

**AGREEMENT**

for

**Securities Lending Services**

Agreement Number CSL-11-002

October 1, 2011

**JAMES L. McINTIRE  
STATE TREASURER  
STATE OF WASHINGTON**

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**WASHINGTON STATE**  
**OFFICE OF THE STATE TREASURER**  
**AGREEMENT NUMBER CSL-11-002**  
**SECURITIES LENDING SERVICES**

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**WASHINGTON STATE  
OFFICE OF THE STATE TREASURER  
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**AGREEMENT NUMBER CSL-11-002  
SECURITIES LENDING SERVICES**

**GENERAL PROVISIONS**

**1. CONTRACTING PARTIES**

THIS AGREEMENT is entered into by and between the OFFICE OF THE STATE TREASURER, STATE OF WASHINGTON, an agency of the Washington State government, hereinafter referred to as the "State" and \_\_\_\_\_, 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 February 2, 2011, for the purpose of obtaining proposals for providing Custody and Securities Lending Services.

The State hereby awards to the Bank this Agreement for Securities Lending Services, hereinafter referred to as the "Services," as described in the 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. CONSIDERATION**

In consideration whereof, the mutual promises made to each other, as hereinafter set forth, the parties further agree as follows:

The State and the Bank agree that this Agreement is the complete and exclusive statement 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. To the extent that any terms and conditions are in conflict with any other terms and conditions, the order of authority is as follows: (1) these General Provisions are controlling, followed by (2) the Office of the State Treasurer RFP for Custody and Securities Lending Services; and (3) the Bank's Proposal, inclusive of related Exhibits and Schedules.

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 \_\_\_\_\_. 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 whom the State Contract Administrator shall work with for the duration of this Agreement.

**"Borrower"** shall mean entities that have been approved by the State, to which the Bank may loan the securities of the State, as evidenced by their inclusion in Exhibit E, the Schedule of Acceptable Borrowers.

**"Depository"** shall include the Federal Reserve/Treasury book-entry system for receiving and delivering securities, 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 Custody and Securities Lending Services issued by the Office of the State Treasurer, dated February 2, 2011.

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

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

**"Exhibit D"** shall mean the Bank's Securities Loan Agreements executed by the Bank and Borrowers.

“**Exhibit E**” shall mean the Schedule of Acceptable Borrowers and shall include the maximum lending amounts attributable to each.

“**Exhibit F**” shall mean the Guidelines for the Investment of Cash Collateral.

“**Exhibit G**” shall mean Lending Limitations established by the State for the Bank’s lending program for the State.

“**Loan**” shall mean a loan of securities under the Bank’s Securities Loan Agreement.

“**Market Value**” shall mean, with respect to any security, as of any time of determination thereof, the price of such security as quoted by a recognized pricing service selected by the Bank as of the last preceding close of business. In addition, Market Value shall mean, as of any time of determination thereof with respect to any cash received as collateral or collateral in which such cash is invested, the amount of such cash originally paid to the Bank, as reduced by any payments of such cash to or for the account of the Borrower.

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

“**Securities Lending 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.

“**State Contract Administrator**” shall mean the staff person appointed by the State to administer this Agreement on behalf of the State.

“**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. SECURITIES LENDING AUTHORIZED**

The State hereby authorizes the Bank to act as its agent in arranging for loans of State securities in the possession or control of the Bank in accordance with the terms and conditions of this Agreement.

## **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 State 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. HOLD HARMLESS AND INDEMNIFICATION**

- 8.1 The Bank shall be financially responsible (liable) for any direct money damages suffered by the State which are caused by the Bank's own negligence, fraud, or failure to exercise Due Care, as defined in Section 31, in the Bank's performance of its duties under this Agreement.
- 8.2 The Bank shall not be financially responsible (liable) for any damages or for any losses to the State, unless such losses constitute direct money damages caused by the Bank's own negligence, fraud, or failure to exercise Due Care, as defined in Section 31, in the Bank's performance of its duties under this Agreement.
- 8.3 Each party to this agreement shall be responsible for its own acts or omissions and those of its officers, employees, and agents. No party to this Agreement shall be responsible for the acts or omissions of entities or individuals not a party to this Agreement. The Bank agrees to indemnify and hold harmless the state of Washington 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. The State agrees to assume responsibility for all claims to the extent of the State's negligence or joint liability for damages.
- 8.4 Nothing in this section shall be construed to mean either party is prevented from commencing a legal action against the other.

## **9. INDEMNIFICATION FOR BORROWER DEFAULT**

- 9.1 Borrower Creditworthiness.** The Bank shall make a reasoned determination in accordance with its fiduciary duties under this Agreement of the creditworthiness of a Borrower through adequate analysis of all material information available to the Bank before lending a security and during the term of the loan or loans.
- 9.2 Collateral Execution.** The Bank shall demand adequate and appropriate collateral on a prompt and timely basis, perfect a security interest or obtain rights equivalent thereto in the collateral, maintain control of the collateral, and make a reasoned determination in accordance with its fiduciary duties under this Agreement of the quality and suitability of collateral investments and holdings through adequate analysis of all material information available to the Bank.

- 9.3 Program Compliance.** The Bank shall maintain the Bank's securities lending program in compliance with the Federal Financial Institutions Examination Council Supervisory Policy on Securities Lending as amended from time to time and the terms of this Agreement.
- 9.4 Best Efforts.** The Bank shall exert its reasonable best efforts to promptly exercise all remedies provided by law and the terms of this Agreement.
- 9.5 Borrower Default.** Notwithstanding the Bank's fulfillment of its responsibilities under subsections 9.1 through 9.4, and irrespective of the applicability of the above Borrower Creditworthiness determination by the Bank, in the event of a default with respect to a Borrower, as defined in Exhibit D, the Securities Loan Agreement, the Bank shall credit the State's account with the amount of distributions made with respect to the borrowed securities of the State that are due and payable by the Borrower on or before the date of the Borrower default but not so paid. The Bank shall also take all actions it deems necessary or appropriate to liquidate the collateral, including any investment or reinvestment of cash collateral; provided, however, that the Bank shall not liquidate any investment or reinvestment of collateral having a maturity date after the date of the Borrower's default if such liquidation would cause a loss attributable to such maturity date being a date after the date of the Borrower's default. Any investments or reinvestments which in accordance with the immediately preceding sentence are not liquidated shall be security to be held by the Bank until maturity and the proceeds applied to reimburse the Bank for its costs of purchasing replacement securities or making the credit described in the penultimate sentence of this subsection 9.5, as the case may be. If the collateral liquidation proceeds are insufficient to purchase in the principal market in which such securities are traded replacement securities that are equivalent securities, or if an investment or reinvestment is not liquidated because its maturity date is after the date of the Borrower's default and such liquidation would cause a loss attributable to such maturity being a date after the date of the Borrower's default, the Bank shall, subject to the State's satisfaction of its obligation under Section 53 of this Agreement in the case of a liquidation, pay such additional amounts as are necessary to make such replacement, and shall transfer such securities to the State's account, except that the Bank will, when no market exists for a borrowed security, and subject to the State's satisfaction of its obligation under Section 53 of this Agreement in the case of a liquidation, credit the State's account with cash in an amount equal to either the last known market value for that security or the market value of that security on the date of the Borrower default, whichever market value is greatest. If upon maturity the proceeds of an investment or reinvestment are less than the amount of collateral used to purchase

such investment or reinvestment, the State shall pay to the Bank the amount of the State's obligation under Section 53 of this Agreement.

## **10. 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.

## **11. 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:

**11.1 Nondiscrimination in Employment.** The Bank shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory, mental, or physical disability. This requirement does not apply, however, to a religious corporation, association, educational institution, or society with respect to the employment of an individual of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

**11.2 Nondiscrimination in Client Services.** The Bank shall not, on grounds of race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory, mental, or physical disability:

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

11.2.2 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;

11.2.3 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

11.2.4 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.

**11.3** 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 because of their race, color, sex, religion, national origin, creed, marital status, age, or the presence of any sensory, mental, or physical disability.

**11.4 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 State. 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.

## **12. GIFTS AND GRATUITIES**

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.

## **13. 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 State 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.

## **14. PERFORMANCE**

Acceptance by the State 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.

**15. GOVERNING LAW**

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 Thurston County, Washington. The Bank, by execution of this Agreement, acknowledges the jurisdiction of the courts of the state of Washington in this matter.

**16. 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 State reserves the right to terminate the Agreement in the event a Successor Bank is substituted, after providing 60 calendar days' written termination notice.

**SCOPE OF SERVICES**

**17. SCOPE OF SERVICES**

The Bank agrees to provide securities lending services, 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**

**18. TERM OF AGREEMENT AND SURVIVORSHIP OF TERMS**

This Agreement shall commence on October 1, 2011, and continue until September 30, 2015.

The term of this Agreement may be extended for additional contract periods or portions thereof, whereby the total contract period with extensions shall not exceed six (6) years, PROVIDED: the extension shall be by mutual agreement between the State and the Bank, and by the State giving written notice of the extension to the Bank not less than 180 days prior to the termination date of this Agreement.

## 19. TERMINATION AND REMEDIES

**19.1 Termination for Convenience.** The State may terminate this Agreement, in whole or in part, at any time and for any reason by giving 30 calendar days' written termination notice to the Bank. The Bank may terminate this Agreement, by giving 60 days' written termination notice to the State.

**19.2 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 State 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 or agreement in the Agreement; (3) the Bank fails to exercise Due Care as to any aspect of this Agreement, with Due Care being defined in Section 31; (4) the Bank makes any general assignment for the benefit of creditors; (5) the Bank becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; (6) the Bank becomes the subject of any proceeding under any law relating to bankruptcy, insolvency, or reorganization or relief from debtors; or (7) any receiver, trustee, or similar official is appointed for the Bank or any of the Bank's property. 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 19.1.

The State Contracting Officer 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 State may do one or more of the following:

19.2.1 Exercise any remedy provided by law;

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

19.2.3 Seek damages.

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

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

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

The rights and remedies of the State 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.

**19.5 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 provider's system.

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

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

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

- 19.6.2 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;
- 19.6.3 Assign to the State, in the manner, at the times, and to the extent directed by the State Contract Administrator all of the rights, titles, and interest of the Bank under the orders and subcontracts so terminated, in which case the State has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- 19.6.4 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the State Contract Administrator to the extent he or she may require, which approval or ratification shall be final for all the purposes of this clause;
- 19.6.5 Transfer title to the State and deliver in the manner, at the times, and to the extent, if any, as directed by the State Contract Administrator, any property which, if the Agreement had been completed, would have been required to be furnished to the State;
- 19.6.6 Complete performance of such part of the work as shall not have been terminated; and
- 19.6.7 Take such action as may be necessary, or as the State 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 State has or may acquire an interest.

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

## **20. FORCE MAJEURE**

- 20.1 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 reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, earthquakes, epidemics, or other similar occurrences.

**20.2 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.

**20.3 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 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.

**20.4 Rights Reserved.** The State 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 State.

## **21. CONFLICT OF INTEREST**

21.1 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.

21.2 The State 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.

21.3 In the event this Agreement is terminated as provided above, the State 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 State provided by this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

## **CONTRACT ADMINISTRATION**

### **22. 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:

22.1 **“Exhibit A”** - The Request for Proposal (RFP) for Custody and Securities Lending Services, dated February 2, 2011.

- 22.2 “**Exhibit B**” - The Bank's proposal in response to the State RFP for Custody and Securities Lending Services.
- 22.3 “**Exhibit C**” - The Bank's schedule of charges for all Services provided under this Agreement.
- 22.4 “**Exhibit D**” - The Bank’s Securities Loan Agreements to be entered into by the Bank and Borrowers.
- 22.5 “**Exhibit E**” – The Schedule of Acceptable Borrowers and the maximum lending amounts attributable to each.
- 22.6 “**Exhibit F**” – The Guidelines for the Investment for Cash Collateral.
- 22.7 “**Exhibit G**” – Lending Limitations.

**23. ORDER OF PRECEDENCE**

- 23.1 The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions.
- 23.2 If any provision of this Agreement shall be deemed to be in conflict with any statute or rule of law, such provisions shall be deemed modified to conform to said statute or rule of law. In the event of any inconsistency in this Agreement, the inconsistency shall be resolved in the order of precedence stated below:
  - 23.2.1 Applicable Federal and State Statutes and Regulations.
  - 23.2.2 The Terms and Conditions of this Agreement.
  - 23.2.3 Exhibit A - The Request for Proposal (RFP) for Custody and Securities Lending Services issued by the Office of the State Treasurer, dated February 2, 2011.
  - 23.2.4 Exhibit B - The Bank's proposal in response to the State RFP for Custody and Securities Lending Services.

**24. ENTIRE AGREEMENT**

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

**25. LIMITATION OF STATE'S AUTHORITY**

Only the State 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 State and the Bank unless otherwise provided herein.

**26. STATE CONTRACT ADMINISTRATOR**

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

**27. BANK'S ACCOUNT MANAGER**

The Bank shall appoint an individual who will be the Account Manager for the State account. The Bank's Account Manager will be the principal point of contact for the State 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 State in writing if a new Account Manager is assigned.

**28. 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 the State Contract Administrator.

**29. DISPUTES**

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

29.2 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) State working days. Then, both parties shall have three (3) State working days to negotiate in good faith to resolve the dispute.

29.3 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 29.2., from pursuing other methods of dispute resolution.

29.4 The State 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.

### **30. 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**

### **31. RESPONSIBILITY OF BANK TO ACT WITH DUE CARE**

31.1 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 fiduciaries acting in like capacity as a securities lending agent. The Bank acknowledges that it is a fiduciary with respect to the State and the Bank shall act in a fiduciary capacity exercising reasonable care, skill, prudence, and diligence commensurate under the circumstances that a similar professional entity acting in like capacity and familiar with such matters would exercise in the conduct of such action, including the lending of securities, accepting cash collateral from Borrowers, and investing the cash collateral appropriately.

31.2 The Bank shall not be liable for any loss or damage caused by the actions or omissions to act of any Depository selected by the Bank with Due Care.

### **32. CONFIDENTIALITY OF STATE RECORDS**

32.1 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.

- 32.2 Access to information concerning the State or individual recipients of the State's services shall not be granted except as authorized by law or in writing by the State.
- 32.3 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.
- 32.4 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. The Bank shall promptly notify the State of any such subpoena or order upon its receipt.

### **33. AUDITING**

The Bank shall permit representatives of the State Treasurer, an auditor selected by the State, 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 State 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 ten (10) days' written notice from the State 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 State 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.

### **34. BANK COMMITMENTS, WARRANTIES, AND REPRESENTATIONS**

- 34.1 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 State under the terms of this Agreement.

34.2 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 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.

### **35. PRICE INCREASES**

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

35.2 The Schedule of Charges applies for the entire term of the Agreement, including any extension of the initial term.

### **36. ANCILLARY SERVICES**

**36.1 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.

**36.2 Settlement of Transactions.** Settlement of and payment for securities received for and delivered from the account may be made in accordance with the customary or established securities trading or securities processing practices and procedures in the jurisdiction or market in which the transaction occurs, including without limitation, the delivery of securities to a purchaser, broker, dealer, or their respective agents either against a receipt for future payment or without any payment (so-called “free delivery”).

**36.3 Taxes.** The State is solely responsible and liable for the payment of and the reclamation, where applicable, of all taxes assessments, duties, and other governmental charges (including any interest or penalties with respect thereto) with respect to the cash or securities held hereunder or the

Account. The Bank, however, will cooperate with the State in connection with the State's payment or reclamation of taxes.

**36.4 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 State, 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 State, but shall have no other obligation or liability with respect to such valuation or pricing information.

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

The term "Proper Instructions" shall mean instructions received by the Bank from the State 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). The State 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 State 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 State. The Bank may receive and accept a certificate from the State 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 State 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.

### **38. SECURITY CODES**

If the Bank has issued security codes or passwords to the State in order that the Bank may verify that certain transmissions of information, including proper

instructions, have been originated by the State, the Bank shall, to the extent authorized by law, be kept indemnified by and be without liability to the State 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 State.

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

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

**40. LICENSING AND ACCREDITATION STANDARDS**

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

**41. WORKERS' COMPENSATION INSURANCE COVERAGE**

The Bank shall provide or purchase applicable workers' compensation insurance coverage prior to performing work under this Agreement. The State 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 State 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.

**42. ADVERTISING**

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

**SECURITIES LENDING PROVISIONS**

**43. THE STATE'S RESERVATION OF RIGHTS**

The State reserves the right, in its sole discretion, to lend any or all of the State's securities. This Agreement does not guarantee that any particular level of the State's securities will be available to the Bank for loan.

**44. SECURITIES TO BE LOANED**

Except for those securities which the State specifically identifies as not being available, all of the State's securities held by the Bank shall be subject to this securities lending program.

**45. AUTHORIZATION TO LOAN SECURITIES**

The State hereby authorizes the Bank to act as its agent in arranging for loans of securities of the State in the possession or control of the Bank, as the appointed custody provider, in accordance with the terms and conditions of this Agreement. All loans made pursuant to this Agreement shall comply with lending limitations as detailed in Exhibit G.

**46. APPROVED BORROWERS AND BORROWER LIMITS**

The Bank shall prepare a schedule of approved Borrowers and submit such list to the State for approval. The list shall also include maximum loan amounts for each Borrower. Upon acceptance by the State, this schedule shall be included in this Agreement as Exhibit E. The Bank may lend securities only to those Borrowers listed in Exhibit E, unless and until otherwise instructed by the State. No additional loan of securities under this Agreement shall be made to a Borrower if the current Market Value of securities on loan under this Agreement to such Borrower, computed each day, exceeds the maximum loan amount for such Borrower, as specified in Exhibit E.

**47. LOAN INITIATION AND QUEUING**

Upon receipt of notice from a Borrower of its desire to borrow securities upon stated terms, the Bank shall determine the account or accounts from which to loan securities by using the Bank's impartial sequential systems that match loan requests with the accounts of the Bank's participating lenders holding eligible securities.

**48. SECURITIES LOAN AGREEMENT**

The Bank shall enter into the Bank's Securities Loan Agreement, Exhibit D, with any approved Borrowers prior to the loan of any securities to those Borrowers. The State must give prior approval to the Bank of any amendments to the Securities Loan Agreement.

**49. ESTABLISHMENT OF CLEARANCE AND/OR CUSTODY ACCOUNTS**

The Bank shall establish separate clearance and/or custody accounts in the name of and/or on the behalf of the State for each of the State's portfolios participating

in the Bank's lending program. All securities, collateral, investments, proceeds and securities loan fees shall be deposited into such accounts.

## **50. COLLATERAL ACCEPTABILITY, RECEIPT, AND MAINTENANCE**

- 50.1 In addition to cash collateral, the Bank may receive as non-cash collateral those securities issued or fully guaranteed by the U.S. Government Federal agencies, or sponsored agencies or sponsored corporations, provided that they are eligible investments according to the State's investment policies.
- 50.2 The collateral received shall have a Market Value of not less than one hundred two percent (102%) of the Market Value of the loaned securities.
- 50.3 The collateral required for securities lending shall be delivered, versus payment against delivery of the loaned securities, to the Bank contemporaneously with the transfer of funds or delivery of securities and, in all cases, settlement shall be on a same-day basis. For the purposes of this Agreement and all attached Exhibits, the term "contemporaneously" shall be construed to mean "simultaneously," i.e., at the same instant in time and delivery versus payment.
- 50.4 If at any time the aggregate Market Value as of the close of business on the prior business day of the collateral allocated to any Loan is less than the required value for such Loan, then the Borrower shall, upon oral demand by the Bank, deliver to the Bank additional collateral having a Market Value as of such close of business at least equal to such deficiency.

## **51. LENDING LIMITATIONS**

The Bank shall comply with all Lending Limitations as found in Exhibit G of this Agreement.

## **52. AUTHORIZATION AND GUIDELINES FOR THE INVESTMENT OF CASH COLLATERAL**

The Bank shall maintain, protect, and apply any collateral given in connection with a loan of securities hereunder. The Bank is hereby authorized to invest and reinvest any cash collateral; provided that the Bank shall follow the State's Guidelines for the Investment of Cash Collateral as found in Exhibit F of this Agreement. It is the Bank's responsibility to coordinate with the State to ensure compliance with those investment policy restrictions of the State which apply to a combination of those investments made by the State and those made by the Bank. All investments and reinvestments of cash collateral shall be for the account and risk of the State. To the extent any loss arising out of any such investment or

reinvestment results in a deficiency in the amount of cash collateral available for return to a Borrower, the State agrees to pay the Bank on demand cash in the amount of such deficiency.

**53. ADVANCES, OVERDRAFTS, AND INDEBTEDNESS; SECURITY INTEREST**

53.1 The Bank may, in its sole discretion, advance funds to the State in order to pay to Borrowers any rebates or to return to Borrowers cash collateral to which they are entitled. The Bank may also credit the State with securities loan fees payable by Borrowers prior to its receipt thereof. Any such credit shall be conditional upon receipt by the Bank of final payment and may be reversed to the extent final payment is not received.

53.2 The State agrees to repay the Bank on demand the amount of any advance or any other amount owed by the State hereunder plus accrued interest at a rate per annum (based on a 360-day year for the actual number of days involved) not to exceed the fed funds rate as publicly announced to be in effect from time to time. In order to secure repayment of any such advance or such other indebtedness of the State to the Bank arising hereunder, the State hereby agrees that the Bank shall have a continuing lien and security interest in and to all assets now or hereafter held as collateral for the Loan of securities to which such advance or such indebtedness relates, and in and to the securities which are the subject of such Loan. In this regard, the Bank shall be entitled to all the rights and remedies of a pledgee under common law and a secured party under the Uniform Commercial Code and/or any other applicable laws and/or regulations as then in effect.

**54. REPORTING REQUIREMENTS**

The Bank shall maintain adequate records of all securities loan transactions made pursuant to this Agreement.

The Bank shall provide daily reports to the State showing the Bank's compliance with all aspects of the State's guidelines regarding the Bank's lending program for the State. Such reports must be available to the State, at a minimum, on a next day basis.

In addition, the Bank shall provide such other reports, as described in Exhibit A.

**55. NOTICE OF DEFAULT**

The Bank shall promptly notify the State upon the occurrence of any Borrower default, as defined in the Bank's Securities Loan Agreement.

**56. 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:

if to the Bank, at:

if to the State, at:

Office of the State Treasurer  
P.O. Box 40200  
Legislative Building, Rm 240  
416 14th Avenue SW  
Olympia, WA 98504-0200

or to such other address as the State 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 State:

Telephone: (360) 902-9012

Facsimile: (360) 902-9044

If to the Bank:

Telephone:

Facsimile:

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

**PAYMENT PROVISIONS**

**57. PAYMENTS**

The Bank shall be compensated for its services hereunder in accordance with the Schedule of Charges, found in Exhibit C. The Bank shall, by the seventh day of each month, provide a report to the State detailing the calculation of the net income earned during the previous month. Upon approval by the State, the Bank shall distribute to the State its share of the net income derived from the State's lending program, and deduct from the appropriate account the Bank's share of the net income.

**58. 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.

**CONTRACT EXECUTION**

**59. 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.

**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:

STATE OF WASHINGTON

\_\_\_\_\_  
JAMES L. McINTIRE  
State Treasurer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

THE STATE OF WASHINGTON  
OFFICE OF THE ATTORNEY  
GENERAL

\_\_\_\_\_  
JOHNNA S. CRAIG  
Assistant Attorney General

\_\_\_\_\_  
Date