – Schedule C – Authorization to Sweep Cash into Money Market Mutual Funds For Non-ERISA Clients ("Sweep Agreement"), provided, however, that as to Exhibit C.3 (Sweep Agreement), its terms and conditions will take precedence over this Agreement (this document) for the limited purpose of and only in the event of a direct conflict regarding the description and operation of the sweep services to be provided and not for any other purpose, including any liability or indemnification provisions. Nothing contained in such Schedules and materials will be effective to the extent that it constitutes a variance with the terms or requirements of the Agreement, RFP19-01, or any of the above-referenced documents, or to the extent that it has not been accepted by OSC in connection with the final Contract.

Any and all proposed modifications or exceptions taken by the Custodian to OSC's RFP19-01 apply only to the extent that such modifications or exceptions have been agreed to by OSC and explicitly incorporated into this Agreement.

III. DEFINITIONS

As used in this Agreement, the following terms shall have the specified meanings:

"Affiliate" – with respect to a party, means an entity controlling, controlled by, or under common control with, that party.

"Agreement" or "Contract" – this document, Contract Number C001103, and all documents identified in Section II (Entirety of Agreement; Conflict of Documents and Clauses).

"Applicable Law" – any applicable statute, treaty, rule, regulation or common law and any applicable decree, injunction, judgment, order, formal interpretation, or ruling issued by a court or Governmental Authority.

"Authorized Person" – any person who has been designated by written notice from OSC to act on behalf of OSC under this Contract, or any person who has been designated by written notice from the Department of Taxation and Finance ("DTF," defined below) to act on behalf of its Division of Treasury under this Agreement. Such persons, whether authorized by OSC or DTF, will continue to be Authorized Persons until such time as the Custodian receives and has had reasonable time to act upon Instructions from OSC or DTF that any such person is no longer an Authorized Person.

"Business Day" – any day on which the Custodian is open for business in the State of New York.

"Cash Account" – one or more accounts in the name of OSC or DTF (or in another name requested by OSC or DTF that is acceptable to the Custodian) for any and all U.S. cash received by or on behalf of the Custodian for the account(s) of OSC or DTF under this Agreement.

“Comptroller” – the Comptroller of the State of New York (or his duly authorized representatives), who is the State’s chief fiscal officer.

“Confidential Information” – shall mean and include all non-public information concerning OSC, Treasury, and State or their investments (including information concerning the Custody Accounts established and maintained by the Custodian pursuant to this Agreement for the safekeeping of State/Treasury assets) that the Custodian receives in the course of providing Services under this Agreement, whether verbally, electronically, visually, or in written or other tangible form, which is either identified or should be reasonably understood to be confidential, regardless of the manner in which it was disclosed. OSC, Treasury, and State confidential information may include, but is not limited to, bank account information, securities, transactions, employee contact information, and financial information and documentation.

Nevertheless, the term Confidential Information shall not include information which is or becomes available to the general public by means other than the Custodian’s breach of the terms of this Agreement or information which the Custodian obtains on a non-confidential basis from a person who is not known to be subject to any obligation of confidence to any person with respect to that information. See Section XV (Confidentiality and Security) of this Agreement.

“Corporate Action” – means any subscription right, bonus issue, stock repurchase plan, redemption, exchange, tender offer, or similar matter with respect to a Financial Asset in the Securities Account that requires discretionary action by the beneficial owner of the Security, but does not include rights with respect to class action litigation and proxy voting.

“Custodian” – JPMorgan Chase Bank, N.A., as set forth in the introductory clause.

“Custodian Indemnitees” – the Custodian and its directors, officers, and employees.

“Custody Account” or “Account” – shall mean the Securities Accounts and the Cash Accounts established and maintained by the Custodian under this Agreement.

“Dependencies” – the prerequisites for Custodian to be able to provide Reports.

“DTC” – the Depository Trust Company or any successor thereto.

“DTF” – the Department of Taxation and Finance. See also, “Treasury.”

“Fed Member Securities Account” – in respect of any Person, an account in the name of such Person at the U.S. Federal Reserve System (“Fed”), to which account book-entry securities held for such Person are or may be credited.

“Financial Asset” – Securities, as the context requires, meaning either the asset itself or the means by which a person’s claim to it is evidenced, including a Security, a security certificate, a Securities Entitlement or other “financial asset” as defined in § 8-102(a)(9) of the UCC; provided however, that Financial Assets shall not include cash.

“Governmental Authority” – any governmental body, agency, or official with jurisdiction.

“Instruction” – an instruction that has been verified in accordance with a Security Procedure or, if no Security Procedure is applicable, which the Custodian believes in good faith to have been

given by an Authorized Person, including a standing instruction, and shall include Instructions received by the Custodian from an Authorized Person before the Custodian receives and has had a reasonable time to act on any notification from OSC that such person is no longer authorized.

“Liabilities” – any liabilities, losses, claims, costs, damages, penalties, fines, interest incurred, obligations, or expenses of any kind whatsoever (including, without limitation, reasonable attorneys’, accountants’, consultants’ or experts’ fees and disbursements).

“Person” – an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, association, company, division of a corporation, Governmental Authority, or other natural or legal entity.

“Property” – any cash or Securities as may be presented to the Custodian by OSC, an Authorized Person, and/or Treasury to be held in the Accounts on behalf of OSC and/or Treasury.

“SEC” – the United States Securities and Exchange Commission or any successor thereto.

“Securities” – shares, stocks, debentures, bonds, notes or other like obligations, whether issued in certificated or uncertificated form, and any certificates, receipts, warrants or other instruments representing rights to receive, purchase or subscribe for the same that are commonly traded or dealt in on securities exchanges or financial markets or other obligations of an issuer, or shares, participations and interests in an issuer recognized in the country in which it is issued or dealt in as a medium for investment and any other property as may be acceptable to the Custodian for the Securities Account.

“Securities Account” – as set forth in Section V.B (Holding Cash and Securities) of this Agreement, one or more securities accounts as directed by OSC or Treasury.

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

“Security Procedure” – security practices and protocols to be followed by OSC upon the issuance of an Instruction and/or by the Custodian upon the receipt of an Instruction, so as to enable the Custodian to verify that such Instruction is authorized, as may be set forth in service level documentation in effect from time to time between the Parties with respect to the Services or as otherwise agreed in a writing executed by the Parties. A Security Procedure may, without limitation, involve the use of algorithms, codes, passwords, encryption and/or telephone call backs. Security Procedures are designed to verify the authenticity of, and not detect errors in, Instructions. The Parties agree that a SWIFT message issued in the name of OSC/DTF through any third-party utility agreed upon by the Parties as being a method for providing Instructions and authenticated in accordance with that utility’s customary procedures, shall be deemed to be an authorized Instruction.

“Services” – the comprehensive master custody services, collateral services and related services as set forth in Exhibits A and B, including any amendments, and this Agreement, including any appendices, exhibits, and attachments hereto.

“Standard of Care” – set forth in Section IV.A (Standard of Care).

"State" – the State of New York.

"Treasury" – the New York State Department of Tax and Finance ("DTF") Division of Treasury.

"UCC" – the Uniform Commercial Code, as adopted in the State of New York.

IV. GENERAL PROVISIONS

A. Standard of Care

The Custodian agrees to act with the care, skill, prudence, and diligence that a prudent entity acting in a like capacity and familiar with such matters would use in the provisioning of services of a like character and with like aims.

Notwithstanding the foregoing, the Custodian shall have no duty or responsibility:

1. to supervise the investment of, or make recommendations with respect to, the purchase, retention, or sale of Securities or other property relating to the Custody Account;
2. with regard to any Security in the Custody Account as to which a default in the payment of principal or interest has occurred, to make demand for payment or take any other action with respect to such default, except to notify the Comptroller of any default of which the Custodian has actual knowledge;
3. for any act or omission, or for the solvency, or notice to OSC of the solvency, of any broker or agent that is selected by OSC to effect any transaction for the Custody Account;
4. to evaluate or report to OSC regarding the financial condition of any party to which the Custodian delivers Property or payments pursuant to this Agreement;
5. for any loss occasioned by delay in the actual receipt of notice by the Custodian, which delay is not due to any act or omission of the Custodian, of any payment, redemption, or other transaction in respect to which the Custodian is authorized to take some action pursuant to this Agreement.

B. Other Agreements

OSC and the Custodian may enter into such other written agreements as are necessary to further the purposes of this Agreement. Any written agreement entered into pursuant to this Section shall expressly reference and be subject to the provisions of this Agreement and the standards described herein.

C. Other Provisions

1. Headings are for reference and convenience only and are not intended to affect interpretation.

2. References to Sections are to Sections of this Agreement and references to sub-sections and paragraphs are to sub-sections of the Sections and paragraphs of the sub-sections in which they appear.
3. Unless the context requires otherwise, references importing the singular shall include the plural (and vice versa); use of the generic masculine pronoun shall include the feminine; use of the term "including" shall be deemed to mean "including but not limited to" and references to appendices and numbered sections shall be to such addenda and provisions herein; all such addenda are hereby incorporated in this Agreement by reference.

V. SERVICES

A. General Services

In reliance on the Custodian's representations, warranties, and covenants set forth herein, OSC engages the Custodian as custodian of all Property of the State that the Custodian may receive from OSC and Treasury from time to time for deposit into the Custody Accounts under this Agreement, and engages the Custodian to perform, and the Custodian agrees to perform for the benefit of OSC and Treasury (where Treasury is a third-party beneficiary of this Agreement), all tasks and activities required to perform the Services and comply with the requirements set forth in this Agreement, and in Exhibits A, B, and C which are fully incorporated by reference, subject to the order of precedence specified in Section II (Entirety of Agreement; Conflict of Documents and Clauses), above. For custodial accounts of Treasury held by another custodial bank, the Custodian will provide dedicated resources (personnel, equipment, training of OSC and/or Treasury personnel and consultants, and others as reasonably required), procedures, and controls to facilitate and complete the conversion process of moving OSC/Treasury custodial services to the Custodian and to ensure that the process is completed in a timely, accurate manner. Such conversion process will include, but not be limited to, the following: establishment of custodial investment accounts and money market sweeps, where applicable, establishment of wire templates, development of transactional files to be uploaded to the Custodian, designation of security administrators, creation of user accounts, and transference of assets from previous custodian. The Custodian will not change or otherwise modify such Services without the prior written consent of OSC (which consent may be granted or withheld by OSC in its sole discretion). Where the Custodian provides Services to Treasury under this Agreement, references to OSC herein shall also mean Treasury, as applicable, in its capacity as the DTF-designated division responsible for safeguarding and investing State funds not needed for immediate disbursement, but only to the extent of Treasury's position as a third-party beneficiary, to effectuate this Agreement. DTF and Treasury are used interchangeably herein.

B. Holding Cash and Securities

For purposes of this Section V, all capitalized terms not otherwise defined in this Agreement shall have the meaning given to them in Article 8 of the Uniform Commercial Code ("UCC"). The Custodian will establish and maintain the following accounts:

1. Cash Account(s)

- (a) Any amount standing to the credit of the Cash Account is a debt due to OSC from the Custodian as banker. Except as otherwise provided herein, all cash held in the Cash Account will be deposited during the period it is credited to the Cash Accounts in one or more deposit accounts at the Custodian. Any amounts credited by the Custodian to the Cash Account on the basis of a notice or an interim credit from a third party may be reversed if the Custodian does not receive final payment in a timely manner. The Custodian will, where commercially reasonable, notify OSC or Treasury prior to or promptly after any such reversal, but, if prior notice is not commercially reasonable, will notify OSC as to all such reversals as soon as reasonably possible thereafter on account statements posted in its online portal.
- (b) All cash received by the Custodian for credit to the Cash Account shall result in a deposit obligation of the Custodian to OSC and shall be received as a general deposit. To the extent collateralization of such deposit is required by SFL, and to the extent such deposit obligation is not covered by deposit insurance from the Federal Deposit Insurance Corporation ("FDIC"), the Custodian shall deposit with OSC in the Account such outstanding unmatured bonds, notes or irrevocable letters of credit as are described in § 105 of the SFL or any other collateral type permitted by the SFL. Nothing in this sub-section shall be construed to limit the right of the Custodian under applicable provisions of federal and State banking laws to treat such funds the same as it treats all other funds that it maintains on its books in its capacity as the Custodian or otherwise.
- (c) All deliveries of Securities to the Custody Account shall be made in accordance with this Agreement, which shall not limit the Custodian's obligations under §§ 8-301 and 8-501 of the UCC.
- (d) Custodian shall provide sweep services to the OSC in accordance with the terms of Exhibit C.3 – Schedule C, the Authorization to Sweep Cash into Money Market Mutual Funds for Non-ERISA Clients, as amended by the parties from time to time.

2. Securities Account(s)

The Custodian shall establish and maintain one or more Securities Accounts as directed by OSC or Treasury, subject to the terms and conditions of this Agreement and shall hold in the name of OSC or Treasury (or in another name requested by OSC or Treasury that is acceptable to the Custodian) as directed by OSC or Treasury, all Securities of the State delivered to the Custodian by OSC or Treasury. The Custodian agrees that all Securities delivered by OSC or Treasury, including, without limitation, all Financial Assets, will be held by the Custodian solely as agent for OSC or Treasury, will be kept separate and apart from the Custodian's general assets and will not in any circumstances be commingled with or become part of the backing for deposit liabilities or any other liabilities of the Custodian. The records of the Custodian shall, at all

times, show the State's ownership of such Securities, including, without limitation, all Financial Assets.

- (a) Securities, held in physical form, delivered to the Custodian by OSC shall be held by the Custodian in its facilities in the State of New York, or other such premises of the Custodian, acceptable to OSC, as the Custodian may designate to hold customer securities.
- (b) The services offered by the Custodian under this Agreement with respect to the custody of Securities are limited to Securities and related settlement services that are issued in the United States ("U.S.") by an issuer that is organized under the laws of the U.S. or any state thereof, or that are both traded in the U.S. and eligible for deposit in a U.S. Securities Depository. No foreign exchange transactions will be serviced or provided under this Agreement.
- (c) The Custodian agrees to (a) treat Securities delivered to the Securities Account as a Financial Asset, (b) except as provided in Section XIII.B (Audit by the Comptroller), treat OSC as entitled to exercise "control" (as defined in § 8-106 of the UCC) and all other rights with respect to any Financial Asset credited to the Account, and (c) comply with any "entitlement order" (as is defined in § 8-102 (a)(8) of the UCC) issued by OSC without further notice to or consent by any other Person.
- (d) The Custodian shall not be obligated to accept Securities on behalf of OSC under the terms of this Agreement unless such Securities are in good delivery form. The Custodian shall promptly notify OSC of the delivery of any Securities that are not in good delivery form and of any failed deliveries.

3. Financial Assets

The Custodian is authorized, in its discretion:

- (a) to hold in bearer form such Financial Assets as are customarily held in bearer form or are delivered to the Custodian in bearer form;
- (b) to hold Financial Assets in or deposit Financial Assets with any Securities Depository or settlement system;
- (c) to hold Financial Assets in omnibus accounts on a fungible (i.e., interchangeable) basis and to accept delivery of Financial Assets of the same class and denomination as those deposited with the Custodian; and
- (d) to register in the name of OSC, DTF, the Custodian, a Securities Depository, or their respective nominees, such Financial Assets as are customarily held in registered form.

4. Obligation to Report Unauthorized Release, Transfer, or Loss of Cash or Securities

The Custodian is required to notify OSC, including Counsel to the Comptroller, and DTF, as soon as reasonably possible following Custodian's discovery of the following with respect to OSC's or DTF's cash or securities in any Cash

Account or Securities Account that is maintained by Custodian under this Agreement: i) unauthorized release or transfer of cash or securities, or ii) loss of securities.

C. Payment of State Monies

Unless provided otherwise in this Agreement, upon receipt of Instructions, the Custodian shall pay out monies of the State in the following cases:

1. For the payment of interest and dividend income received on the assets held in the Account; and
2. For any other purpose, but only upon receipt of Instructions specifying the amount of such payment and naming the Person or Persons to whom such payment is to be made.

D. Delivery of Property

1. All Property shall be held at all times subject to the Instruction of OSC, and, subject to Section XIII.B (Audit by the Comptroller) of this Agreement, the Custodian shall promptly comply with Instructions of OSC from time to time to deliver any or all of such Property to a designated recipient.
2. The Custodian shall release and deliver Property held by the Custodian or in a Securities Depository account of the Custodian in accordance with prevailing standards of the market in which the transactions occur, unless otherwise directed by Instructions.
3. OSC authorizes the Custodian to deliver Securities or payment in accordance with applicable market practice in advance of receipt of consideration expected in connection with such delivery or payment, and OSC acknowledges and agrees that such action alone will not, in and of itself, constitute negligence, fraud or willful misconduct of the Custodian. The risk of loss due to the default by a counter-party, if any, under such circumstances will not be borne by the Custodian, except in instances of fraud, willful misconduct, or negligence, and failure to comply with Applicable Laws by the Custodian that directly cause such counter-party default, in which case the Custodian's liability shall be governed by Section XX.A of this Agreement. In the case of the failure of OSC's and Treasury's counter-party (or other appropriate party) to deliver the expected consideration as agreed, the Custodian will contact the counterparty to seek settlement and notify OSC of such failure. If OSC's and Treasury's counter-party continues to fail to deliver the expected consideration, the Custodian will provide information reasonably requested by OSC and Treasury that the Custodian has in its possession to allow OSC and Treasury to enforce their rights against the counter-party. The Custodian will not be obliged to institute legal proceedings, file a proof of claim in any insolvency proceedings, or take action to initiate an enforcement claim on OSC's behalf. To the extent permitted by Applicable Law, the Custodian will (i) make commercially reasonable efforts to provide information to OSC, at OSC's request and expense, in connection with investigations, legal actions, or proceedings that

arise from or relate to the Services provided pursuant to this Agreement and (ii) to the extent OSC requests Custodian to provide any additional reasonable support in connection with such investigations, legal actions or proceedings, provide such support to the extent not prohibited by Applicable Law and to the extent that doing so will not directly, substantively and adversely impact Custodian's legal rights relative to its provisioning of Services under this Agreement. If Custodian refuses to provide any such additional, reasonable support requested by OSC on the basis that such will directly, substantively, and adversely impact Custodian's legal rights relative to the provisioning of Services under this Agreement, Custodian must provide a written statement to OSC that it is its counsel's opinion that providing the specific support or documents requested by OSC will directly, substantively, and adversely impact Custodian's legal rights relative to the provisioning of Services under the Agreement. Nothing stated in this paragraph shall prevent OSC from pursuing all of its legal rights, including any documents or information from Custodian in the course of any legal actions or proceedings, and, furthermore, nothing in this paragraph shall diminish or adversely affect the State's right to discovery that relates to this Agreement or the Services from Custodian in any pending or future investigation, proceeding, or litigation, or insulate or excuse Custodian from providing information that would otherwise be subject to discovery in such litigation. The directly and reasonably related costs incurred by Custodian to provide such support shall be borne by OSC, except to the extent that the parties agree that such costs arise from the Custodian's negligence, gross negligence, willful misconduct, fraud, or failure to comply with Applicable Laws in relation to the Services, or as finally determined by a jurisdictional court that any such support costs are to be borne by Custodian as a result of Custodian's negligence, gross negligence, willful misconduct, fraud, or failure to comply with Applicable Laws in relation to the Services.

4. Unless provided otherwise in this Agreement, only upon receipt of Instructions will the Custodian release and deliver Securities in the following cases (it being understood that Securities will be transferred, exchanged, or delivered only upon receipt by the Custodian of Instructions that include all information required by the Custodian):
 - (a) For the sale of such Securities: (i) upon receipt of payment; or (ii) in the case of a sale effected through a Securities Depository, in accordance with the rules governing the operation of such Securities Depository;
 - (b) With reference to Section V.F (Holding Collateral and Securities to be Repurchased), upon the receipt of payment in connection with any repurchase agreement related to such Securities;
 - (c) To the depository agent in connection with tender or other similar offers for Securities of the State;
 - (d) To brokers, clearing banks, or other clearing agents for examination in accordance with "street delivery" custom;
 - (e) For delivery in connection with any safekeeping activity by OSC;

- (f) For delivery as security in connection with any borrowings by OSC requiring a pledge of assets by OSC; and
 - (g) For any other purpose, but only upon receipt of Instructions specifying the Securities to be delivered and naming the Person or Persons to whom delivery of such Securities shall be made.
5. The Custodian shall credit or debit the appropriate sub-account in connection with the purchase, sale, maturity, redemption, income, dividends, or other disposition of securities and other assets held by the Custodian in said sub-accounts on a contractual settlement basis.

E. Documents Required to Open Accounts

The Custodian's obligation to open Custody Accounts pursuant to this Agreement is conditional upon the Custodian receiving (i) evidence reasonably satisfactory to the Custodian of the due authorization and execution of this Agreement by OSC, (ii) a certified copy of OSC's constitutional documents as currently in force, and (iii) in the case of any Account opened in a name not that of OSC, documentation with respect to that name similar to that set forth in sub-sections (i) and (ii).

F. Holding Collateral and Securities to be Repurchased

Property delivered to the Custodian by OSC pursuant to this Agreement may include Securities deposited with the State as collateral for State bank deposits under the provisions of the SFL or as collateral in connection with another agreement, or Securities purchased pursuant to a repurchase agreement.

By the delivery of such Securities to the Account, OSC represents, warrants, and covenants to the Custodian that the State shall have a perfected security interest (or, in the case of a repurchase agreement, title and ownership interest) in such Securities. If OSC shall notify the Custodian that any Security it shall receive for credit to the Securities Account is subject to repurchase pursuant to a repurchase agreement, the Custodian shall mark its records accordingly. If OSC shall notify the Custodian that any Security it shall receive for credit to the Securities Account is collateral, the Custodian, as directed by OSC, shall credit such collateral to an Account specially designated by OSC to hold such collateral. If such Securities are sold or resold by OSC, the Custodian, pursuant to Instructions, shall deliver such Securities to the purchaser or its agent and credit the proceeds to the Account. Any income received on such Securities held in the Account shall be applied as directed by OSC.

Treasury has responsibility for the maintenance of certain segregated accounts which hold collateral pledged to secure State deposits. Where the Custodian provides Services to Treasury under the terms and conditions of this Agreement, the Custodian agrees to establish segregated accounts for the safekeeping of securities pledged as collateral by banks designated as State depositories. The Custodian agrees to:

- Upon instruction from OSC or Treasury, accept, release or substitute securities;

- Provide on-line confirmation of transactions and reporting of holdings by account to include market value.

G. Contractual Settlement Date Accounting

In cases where the Custodian and OSC agree that the Custodian shall provide contractual settlement date accounting services, and subject to the other provisions of this Section V:

1. The Custodian will effect book entries on a contractual settlement date accounting basis as described below with respect to the settlement of transactions in those markets where the Custodian generally offers contractual settlement date accounting.
 - (a) Sales: On the settlement date for a sale, the Custodian will credit the Cash Account with the proceeds of the sale and transfer the relevant Financial Assets to an account at the Custodian pending settlement of the transaction where not already delivered.
 - (b) Purchases: On the settlement date for the purchase (or earlier, if market practice requires delivery of the purchase price before the settlement date), the Custodian will debit the Cash Account for the settlement amount and credit a separate account at the Custodian. The Custodian then will post the Securities Account as awaiting receipt of the expected Financial Assets. OSC will not be entitled to the delivery of Financial Assets that are awaiting receipt until the Custodian actually receives them.

Upon request, the Custodian shall provide OSC with a list of those markets for which it provides contractual settlement date accounting. The Custodian may add markets to or remove markets from this list upon reasonable notice to OSC. The Custodian reserves the right to restrict in good faith the availability of contractual settlement date accounting for credit or operational reasons.

2. The Custodian may reverse any debit or credit made pursuant to Section V.F.1 prior to a transaction's actual settlement upon notice to OSC in cases where the Custodian reasonably believes that the transaction will not settle in the ordinary course within a reasonable time. OSC will be responsible for any costs or liabilities resulting from such reversal. OSC acknowledges that the procedures described in Section V.G are of an administrative nature, and the Custodian does not undertake to make loans and/or Financial Assets available to OSC.

H. Actual Settlement Date Accounting

The default process for accounting services hereunder for transactions not posted on the contractual settlement date shall be actual settlement date accounting. The Custodian will post the transaction on the date on which the cash or Financial Assets received as consideration for the transaction is actually received and cleared by the Custodian, unless the Parties agree to contractual settlement accounting services as set forth in Section V.F.

I. Income Collection (AutoCredit) Services

In cases where the Custodian and OSC agree that the Custodian shall provide income collection (auto credit) services, and subject to the other provisions of this Section V:

1. The Custodian will monitor information publicly available in the applicable market about forthcoming income payments on the Financial Assets, and will promptly notify OSC of such information.
2. Except in cases where the Custodian agrees to offer and OSC agrees to accept the AutoCredit services described in paragraph (3) of this Section V.I, the Custodian shall not be required to credit income on Financial Assets, net of any taxes withheld by the Custodian or any third party, prior to actual receipt and reconciliation by the Custodian.
3. In cases where the Custodian agrees to provide AutoCredit services, the Custodian will credit the Cash Account with income proceeds on Financial Assets on the anticipated payment date, net of any taxes that are withheld by the Custodian or any third party ("AutoCredit") in those markets where the Custodian customarily provides an automated credit service. Custodian offers AutoCredit in the United States as of the execution date of this Agreement, and Custodian will provide OSC with reasonable, advance written notice if such AutoCredit service will be discontinued in the United States. Upon request, the Custodian shall provide OSC with a list of other AutoCredit eligible markets. The Custodian may add markets to or remove markets from the list of AutoCredit markets upon written notice to OSC that is reasonable in the circumstances. The Custodian may reverse AutoCredit credits upon written notification to OSC if the Custodian believes that the corresponding payment will not be received by the Custodian within a reasonable period or the credit was incorrect. In markets where the Custodian does not provide an AutoCredit service, income on Financial Assets (net of any taxes withheld by the Custodian or any third party) will be credited only after actual receipt and reconciliation.
4. The Custodian will use reasonable efforts to contact appropriate parties to collect unpaid interest, dividends or redemption proceeds and notify OSC of the late payment, but the Custodian will not be obliged to file any formal notice of default, institute legal proceedings, file a proof of claim in any insolvency proceeding or take any similar action.

J. Taxes

OSC agrees that:

1. The Custodian shall not be responsible or liable for the payment of taxes, assessments, or other governmental charges now or hereafter imposed on OSC;
2. OSC will provide to the Custodian such certifications, declarations, documentation, and information as it may reasonably require in connection with taxation, and represents that, when given, such information shall be true and correct to the best of OSC's knowledge, not knowingly misleading, and

containing all known necessary and material information required for such certifications, declarations, documentation. OSC undertakes to notify the Custodian promptly if any information requires updating or correcting;

3. The Custodian provides no service of controlling or monitoring, and therefore has no duty in respect of, or liability for any taxes, penalties, interest or additions to tax, payable or paid that result from (i) the inaccurate completion of documents by OSC or any third party; (ii) provision to the Custodian or a third party of inaccurate or misleading information by OSC or any third party; (iii) the withholding of material information by OSC or any third party; or (iv) as a result of any delay by any revenue authority or any other cause beyond the Custodian's control;
4. If the Custodian does not receive appropriate certifications, documentation and information then, as and when appropriate and required, additional tax shall be deducted from all income received in respect of the Financial Assets issued (including, but not limited to, United States non-resident alien tax and/or backup withholding tax). OSC will be responsible in all events for the timely payment of all taxes relating to the Financial Assets in the Securities Account; provided, however, that the Custodian will be responsible for any penalty or additions to tax due solely as a result of the Custodian's negligent acts or omissions with respect to paying or withholding tax or reporting interest, dividend or other income paid or credited to the Cash Account; and
5. OSC will pay or reimburse the Custodian, and confirms that the Custodian is authorized to deduct from any cash received or credited to the Cash Account, any taxes or levies required by any revenue or Governmental Authority against the Custodian on OSC's behalf for whatever reason in respect of OSC's Custody Accounts upon proof that the Custodian has paid it.

K. Account Records

1. The Custodian will provide OSC with the records (i.e., statements and account analysis) for each Account, identifying cash and Financial Assets held in the Account and any transfers to and from the Account. Account records may be delivered electronically or on-line over the Internet and are deemed delivered when sent electronically or posted on the Internet. OSC will review the Account records and give the Custodian written notice of (i) any suspected error or omission or (ii) non-receipt of such Account records within a reasonable time after the Account record is sent or made available to OSC or would have been sent. The Custodian will issue correct Account records, as applicable, as soon as reasonably possible upon receipt of notification of suspected errors or omissions or non-receipt of statements by OSC and confirmation of such errors, omissions or lack of delivery.
2. OSC acknowledges that information available to it on-line with respect to transactions posted after the close of the prior business day may not be accurate due to mis-postings, delays in updating Account records, and other causes. The Custodian will not be liable for any loss or damage arising out of any such information accessed on-line that is updated or corrected no later

than the close of business on the business day after the transaction was posted.

L. Daily, Monthly, and Annual Reporting

1. The Custodian shall provide daily, monthly, and annual reporting (including by on-line systems and hard copy reports in such number as may be requested by OSC) and systems support required by OSC under this Agreement and as otherwise necessary to accommodate OSC's current and anticipated service needs consistent with Exhibits A and B, and as may be reasonably requested by OSC from time to time.
2. Notwithstanding any other provision in this Agreement, upon reasonable advance written notice, the Custodian shall reasonably cooperate with OSC in the preparation of any annual reporting of the inventory of the Securities held by the Custodian as required by law.

M. Other Services

1. Electronic Access. Access by OSC to certain applications or products of the Custodian using the Custodian's web site or otherwise shall be governed by this Agreement, including the terms and conditions set forth in Schedule A.
2. Accounts. During the term of this Agreement, the Custodian agrees to: (a) maintain accounts with (1) The Federal Reserve Bank of New York and (2) DTC, and (b) remain a member of the Fed; and (c) maintain Fed Member Securities Accounts.
3. Third-Party Money Market Providers. To the extent the Custodian's product offering to custody clients at the time of provisioning of Services to Treasury includes access to money market accounts, the Custodian and Treasury shall set forth, in writing, provisions for Treasury's access to the Custodian's money market accounts and/or access to such money market services through the Custodian's third-party money market providers.

N. Miscellaneous Administrative Duties

1. Until the Custodian receives Instructions to the contrary, the Custodian will:
 - (a) present all Financial Assets for which the Custodian has received notice of a call for redemption or that have otherwise matured, and all income and interest coupons and other income items that call for payment upon presentation;
 - (b) execute in the name of OSC such certificates as may be required to obtain payment in respect of Financial Assets; and
 - (c) exchange interim or temporary documents of title held in the Securities Account for definitive documents of title.
2. In the event that, as a result of holding Financial Assets in an omnibus account, OSC receives fractional interests in Financial Assets arising out of a Corporate Action or class action litigation, the Custodian will credit OSC with the amount

of cash it would have received had the Financial Assets not been held in an omnibus account, and OSC shall relinquish to the Custodian its interest in such fractional interests.

3. If some, but not all, of an outstanding class of Financial Assets is called for redemption, the Custodian may allot the amount redeemed among the respective beneficial holders of such a class of Financial Assets on a pro rata basis or in a similar manner the Custodian deems fair and equitable.

O. Accounting Reports

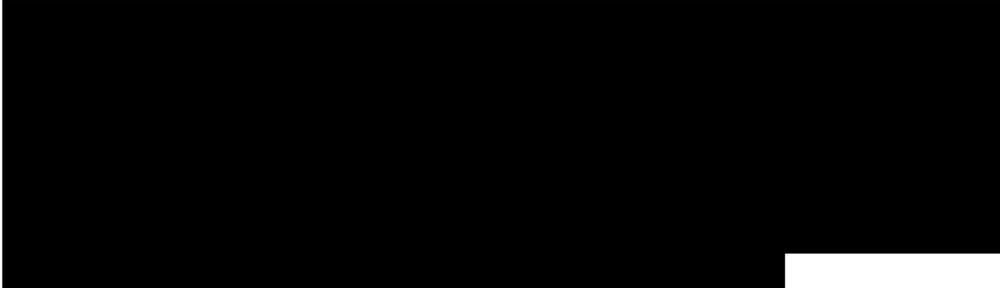
1. Custodian shall provide reports identified in the RFP (the "Accounting Reports") as set forth in Exhibit C.2 – Schedule B to certain DTF Accounts, as agreed in writing with the Custodian from time to time. For the avoidance of doubt, the Custodian is not required to provide accounting services or Accounting Reports to (i) any DTF account which is an Account under this Agreement as of the date of execution of this Agreement, nor (ii) any OSC Account.
2. DTF shall not redistribute any Accounting Report, or any data contained in an Accounting Report which is not owned by Treasury, to any person for purposes other than the administration/custody of Treasury's investments, which purposes may include review by the agencies or authorities for which such investments are made, auditors, or OSC's or Treasury's attorneys or accountants, without Custodian's prior written consent, which consent shall not be unreasonably denied.
3. Custodian's ability to provide accurate and timely Accounting Reports is dependent upon the satisfaction of applicable Dependencies. Custodian shall not be liable to OSC, DTF, or any third party for any failure to provide or any delay in providing the Accounting Reports, or any errors in relation to the Accounting Reports, to the extent such failure is the result of a non-satisfaction of a Dependency defined in this Agreement. In any period during which a Dependency is not met, the parties will cooperate to make best efforts to ensure that such period is kept as short as reasonably possible, and Custodian will use reasonable efforts to provide the Accounting Reports (provided that Custodian shall not be obliged to incur additional costs to do so). The Dependencies include:
 - (a) communications systems operated by third parties instructed by OSC or DTF, or operated by OSC or DTF, required for Custodian activities needed to prepare and deliver Accounting Reports being fully operational at times required for the preparation and delivery of such Reports;
 - (b) OSC or DTF, and other service providers of OSC or DTF whose cooperation is necessary in order for Custodian to provide the Accounting Reports, providing such cooperation, information, data and Instructions to Custodian promptly, accurately, adequately and completely in accordance with the mutually agreed formats or timelines to allow Custodian to provide the Accounting Reports;

- (c) any warranty, representation, covenant or undertaking expressly made by OSC or DTF under the Agreement and which Custodian has relied on or needs to rely on for the preparation and delivery of Accounting Reports being and remaining true and correct at all times;
- (d) the obligations or requirements of OSC and DTF, as applicable, and as expressly listed in an operating procedure or other documents that have been mutually agreed, in writing, between the parties from time to time, and that are directly related to and required for Custodian's preparation of Accounting Reports;
- (e) information provided to Custodian by or on behalf of OSC or DTF, or which was prepared or maintained by OSC, DTF, or any third party on behalf of OSC or DTF, being authorized, accurate, and complete;
- (f) any information provided to Custodian by any pricing services, data services, or provider of other market information or information concerning securities held by OSC or DTF and required for the preparation of the Accounting Reports being authorized, accurate and complete;
- (g) any data that is transitioned from OSC or DTF to Custodian that is used to provide the Accounting Reports being free from errors;
- (h) OSC, DTF and their agents, officers and employees being in compliance with the laws or regulations of any jurisdiction in which OSC's or DTF's Securities are offered, to the extent such compliance is required or relevant for the preparation and delivery of Accounting Reports.

VI. REPRESENTATIONS, WARRANTIES, AND COVENANTS

A. Custodian Representations and Warranties

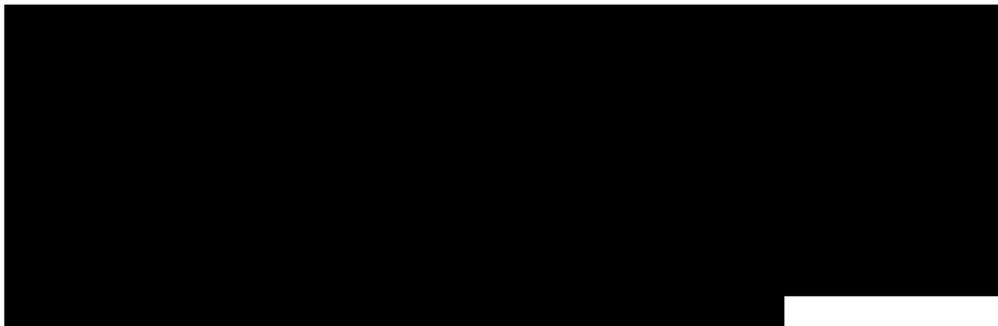
The Custodian hereby represents, warrants, and covenants that:

1. The Custodian has full power and authority to enter into this Agreement and to perform its obligations hereunder. The Agreement has been duly authorized by all requisite action on the part of the Custodian and constitutes the valid, legal, and binding obligation of the Custodian, enforceable against it in accordance with its terms.
2. 
3. The Custodian and its employees, officers, directors, subsidiaries, affiliates, or agents (collectively, "staff"), as applicable, are fully experienced and properly qualified to perform the Services and are properly licensed, equipped,

organized, and financed to perform such Services. Any staff responsible for discharging the Custodian's duties and obligations hereunder are and will be qualified persons experienced in the performance of such functions.

4. To the best of the Custodian's knowledge as of the date of this Agreement, and subject to Custodian's reasonable due diligence, all of the information, representations, and warranties contained in the Custodian's response to the RFP were true at the time of submission and continue to be true as of the date hereof and no representation and warranty contained herein nor any written statements, certificates or documents delivered or to be delivered to OSC or OSC's designated representatives by or on behalf of the Custodian, contains or, with respect to statements, certificates or documents yet to be delivered, will intentionally contain any misstatements of material fact, or omits or, with respect to statements, certificates or documents to be delivered, will intentionally omit to state a material fact necessary to make the statements contained herein or therein not misleading.
5. The Custodian shall be a state or federally chartered bank that is authorized to do business in New York State, and shall have at least one branch or office with a physical location in New York. The Custodian shall maintain such status and a physical location in New York throughout the term of the Agreement.
6. The Custodian shall be and remain a member of NACHA and be and remain at all times compliant with all applicable NACHA rules.
7. The Custodian shall have on file with OSC, Attachment G (Undertaking for Bank Deposits and Assignment of Securities) before the Custody Accounts are established. During the term of the Agreement, including any transition period, the Custodian shall comply with the pledge of collateral requirements of §§ 105 and 106 of the SFL. OSC and Treasury shall establish and periodically review and adjust, as necessary, amounts held as collateral pursuant to this Agreement. The Custodian shall comply with any adjustments in collateral required by OSC. OSC reserves the right to periodically verify the amount of collateral held.
8. The Custodian and its staff performing Services under this Agreement have completed, obtained or performed all registrations, filings, approvals, authorizations, consents and examinations required by any Governmental Authority for the acts contemplated by this Agreement and they, to the extent required in order to perform the Services, (i) shall continue to do so for the duration of this Agreement, and (ii) shall comply with any requirements imposed upon them by law during the term of this Agreement.

9.



10. The Custodian represents and warrants that neither the Custodian nor its staff has received or paid, or entered into an agreement to receive or pay, any compensation, fees, or any other benefit from or to any third party in connection with the indirect or direct procurement of this Agreement.
11. Neither the execution of this Agreement nor the acts contemplated hereby nor compliance by the Custodian with any provisions hereof will:
 - (a) violate any provision of the charter documents or by-laws of the Custodian;
 - (b) violate any statute, regulation, rule, law, or ordinance or any judgment, decree, order, regulation or rule of any court or Governmental Authority applicable to the Custodian; or
 - (c) violate, or be in conflict with, or constitute a default under, or permit the termination of, or require the consent of any person under, any agreement or contract to which the Custodian may be bound, the violation of which in the aggregate would have a material adverse effect on the properties, business, prospects, earnings, assets, liabilities or condition (financial or otherwise) of the Custodian.
12. Delegation. The Custodian shall not delegate any authority to any other persons or entities, with respect to the performance of Services, except as expressly stated otherwise in this Agreement. OSC hereby authorizes the Custodian to act through and hold the Property with Securities Depositories, permitted by the terms herein.

B. OSC Representations and Warranties

OSC represents and warrants that:

1. OSC is authorized pursuant to State law to engage a bank or trust company on behalf of the State to accept delivery of obligations purchased by the State and of securities deposited with the State, hold the same in safekeeping, make delivery to purchasers of obligations sold by the State, and accept deposits of the proceeds of such sales.
2. The person executing this Agreement on behalf of OSC has the power and authority to enter into this Agreement, and has obtained all necessary authorizations and consents.
3. The person executing this Agreement on behalf of OSC has obtained all necessary authorizations and consents for designated, authorized individuals to deposit and control the Financial Assets and cash in the Custody Accounts, and to use the Custodian as its custodian in accordance with the terms of this Agreement, and to borrow money (both any short term or intraday borrowings in order to settle transactions prior to receipt of covering funds), and grant a lien over Financial Assets as contemplated by Section XXI.A.
4. To the best of OSC's knowledge, the Financial Assets and cash deposited in the Custody Accounts are not subject to any encumbrance or security interest whatsoever and OSC undertakes that, so long as Liabilities are outstanding, it

will not create or permit to subsist any encumbrance or security interest over such Financial Assets or cash.

5. OSC has the power and authority to enter into this Agreement and carry out its obligations hereunder, and this Agreement has been duly authorized by all requisite action on the part of OSC, and assuming execution and delivery of this Agreement by the Custodian constitutes the valid, legal and binding agreement of OSC, enforceable in accordance with its terms. The Agreement will not be final until it has received all necessary signatures.
6. Custodian's receipt of an executed copy of this agreement from OSC that contains the signatures required by OSC, and, if applicable, by the New York State Attorney General and the OSC Bureau of Contracts shall be deemed evidence that this Agreement has received all necessary approvals, including as required by the New York State Attorney General, the State Comptroller and the OSC Bureau of Contracts, as set forth in Section XXVII, below, and is a true, complete and accurate copy of the form approved by the aforementioned bodies.
7. OSC has not relied on any oral or written representation made by the Custodian or any person on its behalf not contained herein or in exhibits, schedules, appendices, or annexes hereto, and acknowledges that this Agreement and the aforementioned documents set out to the fullest extent the duties of the Custodian.
8. The Comptroller is the chief fiscal officer of the State of New York and serves as the head of the Department of Audit and Control. The New York State Office of the State Comptroller is a New York State government entity.
9. The Custodian may rely upon the written certification of OSC of such other facts (e.g., regarding OSC's ownership of assets, OSC's tax status, whether OSC may enter into certain transactions under New York State law) as may be required to administer the Custodian's obligations under this Agreement.

VII. INSTRUCTIONS

A. Acting on Instructions

1. OSC authorizes the Custodian to accept, rely upon, and/or act upon any Instructions it receives from OSC that are reasonably believed by the Custodian to be genuine and to have been properly executed or otherwise given by an Authorized Person.
2. Instructions shall be in writing signed by an Authorized Person, delivered in a tested communication effected between electronic devices or by such other means as may be agreed to from time to time in advance and in writing (which may be provided by email) by the Custodian and OSC. OSC will, where reasonably practicable, use automated and electronic methods of sending Instructions.
3. On or about the same date of this Agreement, OSC and DTF shall provide to Custodian a correspondence that identifies a list of Authorized Persons and

alternative communication methods by which Instructions may be issued by OSC and DTF in the event of a communications interruption or failure (e.g., no phone, no email, no fax, no printer due to network outages or other communications failures) or other interruption to OSC's or Treasury's ordinary business operations or processes that prevents OSC or Treasury from issuing Instructions to Custodian in the normal course of business, so that OSC or Treasury may still provide Instructions to Custodian ("List of Alternative Communication Methods"). Subject to Custodian's written consent as to the proposed communication methods (which may be provided by email), the List of Alternative Communication Methods shall be effective as of the date of Custodian's written consent to such list and may be updated by the parties in writing from time to time.

4. OSC shall cause its Authorized Persons to certify to the Custodian, in writing, the names and specimen signatures of such persons authorized to give Instructions. Such certificate shall be conclusive evidence (i) of the authority of any person to act in accordance with such certificate, or (ii) of any determination or of any action by OSC or the Authorized Person as described in such certificate, and such certificate may be considered in full force and effect until receipt by the Custodian of written notice to the contrary. The Custodian shall be entitled to rely upon the identity and authority of such Authorized Persons until it receives and has had reasonable time to act upon Instructions from OSC or its Authorized Person to the contrary. Unless otherwise expressly provided, all Instructions shall continue in full force and effect until canceled or superseded.
5. The Custodian and OSC shall comply with any applicable Security Procedures with respect to the delivery or authentication of Instructions and shall ensure that any codes, passwords, or similar devices are reasonably safeguarded. Either party may record any of their telephone communications.
6. The Custodian shall be protected in following any Instruction reasonably believed by it to be genuine and to have been properly executed or otherwise given by an Authorized Person, provided that the Custodian carried out such Instruction without negligence, fraud or willful misconduct and in accordance with its obligations herein.
7. The Custodian has established cut-off times for receipt of Instructions, which have been made available to OSC and which may be reasonably modified by the Custodian from time to time upon reasonable advance written notice to OSC. If the Custodian receives an Instruction after the established cut-off time, the Custodian will attempt to act upon the Instruction on the day requested if the Custodian deems it practicable to do so or otherwise as soon as reasonably possible after that day.

B. Clarifications to Instructions; Instructions Contrary to Applicable Law or Market Practice

1. The Custodian shall promptly notify an Authorized Person if the Custodian determines that an Instruction does not contain all information reasonably necessary for the Custodian to carry out the Instruction. The Custodian may

decline to act upon an Instruction if it does not receive clarification or confirmation satisfactory to it. The Custodian will not be liable for any loss arising from any reasonable delay in carrying out any such Instruction while it seeks information, clarification, or confirmation, or in declining to act upon any Instruction for which it does not receive clarification satisfactory to it.

2. The Custodian need not act upon Instructions which it reasonably believes to be contrary to Applicable Law or market practice, and the Custodian shall be under no duty to investigate whether any Instructions comply with Applicable Law or market practice. In the event the Custodian does not act upon such Instructions, the Custodian will notify the Comptroller within a reasonable time.

VIII. PUBLIC OFFICERS LAW/ETHICS REQUIREMENTS

A. Public Officers Law/Former State Employees

The Custodian shall comply with the requirements of Public Officers Law §§ 73(4)(a), 73(8)(a)(i) and (ii), and 74(3)(i). Failure to comply with those provisions may result in termination of the Agreement. In addition, neither the Custodian, nor its officers, directors, employees, subsidiaries, affiliates, partners, and agents who are assigned to perform Services will offer or make any gift or hospitality to a State employee during the term of this Agreement that would be in violation of Public Officers Law.

The Custodian may hire former State employees. However, former employees of the State may not appear nor practice before the State, or receive compensation for services rendered on a matter before the State, for a period of two years following their separation from State service. In addition, former State employees are subject to a "lifetime bar" from appearing before the State or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State.

B. Ethics Requirements

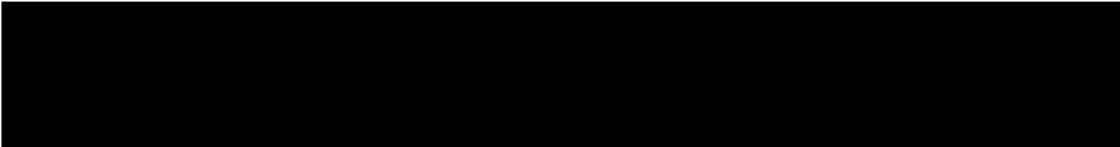
The Custodian shall not engage any person who is, or has been at any time, in the employ of the State to perform Services in violation of the provisions of Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). No person who is employed by the Custodian and who is disqualified from providing services under this Agreement pursuant to any Ethics Requirements may share in any net revenues of the Custodian derived from this Agreement. The Custodian shall identify and provide the State with prior written notice of those employees of the Custodian who are former employees of the State that will be assigned to perform Services under this Agreement and advise such employees of their continuing obligation to comply with Applicable Laws. The State may request that the Custodian provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint

Commission on Public Ethics. The State shall have the right to terminate this Agreement at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

IX. RELATIONSHIP BETWEEN THE PARTIES

- A.** The relationship of the Custodian to OSC under this Agreement will be that of an independent contractor. In accordance with the Custodian's status as an independent contractor, the Custodian covenants and agrees that its staff will: (i) act in a manner consistent therewith; (ii) neither hold themselves out as, nor claim to be, officers or employees of OSC or the State, and (iii) not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the State including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership credit.
- B.** Subject to Section XX, the Custodian shall be responsible for the acts and omissions of its staff, whether directly or indirectly engaged by the Custodian, in connection with the performance of this Agreement and their adherence to all contract terms and conditions.
- C.** The Custodian agrees that nothing set forth in this Agreement shall impose any liability or duty upon OSC to persons, firms or corporations, employees or others engaged by the Custodian in any capacity with respect to or shall make OSC liable to any such person, corporation, association or any government for the acts, omissions, liabilities, obligations and taxes of whatever nature related to workers' compensation coverage, unemployment insurance benefits, social security coverage, retirement membership credit, disability benefits, and social security taxes.

X. STAFF

- A.** 
- B.** The Custodian certifies that the staff provided to perform Services possess the necessary integrity and professional capacity to meet JPMC's responsibilities and obligations under this Agreement. Subsequent to the commencement of Services, or whenever the Custodian becomes aware that any key personnel providing Services no longer possesses the necessary integrity or professional capacity to provide the Services, the Custodian shall immediately discontinue the use of such key personnel.
- C.** 

[REDACTED]

- D. The Federal Immigration Reform and Control Act, as amended (8 USC § 1324a et al.), obligates employers, such as the Custodian to verify that their employees are legally entitled to work in the United States. In order to confirm that the employees are legally entitled to work in the United States, OSC reserves the right to request documentation attesting to the legal entitlement to work in the United States of any Custodian employee assigned to provide Services. The Custodian warrants to OSC that the employees assigned to provide Services are eligible for employment in the United States. The Custodian is responsible for ensuring that the employees retain the authorization to legally work in the United States throughout the term of the Agreement. OSC will not discriminate against individuals on the basis of national origin or citizenship. OSC does not provide sponsorship.

XI. COMPENSATION, PAYMENT, AND INVOICES

The Custodian will be compensated for the Services performed under this Agreement in accordance with Exhibit B2 (Custodian’s Cost Proposal). Such compensation includes all fees due to the Custodian in the performance of Services hereunder, including expenses and disbursements. Total compensation for the Services under this Agreement will not exceed the sum of \$4,430,000.

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

OSC reserves the right to change the compensation method, provided the compensation method chosen by OSC is specified under this Agreement. OSC will not change the method of compensation at a frequency greater than once annually, except in extraordinary circumstances, as determined by OSC.

[Redacted]

A. Payment by Direct Fee

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. Payment by Compensating Balances

[REDACTED]



C. Invoices

OSC will work with the Custodian to develop an invoice form that is acceptable to the Parties. Payment will be made in accordance with Article 11-A of the State Finance Law and any applicable late payment interest amount shall be calculated by OSC pursuant to such Article. The invoices shall include the following information:

1. The number assigned to this Agreement by the Comptroller (#C001103);
2. Sufficient detail to permit the identification of all fees charged by the Custodian pursuant to this Agreement. Such detailed description of Services provided must also include:
 - (a) the total amount billed for Services for the invoice period in MS Excel (electronically submitted), unless OSC agrees, in writing, to another format;
 - (b) the beginning and ending dates of the billing period included in the invoice, and the expiration date of this Agreement;
 - (c) the entity to whom Services were provided (OSC or DTF Treasury); and
 - (d) Any additional information necessary for the proper processing by OSC of the invoice. OSC shall provide advance notice to the Custodian of any additional information required to be included in the invoice.

Submit invoices to OSC via email to contractinvoices@osc.ny.gov. Also submit a copy via email to cashmanagement@osc.ny.gov.

Invoices will be submitted by the Custodian no less than quarterly, or at another frequency as may be mutually agreed to, in writing (which includes email), by the parties from time to time, and will be payable within 30 days of the date of the accepted invoice.



If OSC disputes an invoice, OSC and the Custodian shall proceed promptly and in good faith to resolve such dispute. OSC shall nevertheless pay, on or before the date that payment is due, such portion of the invoice that is not subject to a bona fide dispute.

XII. ADVANCES

If a debit to the Cash Account results in a debit balance, then the Custodian may, in its discretion, (i) advance an amount equal to the debit (i.e., provide an "overdraft"), (ii) refuse to settle in

whole or in part the transaction causing such debit balance, or (iii) if any such transaction is posted to the Securities Account, reverse any such posting.

In the event that Custodian, in its sole discretion, provides an overdraft to OSC, the advance will be payable on demand and, the Custodian may charge interest for such overdraft at the applicable rate of interest, which shall be as mutually, previously agreed or then-agreed upon, in writing, by the Parties or, alternatively, at the daily effective [REDACTED] as a matter of default, from the date of such advance to the date of payment (i.e., interest will be charged only for number of overnights for any overdraft, from the date of initial advance to date of payment). Interest on such advance must be first set off by the Custodian against Earnings Credit under the State Commercial Bank Division Account (or, if applicable, any successor compensating balance account that is established in accordance with Section XI, above) that serves as a compensating balance account to the relevant overdraft account pursuant to Section XI above or, otherwise or at OSC's discretion, may be paid directly to Custodian by OSC.

No prior action or course of dealing on the Custodian's part with respect to the settlement of transactions on State's behalf will be asserted by OSC against the Custodian for the Custodian's refusal to make advances to the Cash Account or to settle any transaction for which State does not have sufficient available funds in the Cash Account. The State shall be deemed to be in default with respect to any such advance upon the occurrence of the State's declaration of insolvency; the State's filing bankruptcy under federal law; or the appointment of a trustee or custodian of all of the State's assets, but only to the extent any such occurrence is permitted under applicable law.

In the event that the Custodian has exercised its discretion as outlined above, it shall, as soon as reasonably practicable, provide notice to OSC.

XIII. OPERATIONAL CONTROLS DOCUMENTATION AND COMPLIANCE: COMPTROLLER'S RIGHT TO AUDIT

A. Documentation Regarding Operational Controls

The Custodian shall provide OSC the annual SOC 1 report prepared by the Custodian's external auditors on the Custodian's internal controls upon request. The annual report shall include an opinion on (1) whether the Custodian's description of its controls presents fairly, in all material respects, certain aspects of the Custodian's controls, (2) whether the controls were suitably designed to achieve specified control objectives and (3) whether the controls that were tested were operating with sufficient effectiveness to provide reasonable, but not absolute, assurance that the control objectives were achieved.

OSC shall have the right to examine the Custodian's performance of the controls referred to in the report. OSC will have cause to terminate this Agreement, without any advance notice to the Custodian, if an examination or audit by an independent examiner or auditor reveals a material failure to perform or inadequate performance of controls referred to in the report, or if the Custodian has refused to provide the report as required pursuant to this paragraph.

B. Audit by the Comptroller

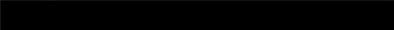
1. OSC shall on its own, or by an independent auditor of its choice (which term shall be deemed to include an independent accounting firm), have the right to inspect all relevant books and records maintained by the Custodian relating to the Custody Accounts. In the event such right is exercised, the Custodian will allow OSC such reasonable access during normal working hours to the records of the Custodian relating to the Custody Accounts as is required in connection with its examination of books and records pertaining to the Custody Accounts. OSC shall have the right, in connection with any such audit or inspection, to have one or more members of its staff present during such time; provided, however, OSC and the Custodian will agree upon the number of individuals allowed access, the frequency and length of such access, and the scope of the records made available. OSC shall reimburse the Custodian for the reasonable cost of copying, collating, and researching archived information at the Custodian's regular hourly rate.
2. The Custodian further agrees that all books, vouchers, records, reports, canceled checks, and any and all similar material related to the Custody Accounts may be subject to periodic inspection, review, and audit during normal working hours by the State of New York, the Federal Government and other persons duly authorized by the State or the Comptroller. Such audit may include examination and review of the source and application of all funds whether from the State, the Federal Government, private sources or otherwise.
3. The Custodian shall submit any and all documentation and justification in support of expenditures or fees under this Agreement to OSC as may be required by OSC so that OSC may evaluate the reasonableness of the charges and the Custodian shall make its records available to OSC as OSC considers necessary.

C. Compliance

The Custodian shall use reasonable efforts to maintain risk management and oversight policies and procedures which are reasonably designed to comply with Applicable Law. The Custodian shall promptly report in writing to OSC whenever the Key Staff Person, becomes aware of the occurrence of any activity that constitutes a material breach of this Agreement.

XIV. INSURANCE

Consistent with Exhibit B:

- A. The Custodian shall maintain adequate insurance coverage consistent with industry best practices throughout the term of this Agreement, 



[REDACTED]

B. [REDACTED]

C. The Custodian shall provide OSC with certificates of insurance showing such insurance coverage prior to the commencement of any work hereunder. By requiring insurance, OSC does not represent that certain coverage and limits will necessarily be adequate to protect the Custodian, and such coverage limits shall not be deemed a limitation on the Custodian's liability to OSC or Treasury under this Agreement. The Custodian shall not be required to maintain any insurance coverage specifically for the benefit of the State or OSC.

D. The Custodian shall be insured by the Federal Deposit Insurance Corporation ("FDIC") for the term of this Agreement including any renewal, extension, and transition period(s).

XV. CONFIDENTIALITY AND SECURITY

A. Confidentiality

Except as may be required in connection with the Custodian's performance of its obligations hereunder, by Applicable Law, or in any governmental or judicial proceeding or inquiry, or by any regulator with jurisdiction over the Custodian's business, the Custodian will not reveal or use such OSC, Treasury, and/or State Confidential Information without the prior written consent of OSC (or Treasury, if applicable) and agrees that the Custodian shall use OSC, Treasury, and/or State Confidential Information solely for the purpose of carrying out its obligations to, or on behalf of, OSC (or Treasury, if applicable) as set forth in this Agreement, and for no other purpose and shall maintain strict confidence with respect to all Confidential Information of OSC and the State. All Confidential Information shall remain the property of the State. Any and all reports, financial information, analyses, and data, whether statistical or otherwise, furnished by the Custodian to OSC under this Agreement may be used for such purposes as OSC may reasonably deem appropriate, unless otherwise expressly provided under this Agreement or in the relevant report, financial information, analyses, or data.

Notwithstanding the above, OSC and the State authorize the Custodian to disclose Confidential Information to (i) its professional advisors, auditors, or public accountants who are under a confidentiality obligation no less strict than that contained herein; (ii) its agents or vendors solely for the purpose of carrying out Custodian's obligations to, or on behalf of, the State in connection with this Agreement, and for no other purpose; provided such are under a confidentiality obligation no less strict than that contained herein; (iii) Affiliates, solely for the purpose of carrying out its obligations to, or on behalf of, the State or the Custodian in connection with the performance of Services as

set forth in this Agreement, and for no other purpose; and (iv) any governmental authority in relation to the process of any tax relief claim.

In the event of the receipt by the Custodian of a valid inquiry, order, or mandatory request from a judicial body or an administrative, or governmental agency having jurisdiction over it, the Custodian will promptly notify OSC thereof, unless such notice is prohibited by law. The Custodian will, unless prohibited by law, cooperate with OSC for purposes of responding thereto, including, if applicable, any OSC effort to limit disclosure.

Notwithstanding anything to the contrary in the foregoing, the Custodian may disclose Confidential Information to any state or federal bank regulatory authority having jurisdiction over the Custodian upon the request of the bank regulatory authority without prior notice to OSC where it is the Custodian's counsel's legal opinion that such Confidential Information is responsive to such request, provided that, except where prohibited as a matter of law, Custodian will, to the extent such request is related to OSC's or DTF's Confidential Information only and not part of a regulatory exam or a broader request for information from multiple of Custodian's clients Custodian will provide written notice of such disclosure to OSC provided a Key Staff Person is made aware of such disclosure request.

The Custodian acknowledges that any unauthorized use or disclosure of Confidential Information may cause irreparable damage to OSC, Treasury, or the State. If an unauthorized use or disclosure occurs, the Custodian shall, at its expense, take such commercially reasonable steps that are necessary to recover Confidential Information and to prevent its subsequent unauthorized use or dissemination. To the extent permitted by Applicable Law, the Custodian shall provide OSC prompt written notice, as soon as reasonably practicable following the Custodian's determination that an unauthorized disclosure, or exposure of, or access to OSC's or DTF's Confidential Information, including if any theft, loss, or unlawful access to OSC's or DTF's Confidential Information in the possession of the Custodian or its subcontractor(s) has occurred. Such notice shall be provided to Counsel to the Comptroller as specified in Section XVIII, below. If the Custodian fails to take these steps in a timely and adequate manner, OSC, Treasury, or the State shall be entitled to pursue any legal remedies available. The Custodian hereby acknowledges that the OSC may not have an adequate remedy at law and OSC shall therefore be entitled to enforce Custodian's obligations under this paragraph by appropriate temporary or permanent injunctive or mandatory relief obtained in any court of competent jurisdiction without the necessity of proving damages, posting any bond or other security, and without prejudice to any other rights and remedies and defenses which may otherwise be available.

B. Security

1. JPMC has implemented physical and cybersecurity policies, processes, standards, and controls that are consistent with industry best practices and that satisfy and are compliant with applicable federal and global regulatory requirements, and JPMC will maintain such throughout the term of this Agreement. JPMC is responsible for and will exercise regular due diligence in the maintenance of and compliance with technology process and security

standards that set out a comprehensive, effective, and secure approach to protecting the State's assets and information, which process, standards, and approach

[REDACTED]

JPMC will comply with state and federal breach notification laws, as applicable.

In the event of decertification by any applicable, industry standard security domains, JPMC shall notify OSC of such decertification if the loss impacts the security of OSC assets or information.

2. While the Custodian is at the OSC's premises, the Custodian is required to comply with all applicable facility security policies and procedures of OSC, Treasury, and the State that are applicable to visitors and that are provided to JPMC. If such procedures are violated, the Custodian agrees to promptly notify OSC of any such breach.

3. [REDACTED]

4. The Custodian may not connect any non-State computer or telecommunications equipment to the State network; personal and corporate laptop computers, and personal and corporate USB devices, smartphones, and tablets are included in this prohibition.

C. Security Incident

1. The Custodian shall develop, implement, maintain, and assess compliance with an information security program with written policies and procedures reasonably designed to protect the confidentiality and integrity of the OSC's Confidential Information (the "Information Security Program"). The Custodian's assessment processes regarding the Information Security Program shall include periodic testing of its systems, including penetration tests, as determined to be advisable by the Custodian from time to time. Upon request, the Custodian shall provide the Comptroller with a summary of the Information Security Program.
2. SHIELD Act; Notification. The Custodian shall comply with the applicable provisions of the New York State General Business Law Section 899-aa and 899-bb, and State Technology Law Section 208, any applicable amendments and notice requirements thereto.
3. The Custodian shall, in conjunction with the State, reasonably cooperate with any federal or State agencies or regulators that may investigate a cyber- or information-security incident.

D. Systems and Disaster Recovery

1. The Custodian represents and warrants that there is in effect as of the date of this Agreement a disaster recovery and business continuity plan as specified in Exhibit B. The Custodian shall maintain and update such plan or a similar plan in accordance with industry standards and the Standard of Care.
2. In the event of any unplanned interruption of the State's critical business and information processing, which causes a disruption in the State's ability to operate its business ("Business Emergency Event"), OSC, or its authorized designee, shall immediately notify the Custodian of the disruption and instruct the Custodian to perform its duties under this Agreement. For purposes of this Agreement, the declaration of a Business Emergency Event shall be based solely on OSC's reasonable judgment.

XVI. BACKGROUND INVESTIGATIONS

Custodian Investigation of Staff

The Custodian represents background checks have been conducted on its staff that performs Services in accordance with the Custodian's Pre-Employment Screening practices, annexed hereto as Attachment 1. The Office of the State Comptroller Inspector General may audit the results of these background checks, unless prohibited by law. The Custodian agrees that such background checks will have been conducted on any new staff performing Services during the term of the Agreement.

XVII. LICENSING

The Custodian warrants and represents it has full ownership or has obtained all necessary rights to use or sublicense to OSC all proprietary or third-party software and related documentation required by the Custodian to perform the Services.

XVIII. NOTICES

Except as otherwise expressly set forth herein, any notice or other communication required or which may be given hereunder shall be in writing and shall be delivered personally or sent by certified, registered, express mail, postage prepaid or electronic mail, but in all cases shall be deemed given when actually received at the following addresses (or electronic addresses, as applicable):

TO OSC (unless a different notification address is provided below with respect to any specific provision):

Attention:	Director of Financial Administration
Address:	Office of the State Comptroller Bureau of Finance 110 State Street, Stop 13-2 Albany, NY 12236
Email:	rfp@osc.ny.gov

WITH COPIES TO:

Attention: Manager
Address: Office of the State Comptroller
Cash Management
110 State Street, Stop 9-8
Albany, NY 12236-0001
Email: cashmanagement@osc.ny.gov

TO OSC WITH RESPECT TO NOTICES REQUIRED UNDER SECTION XV.A AND ANY OTHER SECTION THAT EXPRESSLY REQUIRES NOTICE TO COUNSEL TO THE COMPTROLLER:

Attention: Counsel to the Comptroller
Address: Office of the State Comptroller
110 State Street, Stop 14-1
Albany, NY 12236-0001
Email: nsheingold@osc.ny.gov

TO THE CUSTODIAN:

Attention: [REDACTED]
Title: Client Executive
Address: JPMorgan Chase Bank, N.A.
[REDACTED]
Email: [REDACTED]

AND TO:

Attention: [REDACTED]
Title: Client Service Manager
Address: JPMorgan Chase Bank, N.A.
[REDACTED]
Email: [REDACTED]

The Parties shall notify each other, as soon as possible of any change to the addresses or contact information above. Either Party may designate a different mailing or emailing address, as applicable, or a different or additional person to whom all such notices to that Party are to be addressed by providing written notice to the other Party per the terms of this Section.

In addition to the above, if OSC accesses information concerning the Custody Accounts through the Custodian's website, the Custodian may also make notifications required under this Agreement by posting such on its secure, online portal for OSC (i.e., JPM Markets), provided, however, that any notice relating to advances and overdrafts (including interest rates and charges) under Article XII, termination of this Agreement or any Services hereunder under Article XXII, legal process (including any and all potential claims, suits, or alternative dispute resolution), a force majeure event as set forth in Section XX.K, changes to the Services or cut-off times as set forth in Section VII.A(6), unauthorized disclosures of Confidential Information and security

incidents (including those reportable under General Business Law § 899-aa or § 899-bb or other applicable State or federal statute or regulation) under Article XV, loss or disappearance of Securities under Section XX.B, and Claims under Section XXI.B may not be provided by the Custodian exclusively on its website or through its online portal (i.e., JPM Markets) and must also be provided to OSC in writing at the electronic addresses specified above, including to Counsel to the Comptroller, and as required by law. Custodian does not need to provide Counsel to the Comptroller with routine notifications of changes in cut-off times or advances/overdrafts.

Notwithstanding the foregoing, any service of legal process must be made in accordance with the applicable rules of procedure.

XIX. DISPUTE RESOLUTION

In the event of a dispute, including dissatisfaction with the other's performance under this Agreement, the Parties may elect to resolve such dispute through direct negotiation between OSC and the Custodian. The Party initiating the process will notify the other Party in writing and set forth the issues for resolution and provide all necessary documentation. During the dispute resolution period, all Services will be performed pursuant to the terms of this Agreement. If the Custodian pursues any legal or equitable remedy outside this resolution process, the Custodian shall continue to perform Services, including disputed work, if any, in accordance with the direction of OSC and subject to the terms of the Agreement until the earlier of the retainage of another Custodian to provide the Services or the conclusion of such proceedings and will continue to be paid in accordance with the Agreement, less any amounts attributable to the dispute.

Nothing herein shall limit a party's ability to pursue all legally available remedies.

XX. INDEMNIFICATION AND LIABILITY

- A.** The Custodian will be liable to OSC, Treasury, and the State, and their officers, employees, and agents, for any and all direct Losses (defined below) incurred by OSC, Treasury, or the State to the extent such arise from or relate to:

[REDACTED]

"Losses" are any claims, demands, liabilities, costs, expenses, damages, losses, interest incurred, suits, proceedings and actions, including reasonable attorneys' fees and expenses, whether judicial, administrative, investigative, or otherwise.

- B.**

[REDACTED]

[REDACTED] Custodian shall provide notice of loss or disappearance of Securities under this section, including notice to Counsel to the Comptroller as set forth under Section XVIII.

C.

[REDACTED]

[REDACTED] The Custodian shall be solely responsible under this Agreement for the safety and protection of all of its employees and OSC shall not be liable for the Custodian's employees' safety and protection.

D.

[REDACTED]

E. OSC will indemnify Custodian Indemnitees against, and hold them harmless from, any Liabilities that may be imposed on, incurred by or asserted against any of Custodian Indemnitees in connection with or arising out of (i) Custodian's performance under this Agreement pursuant to instruction from OSC, provided Custodian Indemnitees have not acted with Fraud, negligence, or willful misconduct in performing their duties in connection with such Liabilities, or (ii) any Custodian Indemnitees' status solely as a record holder of the State's Financial Assets, [REDACTED]

[REDACTED] The Custodian hereby acknowledges and agrees that, to the extent any claim is brought by the Custodian directly against OSC's officers or employees, OSC's defense and indemnification of such officers and employees shall be consistent with Section 17 of New York State Public Officers Law.

F. For third-party claims asserted against OSC in relation to the Services and which OSC intends to seek indemnification under this Agreement, OSC and/or Treasury will give the Custodian:

1. prompt written notice of any action, claim, suit, proceeding, or threat of such action relating to this Agreement;
2. the opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at the Custodian's sole expense; and
3. reasonable assistance in the defense of any such action at the expense of the Custodian.

Notwithstanding the foregoing, the rights of the Custodian shall not preclude the Comptroller, OSC, Treasury, or the State from joining any action, claim, suit, or proceeding at their sole expense if it is determined that there is an issue involving a significant public interest.

G. Liability Limitations

1. None of the Comptroller or, OSC's, Treasury's, or the State's officers, employees, or agents will have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into pursuant to the terms hereof.
2. In no event shall the Custodian be liable to or obligated to indemnify the State for liabilities imposed on, incurred by or asserted against the State to the extent of Custodian's reasonable reliance and direct action upon Instruction from OSC, unless a court of final jurisdiction has fully and finally adjudicated that Custodian has acted with negligence, gross negligence, willful misconduct or, fraud or bad faith in performing its duties in connection with such liabilities. Nothing stated in this paragraph shall relieve Custodian of any of its liability for losses that arise from Custodian's failure to conduct, effectuate, or settle trades as instructed by OSC where Custodian's failure results from Custodian's negligence, gross negligence, willful misconduct or fraud in following such instructions.
3. The Custodian will not be liable for the loss of Property held outside the Custodian's control or for any acts or omissions of a Securities Depository.
4. Notwithstanding any other provision in the Agreement, Custodian's liability arising from an event or events occurring with respect to the Accounting Reports shall be as set forth in Schedule B, Exhibit 2 (Valuation Rules).

H. No Duty or Responsibility

Without limiting the Custodian's obligations set forth in Section XIII (Operational Controls Documentation and Compliance; Comptroller's Right to Audit), OSC agrees that the Custodian provides no Services in relation to, and therefore has no duty or responsibility to:

1. question Instructions or make any suggestions to OSC or an Authorized Person regarding such Instructions;
2. supervise or make recommendations with respect to investments or the retention of Financial Assets;
3. advise OSC or an Authorized Person regarding any default in the payment of principal or income of any Security; or
4. evaluate or report to OSC or an Authorized Person regarding the financial condition of any broker, agent, or other party to which the Custodian is instructed to deliver Financial Assets or cash.

I. Consequential, Indirect or Special Damages

The Custodian will not be liable for any consequential, indirect, or special damages (including, without limitation, lost profits) of any form that are incurred by any person or entity, whether or not foreseeable and regardless of the type of action in which such

a claim may be brought, with respect to the Custody Accounts, the Custodian's performance under this Agreement or the Custodian's role as the Custodian.

J. Force Majeure

None of the Custodian, the Comptroller, OSC, Treasury, or the State shall be liable for any delay or failure in performance beyond its control resulting from acts of God or nature, acts of war or terrorism, strikes, fire or floods, nationalization, expropriation, currency restrictions, riot; electrical outages that are not caused by the obligated party; or other similar causes beyond the commercially reasonable control of the relevant party. In such event, the aggrieved party(ies) shall, to the extent commercially practicable, use reasonable efforts to notify other party(ies) (including a notice to Counsel of the Comptroller) of the delay or potential delay and the cause(s) thereof as soon as reasonably practicable.

The parties shall resume performance under this Agreement as soon as reasonably practicable after the parties mutually agree that the inability to perform as a result of a force-majeure event no longer exists.

K. Custodian May Consult With Professional Advisors

The Custodian will be entitled to rely on, and may act upon the advice of its professional advisers in relation to matters of law, regulation, or market practice, provided, however, that to the extent any communications between the Custodian and its professional advisers include Confidential Information of OSC, such information shall remain subject to the confidentiality provisions of this Agreement.

L. Custodian Provides Diverse Financial Services and May Generate Profits as a Result

OSC acknowledges that: (a) the Custodian and any of its divisions, branches or Affiliates may have a material interest in transactions entered into by the Comptroller with respect to the Account or that circumstances are such that the Custodian may have a potential conflict of duty or interest, including the fact that the Custodian or its Affiliates may act as a market maker in the Financial Assets to which Instructions relate, provide brokerage services to other customers, act as financial adviser to the issuer of such Financial Assets, act in the same transaction as agent for more than one customer, have a material interest in the issuance of the Financial Assets; or earn profits from any of the activities listed herein, and (b) the Custodian and any of its divisions, branches or Affiliates may be in possession of information tending to show that the Instructions received may not be in the best interests of OSC. The Custodian is not under any duty to disclose any such information.

M. Assets Held Outside Custodian's Control

The Custodian will not be obliged to (i) hold Financial Assets with any person not agreed to by the Custodian, or (ii) register or record Financial Assets in the name of any person

not agreed to by the Custodian. Furthermore, the Custodian will not be obliged to register or record on the Custodian's records Financial Assets held outside the Custodian's control. If, however, OSC makes any such request and the Custodian agrees to the request, the consequences of doing so will be at OSC's own risk. The Custodian shall not be liable for any losses incurred as a result and may be precluded from providing some of the services referred to in this Agreement (for example, and without limitation, income collection, proxy voting, class action litigation and Corporate Action notification and processing).

N. Ancillary Services

OSC acknowledges that the Custodian will rely on vendors of information regarding matters such as pricing, proxy voting, corporate actions and class action litigation and use local agents to provide extraordinary services such as attendance at annual meetings of issuers of Securities. The Custodian will exercise commercially reasonable care in the selection and retention of these vendors. The Custodian does not guarantee the accuracy of the information received from them and will not be responsible for any errors or omissions made by them in providing the relevant information or services.

O. Accounting Services/Reports

OSC and Treasury agree that Accounting Reports are not for investment, treasury, or hedging purposes, including, but not limited to, for the purpose of currency overlay transactions. Accordingly, Custodian shall have no liability whatsoever for any Liabilities incurred by OSC or Treasury, as applicable, as a result of use of the Accounting Reports for investment, treasury or hedging purposes, including, but not limited to, for the purpose of currency overlay transactions.

XXI. CUSTODIAN'S WAIVER AND RELEASES

A.

[REDACTED]

[REDACTED]

B. Claims

No action shall lie or be maintained against OSC, Treasury, State, or the Comptroller by the Custodian for any claim based upon this Agreement (other than claims relating to (i) legal or tax obligations, or (ii) claims as a result of or in connection with acts or omissions of OSC) unless such action shall be commenced within twelve months after

the termination of this Agreement or the accrual of the cause of action, whichever is earliest.

Subject to Applicable Law and to the extent practicable, the Custodian shall promptly notify OSC in writing of any legal action or proceeding in connection with or relating to this Agreement after receipt of notification of such action or proceeding being initiated against it.

XXII. TERMINATION

This Agreement may be terminated by OSC without cause at any time with at least 30 days' written notice to the Custodian.

- A.** The Custodian may terminate this Agreement, without cause, upon six months prior written notice to OSC. Notwithstanding anything to the contrary in this Agreement, the Custodian shall have the right to immediately terminate this Agreement subject to 120 days written notice to OSC if the State has an unfulfilled indemnification obligation to the Custodian for more than 180 days or if OSC cannot indemnify the Custodian under this Agreement due to unavailability of lawful appropriations. OSC will provide the Custodian necessary details of the persons or entities to whom the Custodian must deliver the Property within a reasonable period before the effective time of termination of this Agreement. If OSC fails to provide such details to effectuate a timely transfer to a new custodian, and subject to [REDACTED]

[REDACTED] OSC will continue to compensate Custodian for any services that Custodian provides at the contracted-rates under this Agreement until such time as Custodian delivers the Property to a successor custodian.

- B.** OSC reserves the right to terminate this Agreement at any time upon 10 days prior written notice to the Custodian in the event of a breach by the Custodian of any of the provisions of this Agreement. In addition, this Agreement may be terminated by OSC immediately upon written notice to the Custodian in the event or the occurrence of an event of insolvency affecting the Custodian. An event of insolvency occurs when (i) a voluntary or involuntary case, petition or proceeding has been commenced under the United States Bankruptcy Code or any other statute or regulation under the laws of any country relating to bankruptcy or relief of debtors seeking liquidation, reorganization or other relief with respect to the Custodian, or its debts; or (ii) the Custodian: (a) has appointed, or applied, for it or for any substantial part of its property, a court-appointed receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official; (b) makes an assignment for the benefit of its creditors; (c) defaults on any secured obligation; (d) fails generally to pay its debts as they become due; (e) takes corporate action in furtherance of any of the foregoing; or (f) experiences a material adverse change in its financial circumstances (collectively, events of insolvency).
- C.** If the Agreement is terminated for any reason prior to its stated term, the Custodian shall be entitled to compensation for Services performed prior to such termination date. However, no termination of this Agreement by OSC shall be deemed a waiver of the Comptroller's right to make a claim against the Custodian for damages to OSC that

occurred prior to the termination date, subject to any liability limitations under Section XX.H. The Custodian shall not be entitled to final payment under this Agreement until it has satisfied all of its obligations hereunder.

D. OSC reserves the right to terminate this Agreement in the event that the certification filed by the Custodian (that all information disclosed to OSC is complete, true and accurate with regard to prior non-responsibility determinations within the past four years based on (i) impermissible contacts or other violations of SFL § 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity) is found by OSC to be intentionally false or intentionally incomplete. Upon such a finding, OSC may exercise its right to terminate this Agreement; in that event this Agreement shall be deemed terminated and of no further force and effect within 30 days from the date OSC provides written notification to the Custodian of such termination.

E.



Nothing in this paragraph shall be a limitation or waiver of applicable New York State law, including Executive Law, State Finance Law, and Public Officers Law.

XXIII. TRANSITION

In the event of any termination of this Agreement for any reason or, where OSC provides written notice to the Custodian that upon the expiration of the Agreement, a new, successor custodian will provide custodial services for OSC and/or Treasury, the Custodian shall continue to perform the Services required hereunder under these same terms and conditions in order to complete any transactions pending on the effective termination or expiration date and to facilitate an orderly transition to a successor custodian ("Transition Period"), including but not limited to (i) maintaining accounts to receive any income accruing on sub-accounts after transition to a successor custodian; (ii) cooperating with auditors of OSC to ensure an accurate final accounting of all activity occurring with respect to the Services; (iii) providing access to all necessary records,

transferring all necessary data, information, and other files related to the Services to OSC; (iv) making appropriate members of its staff reasonably available to answer reasonable questions that OSC and its staff, agents, and designees may have with respect to the records and information being accessed and transferred, as applicable; and (v) otherwise assist with such transition, and cooperate with OSC and any successor custodian in order to accomplish a smooth and orderly transition, so that the Services are uninterrupted and are not adversely impacted. If a successor custodian shall be appointed by the Comptroller, the Custodian shall deliver to such successor custodian at the office of the successor custodian or as otherwise directed by the Comptroller, duly endorsed and in the form for transfer, all Property then held by it hereunder and shall transfer to an account of the successor custodian all of OSC's Property.

XXIV. EQUAL EMPLOYMENT OPPORTUNITY

The Custodian agrees to comply with applicable federal, State, and local requirements concerning EEO as such relate to the Services, including but not limited to Executive Law § 312 and its implementing regulations.

In addition to the requirements stated in Appendix A Clause 12 (Equal Employment Opportunities for Minorities and Women), and to ensure complete compliance with such requirements, the Custodian agrees to submit, upon request, a Workforce Utilization Report, which should document the workforce actually utilized in providing Services under this Agreement, broken down by specified ethnic background, gender, and federal occupational categories or other appropriate categories specified by OSC. Documents are to be submitted to OSC at the following address:

New York State Office of the State Comptroller
Bureau of Finance
110 State Street, Stop 13-2
Albany, NY 12236
Attn: Director of Financial Administration

This Report is reviewed as part of OSC's general compliance monitoring. If discrepancies exist between the EEO Staffing Plan of Anticipated Workforce and the Custodian's EEO Workforce Utilization Reports, the Custodian may be subject to an in-depth EEO compliance review. If deficiencies are identified, OSC shall make every effort to resolve the deficiencies identified and to bring the Custodian into compliance with such requirements. If OSC is unsuccessful in its efforts, and upon review, the Deputy Comptroller for Human Resources and Administration at OSC determines that the Custodian is non-compliant, such Deputy Comptroller shall submit a written complaint to the New York State Department of Economic Development's Division of Minority and Women's Business Development ("DMWBD") regarding the Custodian's noncompliance and shall recommend to DMWBD that it review and attempt to resolve the noncompliance matter. Such Deputy Comptroller shall serve a copy of the complaint upon the Custodian by personal service or certified mail, return receipt requested.

DMWBD shall attempt to resolve a noncompliance dispute. If a resolution of the noncompliance dispute is satisfactory to the Parties, the Parties shall so indicate by signing a document indicating that the matter has been resolved and stating the terms of the resolution. If a resolution is not possible, DMWBD shall take all appropriate actions under statute (Executive Law § 316) and regulation (5 NYCRR § 143.6).

XXV. RESPONSIBILITY TERMS

The Custodian shall at all times during the Agreement remain responsible. The Custodian agrees, if reasonably requested by OSC, to present reasonable evidence of its (i) continuing legal authority to do business in New York State, (ii) experience and organizational capacity, and (ii) a copy of its public financial statements.

- A.** The Custodian represents that it has, to the best of its knowledge, truthfully and thoroughly completed the Custodian’s Vendor Responsibility Questionnaire (“Responsibility Questionnaire”) provided to the Custodian by OSC prior to execution of this Agreement. The Custodian further represents that as of the date of execution of this Agreement, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Responsibility Questionnaire.
- B.** Upon request, the Custodian shall provide to OSC updates to the Responsibility Questionnaire if any material event(s) occurs requiring an amendment or as new information related to such Responsibility Questionnaire becomes available. [REDACTED]
- C.** Notwithstanding subsection XXV.(B) above, OSC reserves the right, in its sole discretion, at any time during the term of this Agreement, (i) to require updates or clarifications to the Responsibility Questionnaire, (ii) to inquire about information included in or omitted from the Responsibility Questionnaire, and (iii) to require the Custodian to provide such information to OSC within a reasonable timeframe.
- D.** OSC reserves the right to make a final determination of the Custodian’s non-responsibility (“Determination of Non-Responsibility”) at any time during the term of this Agreement based on (i) any information provided in the Responsibility Questionnaire and/or in any updates, clarifications or amendments thereof; or (ii) the Custodian’s failure to disclose material information; or (iii) State’s discovery of any other material information which pertains to the Custodian’s responsibility.
- E.** If OSC preliminarily determines the Custodian to be non-responsible, State shall provide written notice to the Custodian detailing the reason(s) for the preliminary determination, and shall provide the Custodian with an opportunity to be heard before the determination is finalized.
- F.** Upon a Determination of Non-Responsibility of the Custodian, OSC reserves the right to terminate this Agreement for cause pursuant to Section XXII. (Termination and Suspension). In such event, OSC may pursue available legal or equitable remedies for breach.

XXVI. MISCELLANEOUS PROVISIONS

A. Amendments, Modifications

The Agreement will not be changed, modified, or altered in any manner except by an instrument in writing executed by the Parties.

The development of necessary interfaces with the Statewide Financial System and other investment systems (e.g., Bloomberg) to receive, validate, and process transaction information will be subject to (i) the request and approval of OSC (in its sole discretion), which will, as applicable, be managed using the Change Control process set forth in Appendix G (Change Control Procedure) and (ii) any corresponding, additional documents that may requested by the Custodian, subject to mutually, written agreement by the parties, which documents shall then be incorporated into this Agreement pursuant to a written amendment that also specifies its priority relative to other documents that are part of the Agreement, as applicable.

B. Waiver

No consent to, or waiver, discharge, or release of, any term or provision or breach of this Agreement shall be valid or effective unless such consent, waiver, discharge, or release is in writing by an authorized representative of each party, expressly refers to this Agreement, and is signed by the party to be bound thereby, and no such consent, waiver, discharge, or release shall constitute a consent, waiver, discharge, or release of any other term or provision hereof or any subsequent breach hereof, whether or not similar in nature, or a subsequent consent, waiver, discharge, or release of the same term, provision, or breach hereof or further exercise of any such right, power, or remedy. No delay on the part of either party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof.

C. Severability

If any term or provision of this Agreement shall be held, by a court of valid jurisdiction, invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, and the Parties shall make a reasonable, good faith effort to substitute an enforceable provision that, to the maximum extent possible in accordance with Applicable Law, preserves the original intentions and economic positions of the Parties.

D. Survival

The provisions of Articles XV. (Confidentiality and Security), XX. (Indemnification and Liability) and XXIII. (Transition), and Appendix A shall survive the expiration or termination of this Agreement, provided, however, that the survival of Appendix A shall be limited to the provisions still applicable to the Custodian after termination of this Agreement.

E. Public Communication

Unless specifically authorized in writing by the other party on a case by case basis, neither party shall have any right to use, and shall not use, the name of the other party, its officials or employees, or the seal of the other party:

1. in any advertising, publicity or promotion;
2. as an express or implied endorsement of any products or services;

3. in any other manner except to perform and deliver in accordance with this Agreement such services as are hereby contracted or as required pursuant to Applicable Law.

F. Counterparts

This Agreement may be executed in counterparts, each of which when executed shall constitute an original, and all of which, when taken together shall constitute one instrument.

G. Compliance with Applicable Laws

The Custodian shall, in the performance of the Services, comply with Applicable Law that applies to J.P. Morgan in the provision of the Services.

H. Incorporation of Amendments to Applicable Laws

Any references to sections of federal or state statutes or regulations shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.

I. No Third-Party Benefits

Nothing herein shall be construed as creating any third-party rights, benefits, privileges, or standing to maintain any action or proceeding in any court or other forum, except to the extent Services are provided to Treasury. The Parties expressly agree that Treasury is a third-party beneficiary under this Agreement.

J. Security Holding Disclosure

With respect to Securities and Exchange Commission Rule 14b-2 under the U.S Shareholder Communications Act, regarding disclosure of beneficial owners to issuers of securities, the Custodian is instructed not to disclose the name, address, or security positions of OSC in response to shareholder communications requests regarding the Custody Account, without the express authorization of OSC.

K. USA PATRIOT Act and Financial Disclosure

The USA PATRIOT Act requires the Custodian to implement reasonable procedures to verify the identity of any person that opens a new account with it. Accordingly, OSC acknowledges that § 326 of the USA PATRIOT Act and the Custodian's identity verification procedures require the Custodian to obtain information which may be used to confirm OSC's identity including without limitation OSC's name, address and organizational documents ("identifying information").

L. Anti-Money Laundering; Foreign Corrupt Practices Act

The Custodian represents that it has a compliance program in place to address the requirements of all United States laws pertaining to international financial transactions, including the USA PATRIOT Act. The Custodian represents and warrants that (a) in agreeing to provide, and in providing, the Services, the Custodian is not in violation of

the provisions of the United States Executive Order 13224 of September 24, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Anti-Terrorism Order") as amended, or the provisions of the USA PATRIOT Act, title III, or the International Money Laundering Abatement and Anti-Terrorism Financing Act of 2001 (as it may be amended from time to time) and any regulations promulgated thereunder, and (b) the Custodian is not a party with which the Treasurer is prohibited to deal under the laws of the United States. The Custodian shall use its best efforts to ensure that it will not be included on the Specially Designated Nationals and Blocked Persons List of the United States Treasury Department's Office of Foreign Assets Control.

The Custodian covenants that it will not make any direct or indirect payments to any foreign government official, government employee, political party or official in order to obtain, retain or direct business or obtain any advantage – unless such payment is permitted under the written laws of the jurisdiction where the Custodian resides and of such foreign official's country – in violation of the United States Foreign Corrupt Practices Act. The Custodian covenants that, in the performance of its duties hereunder, it shall not knowingly make any payments to any person or entity that would cause the Office of the Treasurer or the State to be in violation of the United States Foreign Corrupt Practices Act, as amended from time to time, or similar acts or laws of the country in question. The Custodian represents and warrants that it is not doing business with or investing in any company whose business interests are associated with terrorism or are contrary to the policies of the United States.

M. Continuity of the Agreement

The terms and conditions of this Agreement shall remain in full force and effect for the term of this Agreement and the Custodian agrees to provide all Services for such term, regardless of any reorganizations, consolidations or mergers to which the Custodian is, or may become, a party.

N. Financial Disclosure

OSC may be asked to provide information about its financial status such as its current audited financial statements and unaudited financial data. OSC agrees to provide the Custodian with and consents to the Custodian obtaining from third parties any such relevant identifying and financial information that is required as a condition of opening an account with or using Services that are provided by the Custodian.

O. Mergers, Acquisitions, Consolidation

This Agreement may not be assigned by either party without the prior written consent of the other party, except the Custodian may assign this Agreement without OSC's or the State's consent in connection with a merger, reorganization, or consolidation of all or substantially all of the Custodian's custody business; [REDACTED]



P. Governing Law

This Agreement shall be governed by, and administered, construed, and enforced in accordance with the laws of the State of New York (without regard to any conflict of laws provisions), as well as any amendments thereto as may be enacted from time to time, and, to the extent of any federal pre-emption, the laws of the United States of America, as well as any amendments thereto as may be enacted from time to time. Any action at law, suit in equity or other judicial proceeding brought hereunder (including any action to compel arbitration or to enforce any award or judgment rendered thereby) shall be brought only in state or federal courts sitting in the State of New York where jurisdiction and venue are proper as a matter of law. Each party consents to service of process in any manner authorized by New York law.

Pursuant to Section 8 of the New York State Court of Claims Act, OSC hereby waives its immunity from liability and action and hereby assumes liability and consents to have the same determined in accordance with the same rules of law as applied to actions in the New York supreme court against individuals or corporations, provided the Custodian complies with the limitations set forth in Article II of the New York State Court of Claims Act. Nothing in the preceding sentence shall be construed to affect, alter, or repeal any provision of the Workers' Compensation Law.

XXVII. ENTIRE AGREEMENT/APPROVALS

This Agreement and the appendices, exhibits and attachments hereto constitute the entire Agreement between the Parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. The Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the Parties hereto. This Agreement and any amendment hereof shall not be deemed executed, valid, or binding unless and until approved in writing by the New York State Attorney General and thereafter, approved in writing by the OSC Bureau of Contracts pursuant to SFL § 112, and filed in the Office of the State Comptroller.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

In addition to the acceptance of this Agreement, OSC and Custodian signatures on this page also certify that originals of this signature page will be attached to all other originals of this Agreement.

CONTRACT NUMBER: C001103
JPMORGAN CHASE BANK, N.A.

OFFICE OF THE STATE COMPTROLLER

Printed Name
MANAGING DIRECTOR
Title
3-8-2021
Date

Manaster

Signature

Printed Name
Director of Financial Administration
Title
3/8/21
Date

CONTRACTOR'S ACKNOWLEDGEMENT
STATE OF New York

COUNTY OF New York

On the 8th day of March in the year 2021, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who acknowledged to me that he/she maintains an office at _____, and further that he/she is the Managing Director of JPMorgan Chase Bank, N.A., the corporation described in foregoing instrument; that, by authority of the Board of Directors of the corporation he/she is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing _____ of the corporation as the act and deed of the corporation.

}
}
} SS.:

Notary Public

Registration No. _____

Approved as to Form:
NYS Attorney General

Approved:

Thomas P. DiNapoli, Comptroller

By: _____
Date _____

By: _____
Date _____

APPROVED DEPT. OF AUDIT & CONTROL
Mar 26 2021 David Burmaster
FOR THE STATE COMPTROLLER

Joseph M. Leathem

From: Maggi, Benjamin
Sent: Tuesday, March 09, 2021 11:30 AM
To: Ellen Porcari; Contract Approval
Cc: RFP; Corey J. Geis; Joseph M. Leathem; Elizabeth D. McManus
Subject: Approved - RE: Request for Review and Approval of Contract Number C001103 with JPMorgan Chase Bank N.A.

Approved As To Form: 3/09/2021 by Benjamin Maggi
Received: 3/09/2021

Reminder: Agencies must forward the contract approved by the OAG Contract Approval Section along with the email in which the OAG Contract Approval Section approved the contract, to OSC via the Comptroller's EDSS system. If you are not enrolled in the EDSS system and have not made alternative arrangements with OSC on how to submit your transaction, please contact OSC at [REDACTED] or email [REDACTED]

OAG: CAS please file and enter. "P"

Benjamin L. Maggi
Assistant Attorney General
New York State Office of the Attorney General
Contract Approval Section
The Capitol, Albany, NY 12224
[REDACTED]

ATTORNEY CLIENT PRIVILEGED/NOT FOR DISSEMINATION

The information contained in this electronic mail message is privileged and confidential and intended only for the individual or individuals named above. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please reply to the sender immediately to notify us of the error and delete the original message. Thank you.

APPENDIX D

OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY

Whereas, it is the policy of the Office of the State Comptroller (OSC) and the New York State Common Retirement Fund (CRF) to procure goods and services in a fair, equitable and open manner and to protect the procurement process from improper influences; and

Whereas, procurement lobbying activities must be monitored and documented to assure the integrity of the procurement process;

Now, therefore, I, Thomas P. DiNapoli, Comptroller of the State of New York, in consideration of the foregoing, do hereby order as follows;

1. **Applicability.** This executive order applies to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology. Decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, and selections of investment advisors or managers whose services are integral to the administration of CRF investments, remain subject to the Comptroller's fiduciary responsibility to administer the CRF prudently to increase and preserve CRF assets on behalf of its beneficiaries. In addition, selection of counsel to represent the CRF in transactional, investment or litigation matters remain subject to the Comptroller's fiduciary responsibilities. Although such CRF investment decisions and selections are not subject to this executive order, they shall be made in a fair and equitable manner, in accordance with the Comptroller's fiduciary responsibilities.
2. **General Counsel.** The General Counsel shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF. The General Counsel shall form such committees or draw upon OSC staff as needed to fulfill this responsibility.
3. **Procedural Controls.** The General Counsel shall develop, in consultation with the executive staff of OSC, procedural controls in the form of written Procurement Integrity Procedures. Such procedures shall:
 - a. require that decisions made on the award of procurement contracts shall be made in accordance with Article 11 of the State Finance Law, free from any improper influence;
 - b. require that any OSC employee who has direct knowledge of any improper influence or attempted improper influence shall immediately make a record of the improper influence or attempted improper influence relating to a bid, proposal or a procurement contract and notify the General Counsel or appropriate Division of Legal Services staff designated by the General Counsel;
 - c. prohibit contact relating to a bid or proposal, during the procurement process, between all OSC personnel involved in the determination of the procurement contract award and any employee, agent, or consultant of a bidder or proposer competing for the contract, except for contacts authorized by the procedures established pursuant to this executive order;
 - d. establish procedures for appropriate contacts between OSC personnel involved in the determination of a procurement contract award and the employees, agents or consultants of a bidder or proposer for the purpose of clarifying a bid or proposal. Such authorized contacts shall only be for the purpose of providing information to OSC personnel to assist them in understanding and assessing the qualities, characteristics and anticipated performance of a product or service offered by a bidder or proposer, and shall occur only

at such times and in such manner as have been authorized by the procedures established pursuant to this executive order;

- e. provide for appropriate contacts between OSC personnel and the employees, agents or consultants of a proposer for the purpose of negotiating contract terms after the evaluation of bids or proposals and selection of a contractor have been completed;
 - f. establish a process for the review by the General Counsel of any allegations of improper influence or attempted improper influence, and for the imposition of sanctions if such improper activity has been found to exist.
4. Incorporation of Procedural Controls in Contract Documents. The Procurement Integrity Procedures required by this executive order shall be incorporated into all OSC and CRF procurement solicitations and contracts.
 5. Periodic Review. The General Counsel shall periodically review the Procurement Integrity Procedures with OSC personnel in order to ascertain potential areas of exposure to improper influence and to adopt desirable revisions for more effective avoidance of improper influences.
 6. Sanctions. Any OSC employee who violates the Procurement Integrity Procedures may be subject to disciplinary action. Any vendor who violates the Procurement Integrity Procedures may be found to be a non-responsible vendor, and on the basis of such finding, may be ineligible to receive a contract award.

/s/

Thomas P. DiNapoli
Comptroller, State of New York

Last Revised Date: March 14, 2007
Original Date: February 14, 2002

OSC PROCUREMENT INTEGRITY PROCEDURES

In order to ensure that procurements of goods or services¹ by the Office of the State Comptroller (OSC) or the Common Retirement Fund (CRF) are conducted in a fair, equitable and open manner, the procedures set forth below shall apply to the procurement process.

The General Counsel to the Comptroller shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF.

A copy of these Procurement Integrity Procedures will be given to every OSC employee, consultant, or other person assigned to any task related to an OSC or CRF procurement. A copy of these procedures will be incorporated into every Request for Information (RFI), Request for Proposals (RFP) or Invitation for Bids (IFB) issued by OSC or CRF.

Any OSC employee who violates these procedures may be subject to disciplinary action, such as a reprimand, suspension, demotion, or dismissal. Any vendor who violates these procedures may, after notice and an opportunity to be heard, be determined to be a non-responsible vendor, and on the basis of such a determination may be ineligible to receive a contract award.

Every reasonable effort will be made to assure compliance with these procedures, but a minor deviation from these procedures that does not impair the fairness and integrity of the procurement process will not require the invalidation of a contract award.

1. OSC employees must provide every interested vendor² with an equal opportunity to compete. No information may be given to one vendor without being made available to all other interested vendors. Vendors should be asked to submit every substantive question³ concerning the procurement in writing not later than the date specified by OSC for such questions; and a copy of each question, together with OSC's written answer, should be supplied to all interested vendors and included in the procurement record.
2. Unless otherwise directed by the General Counsel to the Comptroller, OSC's Assistant Comptroller for Administration or a designee will serve as the coordinator for all procurement-related contacts between OSC personnel and vendor personnel. All telephone calls, correspondence, and meeting requests must be routed to: Assistant Comptroller for Administration, Office of the State Comptroller, 110 State Street – 13th Floor, Albany, NY 12236, telephone: (518) 474-7574, Fax: (518) 473-9377, Email: RFP@osc.state.ny.us. OSC's Assistant Comptroller for Administration, or a designee, will maintain a record of all such contacts.
3. A vendor may not exert or attempt to exert any improper influence⁴ relating to the vendor's

¹ These procedures apply to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology, except that they do not apply to (i) decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, (ii) selections of investment advisors or managers whose services are integral to the administration of CRF investments, and (iii) selection of counsel to represent the CRF in transactional, investment or litigation matters. Such CRF investment decisions and selections remain subject to the Comptroller's fiduciary responsibilities, and are to be made in a fair and equitable manner in accordance with those responsibilities.

² For the purposes of these procedures, the term "interested vendor" means a person or firm that has received or requested a Request for Information (RFI), an RFP, or an IFB issued by OSC or CRF.

³ For the purposes of these procedures, the term "substantive question" means an inquiry concerning a material requirement of the procurement process, such as a technical specification or a financial prerequisite. The term does not apply to ministerial matters, such as the time and place or manner of submitting a bid or proposal.

⁴ For the purposes of these procedures, the term "improper influence" means any attempt to achieve preferential, unequal, or favored consideration of a bid or proposal based on considerations other than the merits of the proposal, including but not limited to, any conduct prohibited by the Ethics in Government Act, as set forth in Public Officers Law sections 73 and 74.

bid or proposal. Any OSC employee who has direct knowledge of any improper influence or attempt to exert an improper influence concerning a procurement contract shall immediately make a record of the improper influence or attempted improper influence and notify the General Counsel to the Comptroller. The General Counsel to the Comptroller shall thereupon cause an investigation to be made and shall recommend such action, if any, as may be necessary.

4. Unless otherwise directed by the General Counsel to the Comptroller, OSC's Assistant Comptroller for Administration or a designee will be responsible for approving and scheduling all contacts between OSC employees and vendor personnel concerning procurements.
5. Vendors are expected to obtain information relating to an OSC or CRF procurement only from an OSC employee or other person designated by OSC. Vendors who seek information from other sources are cautioned that they rely on such information at their own risk.
6. Every IFB and RFP shall require vendors to identify in their bids or proposals the persons authorized to represent the vendor by name, address, telephone number, place of principal employment and occupation. This requirement applies not only to vendor employees involved in the submission of the vendor's bid or proposal but also to every individual or organization employed or designated by the vendor to attempt to influence the procurement process⁵. If, after submission of a bid or proposal, a vendor retains an individual or organization to attempt to influence the procurement process, then the name, address, telephone number, place of principal employment and occupation of such individual or organization shall be disclosed in writing to OSC or CRF prior to any contact with OSC or CRF and such disclosure shall be included in the procurement record. IFBs and RFPs shall require that vendors indicate in their bids or proposals or subsequent disclosures whether each contact individual or organization has a financial interest in the procurement.
7. All contacts between OSC personnel and vendor personnel during which a procurement-related matter is discussed in any way must be by telephone, in writing, or in person at the place of business of OSC or the vendor or at a place designated by OSC. Written documentation of all such discussions must be filed by the Assistant Comptroller for Administration or designee in the procurement record.
8. During the procurement process no lunch, dinner, or other meal shall be accepted by a member of the OSC staff from an interested vendor, except that a presentation, interview or similar session occurring at the place of business of OSC or a vendor or at a place designated by OSC may include a refreshment break.
9. The evaluations of competing bids or proposals and the recommendations and deliberations of OSC evaluation or selection committees shall be based solely on the merits of the bids or proposals, free from any improper influence.
10. Prior to the public release by OSC or CRF of an Invitation for Bids (IFB) or Request for Proposals (RFP), no OSC employee may disclose the contents of any portion of an IFB or RFP to any person not employed by OSC or any other person not authorized by the Assistant Comptroller for Administration or designee unless such disclosure is specifically authorized by the Assistant Comptroller for Administration, who shall only authorize such disclosure if he or she determines that such disclosure will not impair the fairness and integrity of the procurement process.

⁵ For the purposes of these procedures, the term "attempt to influence the procurement process" means any attempt to influence any determination by OSC or CRF by a person other than an OSC employee with respect to (i) the solicitation, evaluation or award of a procurement contract; or (ii) the preparation of specifications or request for submissions of bids or proposals for a procurement contract.

11. The evaluation of competing bids or proposals shall be conducted strictly in accordance with the detailed evaluation and selection procedures documented in the procurement record prior to the initial receipt and opening of the bids or proposals. The Assistant Comptroller for Administration or a designee shall issue the detailed evaluation and selection procedures to the members of the evaluation and selection committees prior to the distribution of the bids or proposals to the committee members for evaluation.
12. During the evaluation and selection phases of the procurement process, no OSC employee may disclose any part of a bid or proposal to any other person, except that (i) a member of an evaluation or selection committee may discuss a proposal with another member of the same committee, and (ii) a member of an evaluation or selection committee may disclose a proposal or a portion of a proposal to a person assigned to assist in the evaluation or selection process, as described below.
13. With the approval of the Assistant Comptroller for Administration or designee, evaluation or selection committees may appoint OSC employees or other experts to provide supporting services or information to assist in the evaluation of proposals and the selection of a contractor.
14. At the discretion of the Assistant Comptroller for Administration or a designee, any person to whom a bid or a proposal or a portion of a bid or a proposal is disclosed may be required to comply with a written non-disclosure or confidentiality agreement setting forth the terms and conditions under which such person is entrusted with the bid or proposal or portion thereof.

October 11, 2011