

**WASHINGTON STATEWIDE  
CUSTODY PROVIDER PROGRAM**

**Agreement**

for

**Custody Services**

APRIL 1, 2016

**WASHINGTON STATEWIDE CONTRACT  
FOR SECURITY CUSTODY SERVICES**

**Table of Contents**

<b>GENERAL PROVISIONS.....</b>	<b>1</b>
1. CONTRACTING PARTIES .....	1
2. HEREBY WITNESSETH .....	1
3. ADDITIONAL SERVICES .....	1
4. ENTIRE AGREEMENT; MODIFICATION; AMENDMENT .....	1
5. DEFINITIONS .....	2
6. APPOINTMENT OF CUSTODIAN .....	3
7. PERSONAL LIABILITY .....	3
8. LIABILITY AND HOLD HARMLESS .....	3
9. SEVERABILITY .....	4
10. NONDISCRIMINATION AND AFFIRMATIVE ACTION .....	4
11. GIFTS AND GRATUITIES .....	5
12. RIGHTS AND REMEDIES .....	5
13. PERFORMANCE .....	6
14. GOVERNING LAW; JURY TRIAL .....	6
15. SUBCONTRACT/ASSIGNMENT .....	6
16. SCOPE OF SERVICES .....	6
<b>AGREEMENT TERM AND TERMINATION .....</b>	<b>7</b>
17. TERM OF AGREEMENT AND SURVIVORSHIP OF TERMS .....	7
18. TERMINATION AND REMEDIES .....	7
19. FORCE MAJEURE .....	10
20. CONFLICT OF INTEREST .....	10
<b>CONTRACT ADMINISTRATION .....</b>	<b>11</b>
21. INCORPORATED DOCUMENTS .....	11
22. ORDER OF PRECEDENCE .....	11
23. ENTIRE AGREEMENT .....	11
24. LIMITATION OF AGENCY'S AUTHORITY .....	12
25. AGENCY CONTRACT ADMINISTRATOR .....	12
26. BANK'S ACCOUNT MANAGER .....	12
27. AMENDMENTS .....	12
28. DISPUTES .....	12
29. CONSENT .....	13
<b>BANK RESPONSIBILITIES .....</b>	<b>13</b>
30. RESPONSIBILITY OF BANK .....	13
31. CONFIDENTIALITY OF AGENCY RECORDS .....	14
32. AUDITING .....	15

33.	COMMITMENTS, WARRANTIES, AND REPRESENTATIONS .....	15
34.	PRICE INCREASES .....	17
35.	ANCILLARY SERVICES .....	17
36.	PROPER INSTRUCTIONS AND EVIDENCE OF AUTHORITY .....	17
37.	SECURITY CODES.....	18
38.	REGISTRATION WITH THE DEPARTMENT OF REVENUE .....	18
39.	LICENSING AND ACCREDITATION STANDARDS .....	18
40.	WORKERS' COMPENSATION INSURANCE COVERAGE .....	18
41.	ADVERTISING .....	18
<b>CUSTODY PROVISIONS.....</b>		<b>19</b>
42.	CUSTODY OF SECURITIES .....	19
43.	NOTICES .....	22
<b>PAYMENT PROVISIONS .....</b>		<b>23</b>
44.	PAYMENTS .....	23
45.	TAXES.....	23
46.	INDEPENDENT CAPACITY .....	24
47.	ADVANCE PAYMENTS PROHIBITED .....	24
48.	AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE "ADA" 28 CFR PART 35.....	24
49.	ATTORNEY'S FEES.....	24
50.	COPYRIGHT PROVISIONS.....	24
51.	COVENANT AGAINST CONTINGENT FEES.....	25
52.	DISALLOWED COSTS.....	25
53.	DUPLICATE PAYMENT.....	25
54.	TREATMENT OF ASSETS.....	25
55.	PRIVACY.....	26
56.	WAIVER.....	27
57.	SEVERABILITY.....	27
<b>MISCELLANEOUS .....</b>		<b>27</b>
58.	COUNTERPARTS.....	27
<b>CONTRACT EXECUTION .....</b>		<b>28</b>
59.	RELATIONSHIP BETWEEN THE PARTIES .....	28
60.	SIGNATURE BLOCKS.....	28

**WASHINGTON STATEWIDE AGREEMENT  
FOR CUSTODY SERVICES**

**GENERAL PROVISIONS**

**1. CONTRACTING PARTIES**

THIS AGREEMENT is entered into by and between \_\_\_\_\_, hereinafter referred to as the "Agency" and Wells Fargo Bank, N.A. hereinafter referred to as the "Bank."

**2. HEREBY WITNESSETH**

The State of Washington, acting by and through the OFFICE OF THE STATE TREASURER of the STATE OF WASHINGTON, issued a Request for Proposal (RFP), dated October 30, 2015, for the purpose of obtaining proposals for providing statewide custody services.

As a result of that process, the State Treasurer has designated the Bank as the provider of statewide custody services ("Statewide Custodian"), and the Bank has agreed to provide Statewide Custody Services, hereinafter referred to as the "Services," as described in Bank's proposal, attached hereto at the prices stated therein, in accordance with the terms of this Agreement.

**3. ADDITIONAL SERVICES**

The Parties agree that additional services, appropriate to the scope of this Agreement, may be added to this Agreement by written amendment and only with the written consent of both parties. Such writing shall include a specific description of the additional services, pricing, and additional terms and conditions as relevant. The additional services shall be available under the same terms and conditions established herein except as specifically amended between the parties.

**4. ENTIRE AGREEMENT; MODIFICATION; AMENDMENT**

The Agency and the Bank agree that this Agreement is the complete and exclusive agreement between the parties which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

Unless otherwise agreed in writing, all amendments, addenda, and orders signed during the life of this Agreement shall be governed by these General Provisions.

## 5. DEFINITIONS

Definitions as used throughout this Agreement shall have the meanings set forth below:

**"Bank"** shall mean Wells Fargo Bank, N.A. It shall also include any Subcontractor retained by the Bank as permitted under the terms of this Agreement.

**"Bank's Account Manager"** shall mean an employee of the Bank who is permanently assigned as the primary contact person with whom the Agency Contract Administrator shall work for the duration of this Agreement.

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

**"Business Day"** shall mean any day on which the Bank, Book-Entry System and relevant Depositories are open for business.

**"Custody Services"** may also be referred to as "Services," and shall be inclusive of all services, including associated support services and maintenance provided pursuant to this Agreement.

**"Depository"** shall include the Book-Entry System, the Depository Trust Company (DTC), and any other securities depository, book-entry system, or clearing agency (and their respective successors and nominees) authorized to act as a securities depository, book-entry system, or clearing agency pursuant to applicable law.

**"Exhibit A"** shall mean the Request for Proposal (RFP) for Statewide Custody Services issued by the Office of the State Treasurer, dated October 30, 2015.

**"Exhibit B"** shall mean the Bank's proposal in response to the State RFP for Statewide Custody Services.

**"Exhibit C"** shall mean the Bank's schedule of fees for all Services provided under this Agreement.

**"RCW"** shall mean the Revised Code of Washington (Washington State law).

**"Agency Contract Administrator"** shall mean the staff person appointed by the Agency to administer this Agreement on behalf of the Agency.

**"Subcontractor"** shall mean one not in the employment of the Bank, who is performing all or part of those Services under this Agreement under a separate

contract with the Bank. The term "Subcontractor" means Subcontractor(s) of any tier.

**6. APPOINTMENT OF CUSTODIAN**

The Agency, in accordance with RCW 43.08.015, hereby appoints the Bank as Custodian for certain assets of the Agency and authorizes the Bank to hold such assets in registered form in its name or the name of its nominees. All property delivered to the Bank, its agents, or Subcustodians, shall be held and dealt with as herein provided. The Bank hereby accepts this appointment.

**7. PERSONAL LIABILITY**

It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the Agency be in any way personally liable or responsible for any covenant or agreement herein contained, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

**8. LIABILITY AND HOLD HARMLESS**

**8.1** The Bank shall be liable to the Agency for any direct money damages that are caused by the Bank's own negligence, fraud, or failure to exercise Due Care as defined in Section 30, in the Bank's performance of its duties under this Agreement. For the purposes of this Agreement, direct money damages shall include, but not be limited to, those situations where interest charges are incurred by the Agency or any loss of earnings occurs that would otherwise have been realized by the Agency through an overnight investment of funds, and where such interest charges or loss of earnings are caused by the Bank's own negligence, fraud, or failure to exercise Due Care, as defined in Section 30. In no event shall the Bank be liable to the Agency or any third party for special, indirect or consequential damages, or lost profits or loss of business, arising in connection with this Agreement.

**8.2** Each party to this Agreement agrees to hold harmless the other party, to the extent authorized by law, from all losses (excluding attorneys' fees and expenses) which relate to or result from lawsuits brought by non-parties to this Agreement from activities covered by this Agreement from:

**8.2.1** A failure by a party or its subsidiaries, affiliates, agents, Subcontractors, representatives, or employees to comply with any applicable federal, state, or local law, rule, or regulation;

**8.2.2** A negligent act or omission or the breach of this Agreement (as defined in subsection 18.3) by a party, its subsidiaries, affiliates, agents, Subcontractors, representatives, or employees; or a failure to exercise Due Care as defined in subsection 30.1 herein (“Covered Lawsuit”).

**8.3** Nothing in this section shall be construed to mean either party is prevented from commencing a legal action against the other.

**8.4** Any right to indemnification is contingent on the party claiming indemnification (“Indemnitee”) providing: the party from whom payment is claimed (“Indemnitor”) with: timely notice of the Covered Lawsuit and; the right to meaningful participation (at Indemnitor’s expense) in any defense or settlement proceedings.

## **9. SEVERABILITY**

Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the document.

## **10. NONDISCRIMINATION AND AFFIRMATIVE ACTION**

During the performance of this Agreement, the Bank shall comply with all federal and state nondiscrimination statutes and regulations. These requirements include, but are not limited to:

**10.1 Nondiscrimination in Employment.** The Bank shall not discriminate against any employee or applicant for employment in violation of RCW 49.60.

**10.2 Nondiscrimination in Client Services.** The Bank shall not in violation of RCW 49.60:

**10.2.1** Deny an individual any services or other benefits provided under this Agreement;

**10.2.2** Provide any service(s) or other benefits to an individual which are different, or are provided in a different manner, from those provided to others under this Agreement;

**10.2.3** Subject an individual to segregation or separate treatment in any manner related to the receipt of any service(s) or other benefits provided under this Agreement; or

**10.2.4** Deny any individual an opportunity to participate in any program provided by this Agreement through the provision of services or otherwise, or afford any opportunity which is different from that afforded others under this Agreement.

**10.3** The Bank, in determining (1) the types of services or other benefits to be provided; or (2) the class of individuals to whom, or the situation in which, such services or other benefits will be provided; or (3) the class of individuals to be afforded an opportunity to participate in any services or other benefits, will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination in violation of RCW 49.60.

**10.4 Noncompliance With Nondiscrimination Requirements.** In the event of the Bank's noncompliance or refusal to comply with the nondiscrimination requirements, this Agreement may be rescinded, canceled, or terminated in whole or in part, and the Bank may be declared ineligible for further contracts with the Agency. The Bank shall, however, be given a reasonable time in which to cure the noncompliance. Any dispute may be resolved in accordance with the Disputes section set forth in this Agreement.

## **11. GIFTS AND GRATUITIES**

**11.1** In accordance with RCW 42.52, Ethics in Public Service Act, it is unlawful for any person to accept, directly or indirectly, any compensation, gratuity, or reward in connection with this Agreement from any person beneficially interested therein. The Bank is required at all times to comply with all provisions of RCW 42.52.

**11.2** The Agency may terminate this Agreement, by written notice to the Bank, if it is found after due notice and examination that there is a violation by the Bank of the Ethics in Public Service Act, RCW 42.52, or any other similar statute involving the Bank in its performance under this Agreement.

In the event this Agreement is terminated as provided in sub-section 11.2 above, the Agency shall be entitled to pursue the same remedies against the Bank as it could pursue in the event of a breach of this Agreement by the Bank. The rights and remedies of the Agency provided by this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

## **12. RIGHTS AND REMEDIES**

In the event of any claim for default or breach of contract, no provision in this document nor in the Bank's proposal for services shall be construed, expressly or

by implication, as a waiver by the Agency of any right to insist upon the strict performance of any term or condition of the Agreement or to exercise or delay the exercise of any right or remedy provided in the Agreement or by law, or as the acceptance of (or payment for) materials, equipment, or services, or to release the Bank from any responsibilities or obligations imposed by this Agreement or by law.

**13. PERFORMANCE**

Acceptance by the Agency of unsatisfactory performance with or without objection or reservation shall neither waive the right to claim damage for breach nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by the Bank.

**14. GOVERNING LAW; JURY TRIAL**

This Agreement shall be governed in all respects by, and construed in accordance with, the law and statutes of the state of Washington. The venue of any action hereunder shall be exclusively in the Superior Court for \_\_\_\_\_ County, Washington. The Bank, by execution of this Agreement, acknowledges the jurisdiction of the courts of the State of Washington in this matter.

**15. SUBCONTRACT/ASSIGNMENT**

The Bank shall not subcontract or assign its obligations under this Agreement without the prior written consent of the Contract Administrator. The Bank shall be responsible to ensure that all requirements of the Agreement shall be communicated to any and all Subcontractors.

Substitution of another financial institution to act as the Bank under this Agreement may occur in the event of a takeover, merger, or acquisition. In this event, the successor bank shall provide an automatic continuation of all terms of this Agreement, provided the successor bank can meet all required terms of the Agreement. However, the Agency reserves the right to terminate the Agreement in the event a successor bank is substituted, after providing 60 calendar days' written termination notice.

**16. SCOPE OF SERVICES**

The Bank agrees to provide custody, record keeping, and cash management, as further described in the Office of the State Treasurer RFP (Exhibit A) and the Bank's Proposal (Exhibit B), under the terms of this Agreement, subject to the provisions of Section 4 - Consideration.

## **AGREEMENT TERM AND TERMINATION**

### **17. TERM OF AGREEMENT AND SURVIVORSHIP OF TERMS**

This Agreement shall commence on \_\_\_\_\_ and continue until March 31, 2020 (or thereafter pursuant to extensions provided for in this paragraph), unless the Bank is no longer serving as Statewide Custodian, in which case this Agreement shall terminate upon the termination or expiration of the Bank's service as Statewide Custodian. Annually the term of this Agreement will be automatically extended for a period of one year, with the total contract period including extensions not to exceed eight years.

The Bank is not obliged to offer this contract for a time period of less than one year.

### **18. TERMINATION AND REMEDIES**

**18.1 Termination for Convenience.** The Agency may terminate this Agreement, in whole or in part, at any time and for any reason by giving 90 calendar days' written termination notice to the Bank. The Bank may terminate this Agreement, by giving 180 days' written termination notice to the Agency.

**18.2 Termination for Reduction of Funding or Withdrawal of Authority.** In the event that either funding from the Agency or other sources is withdrawn, reduced, or limited, or the authority of the Agency to perform any of its duties is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to its normal completion, the Agency may terminate this Agreement, in whole or in part, at any time by giving 60 calendar days' written termination notice to the Bank.

**18.3 Termination for Breach.** Except in the case of delay or failure resulting from circumstances beyond the control of and without the fault or negligence of the Bank or of the Bank's suppliers or Subcontractors, the Agency shall be entitled, by written or verbal notice, to cancel this Agreement in its entirety or in part, for breach of any of the terms herein, and to retain all other rights against the Bank by reason of the Bank's breach as provided by law.

A breach shall mean one or more of the following events: (1) the Bank fails to perform the services by the time and date required and such failure is not caused by a force majeure event; (2) the Bank breaches any warranty, or fails to perform or comply with any term in the Agreement; (3) the Bank fails to exercise Due Care as to any aspect of this Agreement, with Due Care being defined in subsection 30.1; or (4) the Bank makes any general assignment of the assets held pursuant to this Agreement for

the benefit of creditors; If it is subsequently found that the Bank was not in breach, the rights and obligations of the parties shall be the same as if a Notice of Termination had been issued pursuant to subsection 18.1.

The Agency Contract Administrator shall issue a written notice of breach providing a period not to exceed 30 days in which the Bank shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate the Bank's liability for damages.

If the breach remains after the Bank has been provided the opportunity to cure, the Agency may do one or more of the following:

**18.3.1** Exercise any remedy provided by law;

**18.3.2** Terminate this Agreement and any related contracts or portions thereof, by written or verbal notice;

**18.3.3** Seek damages.

**18.4 Termination by Mutual Agreement.** The Agency and the Bank may terminate this Agreement in whole or in part, at any time, by mutual agreement.

**18.5 Termination Procedure.** Upon termination of this Agreement, the Agency, in addition to any other rights provided in this Agreement, may require the Bank to deliver to the Agency any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

The Agency shall pay to the Bank the agreed upon price, if separately stated, for completed work and services accepted by the Agency, and the amount agreed upon by the Bank for (a) completed work and services for which no separate price is stated, (b) partially completed work and services, (c) other property or services which are accepted by the Agency, and (d) the protection and preservation of property, unless the termination is for default, in which case the Agency shall determine the extent of the liability of the Agency. Failure to agree with such determination shall be a dispute within the meaning of Section 28, "Disputes" of this Agreement. The Agency may withhold from any amounts due to the Bank such sum as the Agency determines to be necessary to protect the Agency against potential loss or liability.

The rights and remedies of the Agency provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**18.6 Termination-Related Obligations Antecedent to Date of Termination.**

Upon nearing the end of the final term of this Agreement, and without respect to either the cause or time of such termination, the Bank shall take all reasonable and prudent measures to facilitate the transition to a successor custodian's system.

The Bank shall provide, at any time during the nine (9) months preceding termination, such non-proprietary, non-confidential information about the Bank's systems as will be reasonably required by the Agency and/or the successor for purposes of planning the transition and conversion to the successor's system.

**18.7 Obligations Upon Termination.** After receipt of a notice of termination, and except as otherwise directed by the Agency Contract Administrator, the Bank shall:

**18.7.1** Stop work under the Agreement on the date, and to the extent, specified in the notice;

**18.7.2** Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;

**18.7.3** Assign to the Agency, in the manner, at the times, and to the extent directed by the Agency Contract Administrator all of the rights, titles, and interest of the Bank under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

**18.7.4** Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agency Contract Administrator to the extent he or she may require, which approval or ratification shall be final for all the purposes of this clause;

**18.7.5** Transfer title to the Agency and deliver in the manner, at the times, and to the extent, if any, as directed by the Agency Contract Administrator, any property which, if the Agreement had been completed, would have been required to be furnished to the Agency;

**18.7.6** Complete performance of such part of the work as shall not have been terminated; and

**18.7.7** Take such action as may be necessary, or as the Agency Contract Administrator may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Bank and in which the Agency has or may acquire an interest and to transfer that property to the successor Bank.

By such termination, neither the Agency nor the Bank may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

## **19. FORCE MAJEURE**

**19.1 Definition.** Neither party shall be liable to the other or deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising Due Care. Force majeure shall include acts of God, war, riots, strikes, fire, floods, earthquakes, epidemics, or other similar occurrences.

**19.2 Allocation of Service.** When force majeure affects only part of the Bank's capacity to perform, the Bank may allocate services among its customers, including regular customers not included in this Agreement, in any manner which is fair and reasonable.

**19.3 Notification.** If either party is delayed by force majeure, said party shall provide reasonable notice that there will be delay or non-delivery of reports or services. The notification shall provide evidence of the force majeure to the reasonable satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement.

**19.4 Rights Reserved.** The Agency reserves the right to cancel the Agreement and/or purchase services from the best available source during the time of force majeure, and Bank shall have no recourse against the Agency.

## **20. CONFLICT OF INTEREST**

The Bank warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement.

## **CONTRACT ADMINISTRATION**

### **21. INCORPORATED DOCUMENTS**

This Agreement shall consist of the terms and conditions as set forth herein, and the following documents which are incorporated herein by reference:

- 21.1** “**Exhibit A**” - The Request for Proposal (RFP) for Statewide Custody Services, dated October 30, 2015.
- 21.2** “**Exhibit B**” - The Bank's proposal in response to the State RFP for Statewide Custody Services.
- 21.3** "**Exhibit C**" - The Bank's schedule of fees for all Services provided under this Agreement.

### **22. ORDER OF PRECEDENCE**

- 22.1** The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions.
- 22.2** If any provision of this Agreement shall be deemed to be in conflict with state or federal law, such provisions shall be deemed modified to conform with said law. In the event of any inconsistency in this Agreement, the inconsistency shall be resolved in the order of precedence stated below:
  - 22.2.1** Applicable Federal and State Statutes and Regulations.
  - 22.2.2** The Terms and Conditions of this Agreement.
  - 22.2.3** **Exhibit A** - The Request for Proposal (RFP) for Statewide Custody Services issued by the Office of the State Treasurer, dated October 30, 2015.
  - 22.2.4** **Exhibit B** - The Bank's proposal in response to the State RFP for Statewide Custody Services.
  - 22.2.5** **Exhibit C** –The Bank’s schedule of fees for all Services provided under this Agreement.

### **23. ENTIRE AGREEMENT**

This document, including all addenda and subsequent amendments, comprises the entire agreement between the Agency and the Bank and shall be governed by the laws of the State of Washington incorporated herein by reference.

**24. LIMITATION OF AGENCY'S AUTHORITY**

Only the Agency Contracting Officer, or delegate by writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding until made in writing and signed by the Agency and the Bank unless otherwise provided herein.

**25. AGENCY CONTRACT ADMINISTRATOR**

The Agency shall appoint an individual who will be the Contract Administrator for this Agreement and will provide oversight of the activities conducted hereunder. The Agency Contract Administrator will manage this Agreement on behalf of the Agency, and will be the Agency point of contact for the Bank concerning the Bank's performance hereunder. The Agency shall notify the Bank, in writing, when there is a change in staffing and a new Contract Administrator is assigned to this Agreement.

**26. BANK'S ACCOUNT MANAGER**

The Bank shall appoint an individual who will be the Account Manager for the Agency account. The Bank's Account Manager will be the principal point of contact for the Agency concerning the Bank's performance hereunder. The Bank's Account Manager will also serve as the focal point for business matters, support coordination, and administrative activities. The Bank shall notify the Agency in writing if a new Account Manager is assigned.

**27. AMENDMENTS**

No modifications or amendments to this Agreement shall be effective unless it is in a written amendment signed by an authorized officer of the Bank and an individual duly authorized on behalf of the Agency.

**28. DISPUTES**

**28.1** Except as otherwise provided in this Agreement, when a bona fide dispute concerning a question of fact arises between the Agency and the Bank and it cannot be resolved, either party may initiate the dispute resolution procedure provided herein.

**28.2** Time is of the essence in resolving disputes. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party must respond in writing within two (2) Agency working days. Then, both parties shall have three (3) Agency working days to negotiate in good faith to resolve the dispute.

**28.3** Both parties agree to exercise good faith in dispute resolution and to avoid arbitration and litigation whenever reasonably possible. Nothing in this Agreement shall prevent either party, after the expiration of the three (3) day period in subsection 28.2, from pursuing other methods of dispute resolution.

**28.4** The Agency and the Bank agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement which are not affected by the dispute.

## **29. CONSENT**

Both parties agree that whenever a party's consent is required under the terms of this Agreement, that consent shall not be unreasonably delayed or withheld.

## **BANK RESPONSIBILITIES**

### **30. RESPONSIBILITY OF BANK**

**30.1** The Bank shall perform its duties hereunder with “Due Care.” For the purposes of this agreement, “Due Care” shall mean the degree of care and skill demonstrated by agents acting in like capacity as a safekeeping custodian. The Bank shall not be responsible for the title, validity, or genuineness, including good deliverable form, of any property or evidence of title thereto received by it or delivered by it pursuant to this Agreement. The Bank may at its discretion appoint and remove agents or Subcustodians to carry out such of the provisions of this Agreement as the Bank may from time to time direct; provided, however, that such appointment shall not relieve the Bank of its responsibilities or liabilities under this Agreement, and provided further that any depository selected with Due Care by the Bank shall not be deemed for purposes of this Agreement an agent or Subcustodian of the Bank.

**30.2** Provided always that the Bank and its agents and Subcustodians act in good faith and with the exercise of Due Care in performance of such duties as would ordinarily be expected of a financial institution in the relevant market and subject to the terms of the Agreement:

**30.2.1** It is not liable for any loss or damage caused by the delay or failure of any central bank, any depository, or any commercially prevalent payment or clearing system to deliver to or for the Bank or its Subcustodians securities purchased or sold, or to make or receive and remit, any payment in connection with purchases or sales of securities, for delays or failures in providing corporate action notices, or for delays or inability by the Bank to perform its duties

due to acts or omissions of any depository or to disorder in market infrastructure with respect to any particular security, security exchange, central depository, or clearing system; and

**30.2.2** It is not liable for any delay or failure of any non-parties, company, corporation, or other body in charge of registering or transferring securities in the name of the Bank, any customer of the Bank, or the Subcustodian, its nominee or agent, or for any consequential losses arising out of such delay or failure to transfer such securities including non-receipt of bonus, dividends, and rights and other accretions or benefits.

**30.2.3** The Bank's performance under this Agreement is subject to any relevant regulations, as well as the rules, operating procedures and practices of any relevant stock exchange, clearing systems or depositories or market where or through which Proper Instructions are to be carried out and to which the Bank is subject and as exist in the market in which any securities or cash are held.

**30.2.4** The Bank shall be under no obligation to take action to collect any amount payable on securities in default, or if payment is refused after due demand and presentment. The Bank shall have no duty or responsibility to inquire into, make recommendations, supervise, or determine the suitability of any transactions affecting any of the Agency's accounts ("Account").

**30.2.5** The Bank may debit the Account for fees and expenses payable hereunder which remain in arrears for over 60 days.

**30.2.6** The Bank shall have no duties or responsibilities whatsoever except such duties and responsibilities as are specifically set forth in this Agreement, and no covenant or obligation shall be implied against the Bank in connection with this Agreement.

## **31. CONFIDENTIALITY OF AGENCY RECORDS**

**31.1** The Bank acknowledges that material and information which has or will come into its possession or knowledge in connection with this Agreement or its performance, may consist of confidential and proprietary data, the disclosure of which to, or use by, third parties could be damaging.

**31.2** Access to information concerning the Agency or individual recipients of the Agency's services shall not be granted except as authorized by law or in writing by the Agency.

**31.3** The Bank, therefore, agrees to hold all such material and information in strictest confidence, not to make use thereof other than for the performance of this Agreement, to release it only to authorized employees requiring such information, and not to release or disclose it to any other party.

**31.4** Notwithstanding anything apparently to the contrary in the preceding provisions of this section, the Bank may release the material and information described in this section to authorized bank examiners and to its internal and external auditors for official use and may also release it pursuant to a subpoena or other order issued by a court of competent jurisdiction, as otherwise required by law or regulation, and to its attorneys, agency or affiliates having the need to know the same, provided that the Bank advises such recipient of the confidential nature of the information being disclosed. The Bank shall promptly notify the Agency of any such subpoena or order upon its receipt.

## **32. AUDITING**

The Bank shall permit representatives of the Agency, an auditor selected by the Agency, and/or the Auditor of the State of Washington or their authorized assistant to examine the records of the Bank relating to the services rendered under this Agreement, including securities transactions. Such audits may include, but are not limited to, examination of the securities themselves. If the Bank has contracted for deposit of the securities with another bank, the Bank shall require its Subcontractor to provide similar access to the designated Agency officials or their representatives. Any audits required by this section which do not necessitate the compilation of records in addition to those which are otherwise required by other sections of this Agreement may be conducted without notice. Any audits required by this section which require the compilation of records in addition to those which are otherwise required by this Agreement may be conducted upon reasonable written notice from the Agency to the Bank. The provisions of this section shall remain in effect for eighteen (18) months after the expiration, or sooner termination, of this Agreement. Records of Agency transactions must be kept and maintained by the Bank for a period of no less than seven (7) years from the date of the transaction.

## **33. COMMITMENTS, WARRANTIES, AND REPRESENTATIONS**

**33.1** Any written commitment by the Bank within the scope of this Agreement shall be binding upon the Bank. Failure of the Bank to fulfill such a commitment may constitute breach and shall render the Bank liable for damages due the Agency under the terms of this Agreement.

**33.2** For purposes of this Agreement, a commitment by the Bank, which must be in writing, includes: (1) prices and options committed to remain in

force over a specified period(s) of time; (2) any warranty or representation made by the Bank in a proposal as to Service performance; (3) any warranty or representation made by the Bank concerning the characteristics of items in (2) above, contained in any literature, descriptions, or specifications accompanying or referred to in a proposal; (4) any modification of or affirmation or representation as to the above which is made by the Bank in writing whether or not incorporated into a formal amendment to the proposal in question; and (5) any representation by the Bank in a proposal, supporting documents or amendments thereto as to services to be performed, prices, and options committed to remain in force over a fixed period of time, or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this Agreement.

**33.3** The Agency hereby represents and warrants, which representations and warranties shall be continuing and shall be deemed to be reaffirmed upon each Proper Instruction given by the Agency, that:

(a) The Agency is duly organized and existing under the laws of the jurisdiction of its organization, with full power to carry on its business as now conducted, to enter into this Agreement and to perform its obligations hereunder;

(b) This Agreement has been duly authorized, executed and delivered by the Agency, constitutes a valid and legally binding obligation of the Agency, enforceable in accordance with its terms, and no statute, regulation, rule, order, judgment or contract binding on the Agency prohibits the Agency's execution or performance of this Agreement; and

(c) Either the Agency owns the securities in the Account free and clear of all liens, claims, security interests and encumbrances (except those granted herein) or, if the securities are owned beneficially by others, the Agency has the right to pledge such securities to the extent necessary to secure the Agency's obligations hereunder, free of any right of redemption or prior claim by the beneficial owner. The Bank's security interest pursuant to Section 42.3.4.1 hereof shall be a first lien and security interest subject to no setoffs, counterclaims or other liens prior to or on a parity with it in favor of any other party (other than specific liens granted preferred status by statute), and the Agency shall take any and all additional steps which are required to assure the Bank of such priority and status, including notifying third parties or obtaining their consent to, the Bank's security interest.

#### **34. PRICE INCREASES**

**34.1** The Bank agrees to provide the Services at the costs, rates, and fees set forth in **Exhibit C**, Custody Fee Schedule. No other costs, rates, or fees shall be payable to the Bank for services covered under this Agreement.

#### **35. ANCILLARY SERVICES**

**35.1 Contingency Plan.** The Bank shall have a comprehensive contingency plan for timely disaster recovery in the event systems are rendered inoperative due to fire, flood, or other disaster.

**35.2 Pricing Services.** To the extent that the Bank provides values of, and pricing information with respect to, securities, the Bank is authorized to utilize generally recognized pricing services (including brokers, dealers, and market makers). The Bank shall not be liable or responsible for or be under any duty to inquire into, nor be deemed to make any assurances or warranties with respect to, the accuracy or completeness of such values or information, even if the Bank, in performing services for itself and others, including services similar to those performed for the Agency, receives different valuations of the same or similar securities of the same issuer. In the event such services are unable to provide a value of or pricing information with respect to securities, and the Bank, nevertheless, provides values and pricing information, the Bank shall so advise the Agency, but shall have no other obligation or liability with respect to such valuation or pricing information.

#### **36. PROPER INSTRUCTIONS AND EVIDENCE OF AUTHORITY**

The term "Proper Instructions" shall mean instructions received by the Bank from the Agency or any person duly authorized by it. Such instructions may be in writing signed by the authorized person or may be in a tested communication or in a communication utilizing access codes effected between electro-mechanical or electronic devices or may be by such other means as may be agreed to from time to time by the Bank and the party giving such instructions (including, without limitation, oral instructions if so agreed). The Agency shall cause its duly authorized officer to certify to the Bank in writing the names and specimen signatures of persons authorized to give proper instructions. The Bank shall be entitled to rely upon the identity and authority of such persons until it receives notice from the Agency to the contrary.

The Bank shall be protected in acting upon any instructions, notice, request, consent, certificate, instrument, or paper reasonably believed by it to be genuine and to have been properly executed or otherwise given by or on behalf of the Agency. The Bank may receive and accept a certificate from the Agency as 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 the Agency as described in such certificate, and such certificate may be considered as in full force and effect until receipt by the Bank of written notice to the contrary.

**37. SECURITY CODES**

If the Bank has issued security codes or passwords to the Agency in order that the Bank may verify that certain transmissions of information, including proper instructions, have been originated by the Agency, the Bank shall, to the extent authorized by law, be without liability to the Agency for any action taken or omitted by it in reliance upon receipt by the Bank of transmissions of information with the proper security code or password, including instructions purporting to be proper instructions, which the Bank reasonably believes to be from the Agency.

**38. REGISTRATION WITH THE DEPARTMENT OF REVENUE**

The Bank shall complete registration with the Department of Revenue, Olympia, Washington 98504, and be responsible for payment of all taxes due on payments made under this Agreement.

**39. LICENSING AND ACCREDITATION STANDARDS**

The Bank shall comply with all applicable federal and state licensing requirements and standards necessary in the performance of this Agreement.

**40. WORKERS' COMPENSATION INSURANCE COVERAGE**

The Bank shall provide or purchase applicable workers' compensation insurance coverage prior to performing work under this Agreement. The Agency will not be responsible for payment of industrial insurance premiums for the Bank or any Subcontractor or employee of the Bank, which might arise under the workers' compensation insurance laws during performance of duties and services under this Agreement. Should the Bank fail to secure workers' compensation insurance coverage or fail to pay premiums on behalf of its employees, the Agency may deduct the amount of premiums owing from the amounts payable to the Bank under this Agreement and transmit the same to the appropriate workers' compensation insurance fund.

**41. ADVERTISING**

The Bank shall not advertise or publish information concerning this Agreement in any form or media without prior written consent from the Agency.

## CUSTODY PROVISIONS

### 42. CUSTODY OF SECURITIES

**42.1 Custodial Services.** The Bank shall take custody of the securities owned by the Agency and tendered for transfer to its custody; provide safekeeping services for them and accept complete responsibility as an agent for their safekeeping from the moment of delivery to it and/or its transfer agent until their safe return and delivery to the Agency or its designated agent upon expiration or sooner termination of this Agreement.

When ownership of a security is manifested by a certificate, bond, note, or other physical document, the Bank will verify proper registration of the security in the name of the Agency or nominee of Bank; keep the physical specimen in a secure vault, safe from destruction, damage, embezzlement, and/or other loss; readily available to the Agency; and in a condition suitable for sale or transfer. When ownership is reflected in a book entry on official records only, the Bank shall be shown on the books of the Federal Reserve System, DTC, or other depository agencies, as custodian of the Agency's book-entry security; the Bank shall verify the proper registration, evidenced by an entry in the Bank's books reflecting that the Bank holds those particular securities (or a quantity of securities that are part of a fungible bulk of government book-entry securities) as custodian for the Agency; and the Bank shall obtain and maintain the confirmatory documents in a secure area and unless expressly authorized by the Agency, keep the securities ready for immediate sale or transfer free and clear of all encumbrances.

With respect to securities issued in the United States, the Shareholders Communications Act of 1985 (the "Act") requires the Bank to disclose to the issuers, upon their request, the name, address and securities position of its customers who are (a) the "beneficial owners" (as defined in the Act) of the issuer's securities, if the beneficial owner does not object to such disclosure, or (b) acting as a "respondent bank" (as defined in the Act) with respect to the securities. (Under the Act, "respondent banks" do not have the option of objecting to such disclosure upon the issuers' request.) The Act defines a "beneficial owner" as any person who has, or shares, the power to vote a security (pursuant to an agreement or otherwise), or who directs the voting of a security. The Act defines a "respondent bank" as any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with a bank, such as the Bank. Under the Act, the Agency is either the "beneficial owner" or a "respondent bank."

The Agency is the "beneficial owner," as defined in the Act, of the securities to be held by the Bank hereunder.

The Agency is not the beneficial owner of the securities to be held by the Bank, but is acting as a "respondent bank," as defined in the Act, with respect to the securities to be held by the Bank hereunder.

IF NO BOX IS CHECKED, THE BANK SHALL ASSUME THAT THE AGENCY IS THE BENEFICIAL OWNER OF THE SECURITIES.

For beneficial owners of the securities only:

The Agency objects

The Agency does not object

to the disclosure of its name, address and securities position to any issuer which requests such information pursuant to the Act for the specific purpose of direct communications between such issuer and the Agency.

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

**42.2 Inventory; Delivery and Redelivery.** The Bank shall keep an accurate, current inventory of all securities held within its custody for the Agency. The inventory will contain precise identification of each security including, when applicable, the date of purchase and maturity date; CUSIP numbers; and other sources of identification.

**42.3 Transactions.** The Bank shall assist the purchase of securities and the sale of securities within its possession, owned by the Agency. When so instructed, the Bank will:

**42.3.1** Take possession of securities purchased by the Agency, and when authorized, make payment from the clearing accounts as established under this Agreement therefor;

**42.3.2** Deliver securities sold or transferred by the Agency to the appropriate entity or person versus payment;

**42.3.3** Register in its name or in its name as the Bank, securities owned by the Agency and held in its physical custody or those securities indicated on the records of the Federal Reserve System, DTC, or another depository, provided that adequate records are maintained to identify the actual ownership of the securities by the Agency

and all rights to interest and sale proceeds are vested in the Agency;

**42.3.4** Credit or debit the appropriate money account of the Agency in connection with the purchase, sale, maturity, redemption, income, dividends, or other disposition of securities and other assets held for the time being on behalf of the Agency in said accounts on a contractual settlement basis. The Bank reserves the right to reverse any such crediting at any time before actual receipt of the item associated with the credit when the Bank determines that actual receipt will not be received in due course for such an item.

**42.3.4.1** In order to secure repayment of an advance of funds made in connection with a purchase of securities, the Bank shall have a purchase money security interest in, and a security entitlement with respect to, all of the Agency's right, title, and interest in and to the securities acquired with such advance (including proceeds thereof). The Bank shall, with respect to such purchase money security interest, be entitled to all the rights and remedies of a pledgee and secured creditor under applicable laws, rules, or regulations as then in effect.

**42.4 Agency Clearing Account.** The Bank shall establish clearing accounts for the Agency, as directed by the Agency. These accounts shall accurately reflect transactions of all kinds, with respect to securities of the Agency. These accounts are not to be construed as Depository Accounts.

The Bank shall, on a contractual basis, credit or debit the Agency account on the contractual settlement date in connection with all trading transactions, income and principal payments to include, but not be limited to purchases, sales, maturities, redemptions, interest, or any other principal and income event.

At the close of each business day, there shall be no "public funds" (as defined in RCW 39.58.010(16) now or as hereafter amended) in the clearing accounts.

All "public funds" (as defined above) in an account shall be returned to the Agency prior to the close of business.

**42.4.1** The Agency retains the exclusive authority to manage the assets of the Agency within the Bank's custody. This includes the determination of which investments shall be made, what and when securities shall be sold or encumbered, the terms or conditions of any transaction, and the disposition of cash on hand. The Bank

shall make no transaction without instructions from the Agency, except the advance crediting of principal, interest, and other proceeds to the Agency's clearing account.

#### **43. NOTICES**

Notices and other writings shall be delivered by the most expeditious means available, with due regard given to the time sensitivity of the notice or demand being made:

To the Agency:

To the Bank:  
Wells Fargo Bank. N.A.  
999 3rd Ave  
11th Floor, MAC P6540-11H  
Seattle, WA 98104-4019  
Attention: Cindy M. Parsons

or to such other address as the Agency or the Bank may hereafter specify in writing. Telephone and facsimile notices shall be sufficient if communicated to the party entitled to receive such notice at the following numbers:

If to the Agency:

Telephone:

Fax:

If to the Bank:

Telephone: : 206-292-3469

Fax: 206-292-3682

or to such other numbers as either party may furnish the other party by written notice under this section.

The Bank agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Bank shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Agency elects to give the Bank e-mail or facsimile instructions (or instructions by a similar electronic method) and the Bank in its discretion elects to act upon such instructions, the Bank's reasonable understanding of such instructions shall be deemed controlling.

The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with instructions

provided by the Agency pursuant to this Agreement. This includes, but is not limited to, Bank's reliance upon instructions that may later conflict or be inconsistent with subsequent written instructions. The Agency agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Bank, including the risk of the Bank acting on unauthorized instructions by an individual purporting to be a designated person on the incumbency certificate, and the risk of interception and misuse by third parties.

Notwithstanding the foregoing, the Bank will accept transaction requests that it reasonably believes to be from Authorized Signers by telephone, letter, facsimile, or E-mail. However, in order to prevent fraud related activity, the Bank prohibits the use of public, non-firewall protected E-mail domain names (e.g. aol, hotmail, gmail, yahoo, etc.) as a method for submitting transaction requests.

## **PAYMENT PROVISIONS**

### **44. PAYMENTS**

Quarterly, after the last business day of each calendar quarter, the Bank shall submit to the Agency an invoice containing an itemized list of all costs and expenses incurred by the Bank in connection with this Agreement. The first payment will be for the calendar quarter ending \_\_\_\_\_.

The Agency will forward payment for service charges to the Bank, after the Agency verifies all activity and charges, within thirty (30) days of receipt of the invoice, provided there are no significant unreconciled differences.

In the event services are rendered for less than a calendar quarter, or this Agreement is terminated prior to the end of a calendar quarter, the Agency shall pay the Bank's fee prorated for the portion of the calendar quarter such services are rendered or the Agreement is in effect, plus any costs and expenses incurred by the Bank for the Accounts up to or subsequent to the date of termination.

If the Bank does not meet its Service obligations, the Bank shall be required to negotiate a settlement with the Agency Contract Administrator for an appropriate reduction in charges. Such settlement shall be in addition to other rights and remedies available to the Agency under law and this Agreement.

### **45. TAXES**

It is mutually agreed and understood that all payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for the Bank's staff shall be the sole liability of the Bank.

**46. INDEPENDENT CAPACITY**

The parties intend that an independent contractor relationship will be created by this Agreement. The Bank, the Bank’s employees, and subcontractors performing under this Agreement are not employees of the Agency. The Bank will not hold itself out as, nor claim to be, an officer or an employee of the Agency by reason hereof, nor with the Bank make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Bank.

**47. ADVANCE PAYMENTS PROHIBITED**

No advance payment shall be made for services furnished by the Bank pursuant to this Agreement.

**48. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE “ADA” 28 CFR PART 35**

The Bank must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in areas of employment, public accommodations, state and local government services, and telecommunications.

**49. ATTORNEYS’ FEES**

In the event of litigation or other action brought to enforce the terms of this Agreement, each party agrees to bear its own attorney fees and costs.

**50. COPYRIGHT PROVISIONS**

Unless otherwise provided, all Materials produced under this Agreement shall be considered “works for hire” as defined by the U.S. Copyright Act and shall be owned by the Agency. The Agency shall be considered the author of such Materials. In the event the Materials are not considered “works for hire” under the U.S. Copyright laws, the Bank hereby irrevocably assigns all right, title and interest in Materials, including all intellectual property rights, to the Agency effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under this Agreement but that incorporate pre-existing materials not produced under this Agreement, the Bank hereby grants to

the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Bank warrants and represents that it has all rights and permissions, including intellectual property rights, moral rights, and rights of publicity, necessary to grant such a license to the Agency.

The Bank shall exert all reasonable effort to advise the Agency, at the time of delivery of Materials furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. The Agency shall receive prompt written notice of each notice or claim of infringement received by the Bank with respect to any data delivered under this Agreement.

**51. COVENANT AGAINST CONTINGENT FEES**

The Bank warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Bank for the purpose of securing business. The Agency shall have the right, in the event of breach of this clause by the Bank, to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or recover by other means the full amount of such commission, percentage, or brokerage or contingent fee.

**52. DISALLOWED COSTS**

The Bank is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

**53. DUPLICATE PAYMENT**

The Agency shall not pay the Bank, if the Bank has charged or will charge the Agency or any other party under any other contract or agreement for the same services or expenses.

**54. TREATMENT OF ASSETS**

A. Title to all property furnished by the Agency shall remain in the Agency. Title to all property furnished by the Bank, for the cost of which the Bank is entitled to be reimbursed as a direct item of cost under this Agreement, shall pass to and vest in the Agency upon delivery of such property by the Financial Advisor. Title to other property, the cost of which is reimbursable to the Agency under this Agreement shall pass to and vest in

- the Agency upon (i) issuance for use of such property in the performance of this Agreement or (ii) commencement of use of such property in the performance of this Agreement, or (iii) reimbursement of the cost thereof by the State, in whole or in part, whichever first occurs.
- B. Any property of the Agency furnished to the Bank shall, unless otherwise provided herein or approved by the Agency, be used only for the performance of this Agreement.
  - C. The Bank shall be responsible for any loss or damage to property of the Agency which results from the negligence of the Bank or which results from the failure on the part of the Bank to maintain and administer that property in accordance with sound management practices.
  - D. If any Agency property is lost, destroyed or damaged, the Bank shall immediately notify the Agency and shall take all reasonable steps to protect the property from further damage.
  - E. The Bank shall surrender to the Agency all property of the Agency prior to settlement upon completion, termination or cancellation of this Agreement.
  - F. All reference to the Bank under this clause shall also include Bank's employees, agents or Subcontractors.

## **55. PRIVACY**

Personal information collected, used or acquired in connection with this Agreement shall be used solely for the purposes of this Agreement. Bank and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Agency or as provided by law. Bank agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The Agency reserves the rights to monitor, audit or investigate the use of personal information collected, used or acquired by the Bank through this Agreement. The monitoring, auditing or investigating may not include "salting" by the Agency. Bank shall certify the return or destruction of all personal information upon expiration of the Agreement. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of the provisions may result in termination of the Agreement and the demand for return of all personal information. The Bank agrees to indemnify and hold harmless the Agency for any damages related to Bank's unauthorized use of personal information.

The Agency's right to monitor, audit, or investigate shall be subject to the Bank's right to limit those activities that are prohibited by its internal policies or that the

Bank, in good faith, believes will compromise the security of its systems or the rights of other customers of Bank.

**56. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by authorized representatives of the Agency.

**57. SEVERABILITY**

The provisions of this Agreement are to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

**MISCELLANEOUS**

**58. COUNTERPARTS**

This Agreement is to be executed in duplicate originals and each duplicate shall be deemed an original copy of the Agreement signed by each party, for all purposes.

**CONTRACT EXECUTION**

**59. RELATIONSHIP BETWEEN THE PARTIES**

The parties hereto agree that in performing hereunder, the Bank is acting solely on behalf of the Agency and no contractual or service relationship shall be deemed to be established hereby between the Bank and any other person.

**60. SIGNATURE BLOCKS**

**IN WITNESS WHEREOF** the parties hereto, having read this Agreement in its entirety, including all attachments hereto, do agree in each and every particular.

APPROVED:

APPROVED:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date