



Office of the State Treasurer

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State Treasurer

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CUSTODIAL AGREEMENT

This Custodial Agreement (the "Agreement") dated as of _____, among _____ Bank (the "Depository"), the Treasurer of the Office of the State Treasurer of the State of Georgia (the "Treasurer"), _____ (the "Custodian"), and GBA Services, Inc. (the "Administrator").

Section 1. **Definitions.** Unless otherwise provided in this Agreement, the following terms shall have the following respective meanings for purposes of this Agreement:

"Administrator" shall mean the GBA Services, Inc. and its officers, directors, employees, agents, successors, and assigns.

"Aggregate Deposits": shall mean the amount of aggregate deposits of Public Funds that the Treasurer and/or other Public Bodies have elected to collateralize through the pooling method as specified in Title 45.

"Approved Securities" shall mean those securities identified in that list of securities contained in Exhibit A of this Agreement as now or hereafter amended.

"Approved Securities List" shall mean that written list of securities prepared by the Treasury and contained in Exhibit A of this Agreement; the Treasurer hereby reserves the right, with 30 days' notice, to modify the Approved Securities List by written notification to the Administrator and subsequently provided by written notification by the Administrator to the Depositories and Custodians.

"Depository or Depositories" shall mean any and all financial institutions, as identified in O.C.G.A. §45-8-1, , which the Treasurer has issued a certificate of qualification for use of the pooled method and with which a public body has deposited public funds, which are required under Georgia law to be adequately secured and has consented to the use of the pooled method.

"Custodian" shall mean the Treasurer, the Federal Reserve Bank, or any depository, savings association, or trust company that meets all of the requirements of O.C.G.A. §45-8-1(3).

"Depositor or Depositors" shall mean any state or local entity with deposits of public funds.

"Fair Market Value" shall mean the value of the Pledged Securities as determined by

any independent service that regularly furnishes such information to financial institutions in the United States as of the applicable date of transaction or report; provided however, should such method of valuation be inapplicable or unacceptable to the Treasurer in respect to any Pledged Security, Fair Market Value shall mean the value placed thereon by the Treasurer.

"FDIC" shall mean the Federal Deposit Insurance Corporation, a federally chartered public corporation of the United States of America.

"Fiscal Year" shall mean any period adopted by the State of Georgia as its fiscal year for financial auditing purposes and shall initially mean the period beginning on July 1 of each calendar year and ending on June 30 of the next calendar year.

"Pledge Amount" unless modified by the Treasurer as allowed in O.C.G.A. §45-8-13.1(f) shall mean the difference between the amount of Aggregate Deposits of public funds in a Depository and any FDIC insurance applicable to said funds (as identified in O.C.G.A. §50-17-59(c)), multiplied by 110%; $\text{Pledge Amount} = (\text{Aggregate Deposits} - \text{any applicable FDIC insurance}) \times 1.10$; as allowed in OCGA §45-8-13.1(f)(1) the Treasurer has determined that the depository may not deduct the face amount of direct loans from deposits in determining the Pledge Amount;

"Pledged Securities" shall mean those Approved Securities as to which the Depository has granted a security interest to the Treasurer and as to which the Custodian has taken physical possession or, in the case of un-certificated securities, which the Custodian has registered to the Treasurer.

"Securities Account" shall mean the account established with and held by the Custodian for the benefit of the Treasurer containing Pledged Securities, and any successor account thereto.

"State Depository Board" shall mean and refer to the board created by O.C.G.A. section 50-17-50.

"Treasurer" shall mean the Treasurer of the Office of the State Treasurer of the State of Georgia.

Section 2. Establishment of Securities Account. The Custodian hereby confirms that (i) the Custodian has established account number _____ in the name of the Treasurer (such account and any successor account the "Securities Account"), (ii) the Custodian, shall, subject to the terms of this Agreement, treat the Treasurer as entitled to exercise the rights that comprise any securities entitlement credited to the Securities Account, (iii) all property delivered to the Custodian pursuant to the Security Agreement will be promptly credited to the Securities Account, and (iv) all securities or other property underlying any financial assets credited to the Securities Account shall be registered in the name of the Custodian, endorsed to the Custodian or in blank or credited to another securities account maintained in the name of the Custodian and in no case will any financial asset credited to the Securities Account be registered in the name of the Depository, payable to the order of the Depository, or specially endorsed to the Depository except to the extent the foregoing have been specially endorsed to the Custodian or in blank.

Section 3. "Entitlement Holder. The Treasurer shall be the entitlement holder as defined in " O.C.G.A. §11-8-102(7).

Section 4. "Securities Entitlement" Election. The Custodian hereby agrees that each item of property (whether investment property, financial asset, security, instrument, or cash) credited to the Securities Account shall be treated as a "securities entitlement" with respect to the Securities Account as defined in O.C.G.A. §11-8-102(a)(17)

Section 5. Entitlement Orders. If at any time the Custodian shall receive an "entitlement order" as defined in O.C.G.A. §11-8-102(a)(8) issued by the Treasurer or by the Administrator and relating to the Securities Account, the Custodian shall comply with such entitlement order without further consent by the Depository or any other person.

Section 6. Subordination of Lien; Waiver of Set-Off. In the event that the Custodian has or subsequently obtains by agreement, operation of law, or otherwise a security interest in the Securities Account or any security entitlement credited thereto, the Custodian hereby agrees to immediately notify the Administrator of such secondary security interest and further agrees that such security interest shall be subordinated to the Treasurer. The securities entitlements and other items held in the Securities Account will not be subject to deduction, set-off, banker's lien, or any other right in favor of any person other than the Treasurer.

Section 7. Choice of Law. Both this Agreement and the Securities Account shall be governed by the laws of the State of Georgia excluding choice of law provisions. Regardless of any provision in any other agreement, for purposes of the Georgia UCC, Georgia shall be deemed to be the Custodian's location and the Securities Account (as well as the securities entitlements related thereto) shall be governed by the laws of the State of Georgia, including specifically O.C.G.A. §11-8-110(e); otherwise, the choice of law provisions of the State of Georgia shall not be applicable.

Section 8. Conflict with other Agreements. There are no other agreements entered into between the Custodian and the Depository with respect to the Securities Account, other than the safekeeping or custodial agreement pursuant to which the account was opened. In the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Agreement shall prevail.

Section 9. Amendments. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

Section 10. Notice of Adverse Claims. Except for the claims and interest of the Treasurer and of the Depository in the Securities Account, the Custodian does not know of any claim to, or interest in, the Securities Account or in any "financial asset" (as defined in O.C.G.A. §11-8-102(a)) credited thereto. If any person asserts any lien, encumbrance, or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution, or similar process) against the Securities Account or in any financial asset carried therein, the Custodian will promptly notify the Treasurer and Depository thereof.

Section 11. Maintenance of Securities Account. In addition to, and not in lieu of, the obligation of the Custodian to honor entitlement orders as agreed in Section 3 hereof, the custodian agrees to maintain the Securities Account as follows:

(a) Custody of Pledged Securities and Reports. The Custodian shall maintain custody of the Pledged Securities and (i) send written safekeeping receipts or electronic advices and (ii)

reports or statements, each required by, and in a form approved by, the Treasurer or the Administrator of all pledged securities as of the end of each calendar month, sent on a monthly basis to the Administrator within ten (10) business days after the end of each month.

(b) Authorization for Release of Pledged Securities. The Custodian shall require written authorization from the Administrator before effecting release of any of the Pledged Securities to the Depository.

The Custodian will not pay the Depository any principal funds as a result of a maturity or redemption without 1) the receipt of written authorization by the Administrator, and 2) adequate collateral replacement or substitution of Approved Securities to ensure the Fair Market Value of the Securities Account exceeds the Pledge Amount, if needed. In no case shall the Fair Market Value of the Securities Account be less than the Pledge amount after the withdrawal.

(c) Statements and Confirmations. The Custodian will promptly send copies of all statements, confirmations, and other correspondence concerning the Securities Account and/or any financial assets credited thereto simultaneously to the Depository and the Treasurer or designee at the direction of the Treasurer at the address set forth in Section 13 of the Agreement.

(d) Tax Reporting. All items of income, gain, expense, and loss recognized in the Securities Account shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Depository.

(e) Substitution of Pledged Securities. In the event of a maturity or redemption, the Custodian will require the substitution of an appropriate amount of Approved Securities to satisfy the Pledge Amount.

(f) Duty to Resolve Discrepancies. It is the duty of the Custodian to work with the Administrator to resolve any and all differences or discrepancies between their respective records and reports of inventory of Pledged Securities. The Administrator shall immediately report its inability or failure to reach such resolution to the Treasurer. In the event of any dispute not resolved, the Treasurer and the Attorney General shall act for the State.

(g) Interest payments. The Depository may collect and receive all interest payments on the Pledged Securities under certain circumstances, as more fully set forth in this Agreement.

Section 12. Representations, Warranties, and Covenants of the Custodian. The Custodian hereby makes the following representations, warranties, and covenants:

(a) The Custodian is a bank, savings association, or trust company that:

(1) is organized and existing under the laws of the State of Georgia, any other state, or the United States;

(2) has executed all forms required for a custodian under Title 45 or any rule adopted under Title 45;

(3) hereby agrees to be subject to the jurisdiction of the courts of the State of Georgia or of courts of the United States that are located within the State of Georgia for the purpose of any litigation arising out of Title 45; and

(4) has been approved by the Treasurer to act as a custodian under Title 45.

(b) The Securities Account will be maintained in the manner set forth herein until termination

of this Agreement. The Custodian shall not change the name or account number of the Securities Account without the prior written consent of the Treasurer.

(c) No financial asset is or will be registered in the name of the Depository, payable to its order, or specially endorsed to it, except to the extent such financial asset has been endorsed to the Custodian or in blank.

(d) This Custodial Agreement is a valid and legally binding obligation of the Custodian.

(e) The Custodian has not entered into and until the termination of this Agreement will not enter into any agreement with any other person relating to any property of the Securities Account and/or any securities entitlements credited thereto pursuant to which it has agreed to comply with entitlement orders (as defined in O.C.G.A. §11-8-102(a)(8)) of such person. The Custodian has not entered into any other agreement with the Depository or Treasurer purporting to limit or condition the obligation of the Custodian to comply with entitlement orders as set forth in Section 3 hereof.

Section 13. Successors. The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives.

Section 14. Notices. Any notice, request, or other communication required to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or two days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth below.

Depository: _____

Treasurer: Office of the State Treasurer
Attention: Jeff Carman
200 Piedmont Avenue, SE
Suite 1204 West Tower
Atlanta, GA 30334
jcarman@treasury.ga.gov

Copy to: Georgia Bankers Association
Attention: Sherry Scruggs
50 Hurt Plaza, Suite 1050
Atlanta, Georgia 30303
sscuggs@gabankers.com

Custodian: _____

Attention: _____

Any party may change its address for notice in the manner set forth above.

Section 15. Termination. The rights and powers granted herein to the Treasurer have been granted in order to perfect the security interest in the Securities Account and are powers coupled with an interest and will neither be affected by the bankruptcy of the Depository nor by the lapse of time. The obligations of the Custodian hereunder shall continue in effect until the security interest of the Treasurer in the Securities Account has been terminated pursuant to the terms of the Security Agreement and the Treasurer has notified the Custodian of such termination in writing.

Section 16. Georgia and Federal Law to Govern; Choice of Forum. This Agreement shall be deemed to have been made in the State of Georgia and shall be construed, and the rights and liabilities of the parties determined, in accordance with the laws of the State of Georgia except as to choice of law provisions. With respect to regulatory matters, all transactions under this Agreement shall be subject to all applicable laws and rules and regulations of all federal, state, and self-regulatory agencies, including but not limited to the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the United States Treasury, and the Georgia Department of Banking and Finance. Any action brought to assert any right or remedy pertaining to this Agreement shall be brought exclusively in the Superior Court of Fulton County, Georgia.

Section 17. Conduct of the Parties. Conduct of the parties shall not in any matter constitute a waiver of any right, duty, or obligation imposed by this Agreement upon any party hereto.

Section 18. Time of the Essence. Time is of the essence of this Agreement.

Section 19. Headings. The headings of the sections and subsections hereof are for descriptive purposes only and do not modify or qualify any of the rights or obligations set forth in this Agreement.

Section 20. Limitation on Assignment. The Administrator shall not assign this Agreement or any right or obligation hereunder without the prior written approval of the Treasurer. Further, the Administrator shall not subcontract or otherwise "farm out" or substitute performance under this Agreement without the prior written permission of the Treasurer.

Section 21. Independent Parties. The parties to this Agreement are independent, and herein shall be construed to make either party an agent, employee, partner, or joint venture of the other.

Section 22. Construction. Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and between the parties hereto that the court interpreting or construing the same shall not apply a presumption that the terms, conditions, and provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.

Section 23. Severability. Notwithstanding any provisions hereof, if any provision herein is or should become inconsistent with any present or future law, rule, or regulation of any sovereign government or regulatory body having jurisdiction over the subject matter of this Agreement, such provision shall be deemed to be rescinded or modified in accordance with any such law, rule, or regulation; in all other respects, this Agreement shall continue to remain in full force and effect.

Section 24. Amendment. Except as otherwise provided herein, this Agreement may be

modified only by the prior written agreement of the parties. This Agreement represents the entire agreement and understanding between the Treasurer and the Administrator concerning the subject matter hereof, and shall supersede any previous agreement between the Treasurer and the Administrator.

Section 25. Counterparts. This Agreement is executed in three counterparts, each of which is deemed an original of equal dignity with the others and which is deemed one and the same instrument as the others.

Section 26. Hold Harmless. Solely as between the Custodian and the Depository, the Depository hereby agrees to indemnify, defend and hold the Custodian, its affiliates and each of their officers, directors, employees, agents and representatives harmless from and against any suit, judgment, claim, asserted claim, demand, loss, liability, expense or interest (including legal fees and expenses) (“Losses and Expenses”) arising out of or in connection with this Agreement, excluding, however, those Losses and Expenses which are finally determined by a court of competent jurisdiction to have resulted directly from the Custodian’s gross negligence or willful misconduct in the performance of its obligations as described by this Agreement. This indemnification shall survive resignation of the Custodian or termination of this Agreement.

Section 27. Termination. This agreement may be terminated by the Treasurer or the Custodian with 30 days’ written notice the other parties and to the Administrator.

IN WITNESS WHEREOF, the Treasurer, Depository, Custodian, and Administrator have caused this Agreement to be executed as of the date first written above.

DEPOSITORY

By: _____
Name:
Title:

OFFICE OF THE STATE TREASURER

By: _____
Name: Lynne Riley
Title: State Treasurer

CUSTODIAN

By: _____
Name:
Title:

ADMINISTRATOR

By: _____
Name: Joe Brannen
Title: President & CEO