

STATE OF GEORGIA BANKING AGREEMENT

for Accounts Awarded Pursuant to a Request for Proposal

THIS AGREEMENT (“State Banking Agreement”) is made and entered into this _____ day of _____, 20____ (“Effective Date”), by and between _____, (“State Entity”) and _____ (“Bank”).

WHEREAS, State Entity desires to contract with the Bank for the provision of banking services, and

WHEREAS, State Entity has received approval to contract for these banking services from the State Treasurer acting on behalf of the State Depository Board.

NOW THEREFORE, it is covenanted and agreed as follows:

1. Priority of documents – In addition to this State Banking Agreement, the State Entity and Bank have entered into other banking agreements listed in Appendix A which include the related addendums and specifically incorporated documents to the agreements as well as any subsequent amendments to the agreements, addenda, and incorporated documents (collectively “Agreements”). The entire and integrated agreement between the State Entity and the Bank related to the services shall consist of this State Banking Agreement, the Request for Proposal (“RFP”), the Response, and the Agreements. In the event of conflict among any of the preceding documents, such documents shall govern in the following order of precedence: (1) State Banking Agreement, (2), RFP, (3) the Response, and (4) Agreements in such order of priority as specified in the RFP and each individual agreement but none superseding the State Banking Agreement, RFP, or the Response. Further, in the event the State Entity and the Bank execute any additional agreements (the Agreements as well as any additional agreements are collectively referred to as “Other Agreements”) for the provision of banking services, the terms of the State Banking Agreement shall control over any conflicting terms in the additional agreements.
2. Fees – The State Entity agrees to pay fees for services per the unit prices submitted in the Response as accepted by the State Entity. The fees shall be uniform for all accounts maintained by State Entity, and to the extent a fee is listed on either the State Entity’s schedule, such fee shall be applicable. The Bank and the State Entity agree that all unit costs shall remain firm for the term contemplated in the RFP, Response, and Agreements and any extensions should Customer elect to extend the Agreements, unless the parties agree differently in writing. Any services for which a fee is not part of the RFP or Response shall be at the Bank’s then rate current at the time the services are performed or as otherwise negotiated in writing between the parties before such services are rendered.
3. Reservation to Add Services – The State Entity reserves the right to add or reduce any services at any time. Any services for which a fee is not part of the RFP or Response shall be at Bank’s then current standard price or as agreed to in writing between the parties before such services are rendered.
4. Specific Provisions: Notwithstanding anything to the contrary in the RFP, the Response, and the Other Agreements, the following terms and conditions shall apply:

- a. Indemnification: State Entity is precluded from agreeing to indemnify or hold harmless Bank or any other party from and against any losses related to the Response and the Other Agreements. Although precluded from giving an indemnification or agreeing to hold the Bank harmless, State Entity shall, to the extent provided by Georgia law, be responsible for its performance and the performance of its officers and employees related to the RFP, the Response, and the Other Agreements and does not request that Bank assume liability for the performance of Agency and/or its officers and employees under the RFP, the Response, and the Other Agreements. As a matter of Georgia law, State Entity is subject to certain legal actions related to tort and contract claims. O.C.G.A. §§ 50-21- 1 & 50-21-20 through 50-21-37. A breach of contract action is Bank’s remedy if it believes it has suffered any losses as a result of State Entity’s breach of the Other Agreements.
- b. Jurisdiction and Venue: In the event a dispute arises between the parties regarding the State Banking Agreement, RFP, the Response, and/or Other Agreements, the parties shall not arbitrate the dispute. Instead, any action or proceeding brought by any party in connection with the State Banking Agreement, RFP, the Response, and/or the Other Agreements shall be brought only in the Superior Court of Fulton County, Georgia. Each party expressly submits and consents in advance to such jurisdiction and waives any objection based upon lack of personal jurisdiction, improper venue or forum non-conveniens. Further, the State Banking Agreement, RFP, the Response, and Other Agreements shall be construed in accordance with, and governed by, the laws of the State of Georgia without regard to its conflict of laws rules or any other rules directing referral to foreign law or forums.
- c. Open Records: The State Entity may disclose documents and/or information identified by the Bank in the Response, and/or the Other Agreements as confidential in response to a request for disclosure by a court, regulatory body, or taxing authority, including a valid subpoena or a court order, pursuant to the Open Meetings Act or the Georgia Open Records Act, or if otherwise obligated under applicable law or regulatory authority, as long as State Entity:
 - (i) Notifies the Bank of the terms and the circumstances of the request;
 - (ii) Consults with Bank and cooperates with Bank’s reasonable requests to resist or narrow that request;
 - (iii) Furnishes only information that, according to advice (which need not be a legal opinion) of its legal counsel, State Entity is compelled by law or regulatory authority to disclose; and
 - (iv) Except in cases where the disclosure is pursuant to the Georgia Open Records Act, uses reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded the information disclosed.

In the event State Entity receives a request under the Georgia Open Records Act for inspection of the Bank’s information or documents which have been identified as confidential and are not otherwise exempt from disclosure under applicable law, including, but not limited to O.C.G.A. § 50-5A-11, State Entity shall, prior to disclosure, immediately (within one (1) Business Day of receipt of the request, if possible) provide Bank with notice of the request. Bank shall have the burden of raising any applicable exceptions or exemptions under the Georgia Open Records Act, sustaining the exception or exemption, and taking any other action necessary to protect its interests, including, without limitation, complying with any requirements of the Georgia Open Records Act for refusing access to

records. Bank shall bear all costs (including attorney's fees) of denying or limiting access to records and information.

- d. Limitations of liability: To the extent the Response or any of the Other Agreements seek to limit the Bank's liability, it is the position of the State Entity that the provisions are void as it is precluded from agreeing to limit the liability of the Bank from and against any losses related to the Response or the Other Agreements. However, State Entity agrees that the limitations of liability found in the Response and/or Other Agreements are valid to the fullest extent permitted by law.
- e. Termination: The State Treasurer, acting on behalf of the State Depository Board, may immediately terminate this State Banking Agreement and any of the Other Agreements, unless otherwise specified in writing by the State Treasurer, should the Bank no longer be approved as a qualified state depository or should the State Depository Board otherwise determine to limit the State's financial exposure to the Bank. In addition, the State Entity may terminate this State Banking Agreement and any of the Other Agreements, for any reason whatsoever, by providing at least sixty (60) days written notice to the Bank prior to termination.
- f. Term: State Entity is legally precluded from contracting for a term beyond currently appropriated funds. Therefore, in the event any of the Other Agreements provide that the terms of the agreement extend beyond the current fiscal year, then, subject to the rights of termination set forth above, the Other Agreements shall expire at the end of the current fiscal year. Unless previously terminated, State Entity may renew the State Banking Agreement and Other Agreements on the same terms and conditions for four (4) additional one (1) year periods beginning on July 1st and ending on June 30th of the succeeding years.
- g. Attorneys Fees: The Bank and State entity will bear their own respective attorneys fees, expenses and costs in connection with any disputes arising under the Agreements. However, the Bank and State Entity may request an award of attorneys fees in any court dispute.
- h. Disputes over Account Funds: Except where another applicable banking agreement does not specifically provide for the Bank to withhold any funds due to a dispute, the Bank may refuse to pay out money only to the extent of the amount in dispute from an Account until any dispute over the deposits or funds (including, without limitation, any dispute over what persons are authorized to represent or Act for the Customer) has been resolved by a court, or by agreement of the parties that is documented to the Bank's satisfaction.
- i. Set Off: No provisions providing for a right to set off on behalf of the Bank shall apply against the State.

IN WITNESS WHEREOF, the STATE ENTITY has caused this instrument to be duly signed by _____, and the BANK has hereunto set its hand and seal, the day and year written above.

STATE ENTITY

BANK

By: _____

By: _____

ATTEST: _____

ATTEST: _____