



# ADOPTED

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

1-D October 18, 2022

October 18, 2022

The Honorable Board of Commissioners  
Los Angeles County  
Development Authority  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

A handwritten signature in black ink, appearing to read "Celia Zavala", is written over a light blue circular stamp.

CELIA ZAVALA  
EXECUTIVE OFFICER

Dear Commissioners:

**APPROVE A CONTRACT FOR CUSTODIAL BANK SERVICES  
(ALL DISTRICTS) (3 VOTE)**

**SUBJECT**

This letter recommends approval of a contract with U.S. Bank National Association (U.S. Bank) to provide custodial bank services for the Los Angeles County Development Authority (LACDA).

**IT IS RECOMMENDED THAT THE BOARD:**

1. Authorize the Executive Director or designee to execute a Contract with U.S. Bank to provide custodial bank services for the LACDA, to be effective following approval as to form by County Counsel and execution by all parties.
2. Authorize the Executive Director or designee to execute amendments to the Contract, following approval as to form by County Counsel, to modify the Statement of Work or to add services, as necessary.
3. Authorize the Executive Director or designee, upon his determination and as necessary and appropriate under the terms of the Contract, to terminate the Contract.
4. Find that approval of a Contract to provide custodial bank services is exempt from the California Environmental Quality Act (CEQA), as described herein, for the reasons stated in this Board letter and the record of the project.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The purpose of this action is to approve a Contract for custodial bank services necessary for the regular operation of the LACDA. The LACDA is required to establish safekeeping arrangements for the delivery of all brokered investments and purchases from other institutions. This requirement is in accordance with the Prudent Investor standard under California Government Code, Sections 53600 – 53686 and the LACDA’s investment policy.

Bank of America is the LACDA’s current safekeeping and custody services bank but will cease providing custodial bank services to clients in November 2022. The LACDA has identified U.S. Bank as a qualified institution with clients comparable to the LACDA and whose pricing is market standard. An expeditious execution of the agreement is necessary for regulatory compliance and uninterrupted business continuity.

### **FISCAL IMPACT/FINANCING**

There is no impact on the County General Fund. Costs for the services are minimal, estimated at approximately \$40,000 per year, within acceptable market ranges, and equivalent to the current vendor. Funds for this service are included in the LACDA’s approved Fiscal Year 2022-2023 budget and future year budgets as needed.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

This Contract includes provisions for mutual indemnification, which are standard in banking and fiscal contracts. These provisions have been reviewed by County Counsel and LACDA Risk Management. The custodial bank services have a very low risk as the bank is not authorized to move any LACDA funds without proper authorization and only to the investments authorized in the amounts authorized by the LACDA.

### **ENVIRONMENTAL DOCUMENTATION**

The proposed action is exempt from the provisions of the National Environmental Policy Act pursuant to 24 Code of Federal Regulations, Part 58, Section 58.35 (b)(3) because it involves maintenance activities that will not have a physical impact on or result in any physical changes to the environment. The action is exempt from the provisions of CEQA pursuant to State CEQA Guideline 15301 because it involves activities that do not have the potential for causing a significant effect on the environment.

### **CONTRACTING PROCESS**

Financial services are exempt from procurement regulations. The LACDA, upon being informed by Bank of America that they would no longer provide these custodial bank services, conducted an informal procurement to identify a national bank that would provide the LACDA with the best custodial bank services. U.S. Bank was selected based on the excellent services the bank provides, the low cost for the service, and the long-standing arrangement that LACDA already has with the bank for other services such as loan servicing, prepaid cards and credit cards. U.S. Bank has provided excellent services to the LACDA and has a good record of appropriate fiscal responsibility.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

An expeditious execution of the agreement is necessary for regulatory compliance and uninterrupted

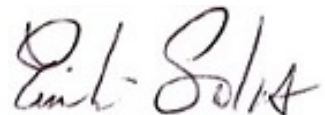
The Honorable Board of Commissioners

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business continuity.

Respectfully submitted,

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Emilio Salas

Executive Director

ES:MF

Enclosures

## CUSTODY AGREEMENT

This Custody Agreement (the “Agreement”) is between Los Angeles County Development Authority (legal name of entity), a governmental agency (legal form of entity) organized under the laws of the State of California, United States of America, (“Customer”), and U.S. Bank National Association, a national banking association organized under the laws of the United States with offices in Minneapolis, Minnesota (“Bank”).

The parties hereby agree as follows:

### SECTION 1 DEFINITIONS

- 1.1. “**Account**” means (i) the custody account established in the name of Customer and maintained under this Agreement for the Assets (as defined below) and (ii) where the context requires, one or more Sub-accounts (as defined below).
- 1.2. “**Accounting Standards**” means Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 820, *Fair Value Measurement*, or Governmental Accounting Standards Board (GASB) Codification Statement No. 72, *Fair Value Measurement and Application*.
- 1.3. “**Affiliated Investment**” means a security or other property issued, offered, or serviced by Customer or Customer’s affiliate.
- 1.4. “**Assets**” means the securities, cash, and other property Customer contributes, or causes to be contributed, from time to time under this Agreement; investments and reinvestments thereof; and income thereon, as provided herein.
- 1.5. “**Cash-flow Analysis**” means a periodic written analysis of Customer’s cash-flow history, short-term financial needs, long-term financial needs, expected levels and timing of contributions, expected levels and timing of distributions, liquidity needs (including but not limited to the anticipated liquidity required to make distributions), ability to provide future funding, and other significant information which could affect cash-flow or the exercise of discretion to manage the Assets.
- 1.6. “**CFR**” means the Code of Federal Regulations.
- 1.7. “**Client-controlled Asset**” means an asset that is neither registered in the name of Bank or Bank’s nominee nor maintained by Bank at a Depository (as defined below) or with a sub-custodian nor held by Bank in unregistered or bearer form or in such form as will pass title by delivery.
- 1.8. “**Code**” means the Internal Revenue Code of 1986, as amended.
- 1.9. “**Depository**” means any central securities depository (such as the DTC), international central securities depository (such as Euroclear Bank SA/NV), or Federal Reserve Bank.
- 1.10. “**DTC**” means the Depository Trust Company.
- 1.11. “**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.
- 1.12. “**Guidelines**” means the written investment objectives, policies, strategies, and restrictions for the Account (or for any Sub-accounts therein), including but not limited to proxy-voting guidelines, as amended from time to time
- 1.13. “**Harm**” means claims, costs, damages, delayed payment or non-payment on Assets sold, diminution of Assets by reason of investment experience, expenses (including attorneys’ and other professional fees), fines, interest, liabilities, losses, penalties, stockholders’ assessments (asserted on account of asset registration), and taxes.

- 1.14. **“Indemnified Person”** means Bank and its affiliates, and their officers, directors, employees, agents, successors, and assigns.
- 1.15. **“Investment Advice”** means a recommendation, or a suggestion to engage in or refrain from taking a particular course of action, as to (i) the advisability of acquiring, holding, disposing of, or exchanging any Asset or any securities or other investment property or (ii) the Guidelines, the Cash-flow Analysis, the composition of the Account’s portfolio, or the selection of persons to provide investment advice or investment management services with respect to the Assets.
- 1.16. **“Investment Company Act”** means the Investment Company Act of 1940, as amended.
- 1.17. **“IRS”** means the Internal Revenue Service.
- 1.18. **“Legal Action”** means any freeze order, garnishment, levy, restraining order, search warrant, subpoena, writ of attachment or execution, bankruptcy-court order, receivership order, or similar order relating to the Account.
- 1.19. **“Messaging System”** means any financial-messaging system, network, or service acceptable to Bank, such as the Society for Worldwide Interbank Financial Telecommunication messaging system.
- 1.20. **“National Securities Exchange”** means a securities exchange that is registered with the SEC (as defined below) under Section 6 of the Securities Exchange Act of 1934.
- 1.21. **“Plan-assets Vehicle”** means an investment contract, product, or entity that holds plan assets (as determined pursuant to ERISA §§3(42) and 401 and 29 CFR §2510.3-101).
- 1.22. **“Private Fund”** means an *“investment company”* that is not subject to registration with the SEC under the Investment Company Act, pursuant to §3(c)(1) or (7) thereof.
- 1.23. **“SEC”** means the United States Securities and Exchange Commission.
- 1.24. **“State”** means the State of California, United States of America.
- 1.25. **“Statement Recipient”** means Customer and anyone else Customer so designates.
- 1.26. **“Sub-account”** means a separate portion of the Account.

## SECTION 2 APPOINTMENT AND ACCEPTANCE

- 2.1. **Appointment; Acceptance.** Customer hereby appoints Bank to provide custody services in connection with the Assets. Bank hereby agrees to hold the Assets in the Account with due care in accordance with reasonable commercial standards, upon the terms and conditions set forth below.
- 2.2. **Establishment of Account.**
- 2.2.1. Customer hereby contributes Assets, or causes Assets to be contributed, to the Account.
- 2.2.2. Customer hereby represents, warrants, and covenants as follows, and Bank may resign immediately if Customer breaches any such representation, warranty, or covenant:
- 2.2.2.1. Customer holds good and valid legal title to all Assets.
- 2.2.2.2. None of the Assets is (i) an asset of any “plan” as defined in ERISA §3(3); any “plan” as defined in Code §4975(e)(1); any Plan-assets Vehicle; or any plan or entity not otherwise within the foregoing definitions that is subject to similar restrictions under federal, state, or local law; (ii) subject to the requirements of a special reserve bank account under SEC Rule 15c3-3; a customer segregated account, cleared swaps customer account, or customer secured

account under U.S. Commodity Futures Trading Commission Rules 1.20, 22.5, or 30.7; or any similar rule or regulation; or (iii) subject to a public-deposits, public-funds, or other State law that would require Bank to set aside any direct government obligations, government-guaranteed obligations, surety bonds, letters of credit, or other assets as security, regardless of the type or amount of capital of Bank, the amount of public deposits held by Bank, or the extent to which the Assets are not insured by the Federal Deposit Insurance Corporation or exceed federal deposit insurance limits.

2.2.2.3. Customer is neither (i) a Private Fund, (ii) an investment pool or entity that is an “*investment company*” as defined in Investment Company Act §3(a) or is excluded from such definition (or exempted from regulation) by the Investment Company Act, (iii) an insurer, (iv) a reinsurer, nor (v) a natural person.

2.2.2.4. Customer is not a trustee of, and has no duty to engage a trustee for, the Assets.

2.2.3. As directed by Customer, Bank will establish one (1) or more Sub-accounts and allocate Assets among Sub-accounts. Customer hereby covenants not to direct Bank to establish any Sub-account for the benefit of any entity having a different taxpayer identification number than Customer and acknowledges that each Sub-Account will have the same taxpayer identification number as Customer.

2.2.4. Customer hereby covenants not to cause or permit the Account to acquire any Affiliated Investment the price of which is not quoted on a National Securities Exchange.

2.2.5. Bank will keep the Assets (other than deposits at Bank) separate and apart from the assets of Bank.

### SECTION 3 BOOKS, RECORDS, AND ACCOUNTS

3.1. **Accounting.** Bank shall maintain proper books of account and complete records of Assets and transactions in the Account.

### SECTION 4 ASSET DELIVERY, TRANSFER, CUSTODY, AND SAFEKEEPING

4.1. Customer will from time to time deliver, or cause to be delivered, Assets to Bank. Bank shall receive and accept such Assets for the Account upon directions from Customer.

4.2. **Account Statements.** Bank will furnish each Statement Recipient with (i) an Account statement with the frequency designated below (or as subsequently agreed upon by Bank and Customer) within thirty (30) calendar days after the end of the reporting period and (ii) a final Account statement within thirty (30) calendar days after Bank has transferred all Assets from the Account as provided under this Agreement. (However, if Customer directs Bank to hold an Account statement, then Bank may delay delivery thereof until thirty (30) calendar days after the hold has expired.) Such Account statements will reflect Asset transactions during the reporting period and ending Asset holdings. To the extent Customer has established an account in Bank’s on-line portal and granted access thereunder to Statement Recipients, Bank will furnish such Account statements by way of such system. If no frequency is so designated or agreed upon, Customer shall be deemed to have designated “Monthly”.

(Check at least one):

- Monthly
- Quarterly
- Semi-annually
- Annually

4.3. **Confirmations; Notification by Agreement.** Except to the extent that Customer and Bank have entered into a separate written agreement that expressly makes Bank an investment manager of the Assets, the Account statements described above (including their timing and form) serve as the sole written notification of any securities transactions effected by Bank for the Account. Even so, Customer has the right to demand that Bank provide written notification of such transactions pursuant to 12 CFR §12.4(a) or (b) at no additional cost to Customer.

4.4. **Corporate Actions.** Bank shall forward to any person authorized under this Agreement to direct the purchase or sale of an Asset information Bank receives with respect to the Asset concerning voluntary corporate actions (such as proxies, redemptions, or tender offers) and mandatory corporate actions (such as class actions, mergers, stock dividends, or stock splits).

4.4.1. Notwithstanding anything herein to the contrary, Bank will, without providing notice, (i) cause Assets to participate in any mandatory exchange transaction that neither requires nor permits approval by the owner of the Assets and (ii) file any proof of claim received by Bank during the term of this Agreement regarding class-action litigation over a security held in the Account during the class-action period, regardless of any waiver, release, discharge, satisfaction, or other condition that might result from such a filing.

4.5. Upon receipt of directions from Customer, Bank shall return Assets to Customer, or deliver Assets to such location or third party as such directions may indicate, provided that in connection therewith it is the sole responsibility of Customer to provide any transfer documentation as may be required by the applicable Depository or third party recipient. Bank shall have no power or authority to assign, hypothecate, pledge or otherwise dispose of any Assets, except as provided herein or pursuant to such directions.

## SECTION 5 POWERS OF BANK

5.1. In the performance of its duties under this Agreement, Bank shall have the power to:

5.1.1. **Sign Documents.** Make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any or all other instruments that may be necessary or appropriate to the proper discharge of its duties under this Agreement.

5.1.2. **Hire Service Providers.** Hire service providers to assist Bank in exercising Bank's powers under this Agreement, including any service provider that is affiliated with Bank, and provide them with information about the Account as needed to that end.

5.1.3. **Hold Assets Un-invested.** Hold in a noninterest-bearing deposit account of Bank any cash Assets (i) that are subject to pending investment or distribution directions received by Bank with respect to the Account, (ii) that were received by Bank too late in the day to be invested into the Account's designated sweep vehicle, (iii) as directed under this Agreement, or (iv) for other operational reasons.

5.1.4. **Retain Disputed Funds.** Withhold delivery or distribution of Assets that are the subject of a dispute pending final adjudication of the dispute by a court of competent jurisdiction.

5.1.5. **Distribute Assets.** Distribute Assets as set forth herein.

5.1.6. **Safe-keep Assets.** Safe-keep Assets as set forth herein.

5.1.7. **Register Assets.** Register any Asset in the name of Bank or Bank's nominee or to hold any Asset in unregistered or bearer form or in such form as will pass title by delivery, provided that Bank's records at all times show that all such assets are part of the Account.

5.1.8. **Maintain Assets at a Depository or with a Sub-custodian.** Maintain Assets that are (i) book-entry securities at any Depository or with any sub-custodian and to permit such Assets to be registered in the name of Bank, Bank's nominee, the Depository, the Depository's nominee, the sub-custodian, or the sub-custodian's nominee and (ii) physical securities at Bank's office in the United States and in a safe place.

5.1.9. **Maintain Assets at a Mutual Fund.** Maintain Assets that are mutual-fund shares in Bank's omnibus position at the fund.

5.1.10. **Collect Income.** Collect all income, principal, and other distributions due and payable on Assets. If Customer directs Bank to search the DTC's Legal Notice System for notice that a particular Asset is in default or has refused payment after due demand, then Bank will conduct such a search and notify Customer of any such notice Bank finds therein.

5.1.11. **Exchange Foreign Currency.** Exchange foreign currency into and out of United States dollars through customary channels, including Bank's foreign exchange department.

5.1.12. **Advance Funds or Securities.** Advance funds or securities in furtherance of settling securities transactions and other financial-market transactions under this Agreement.

## **SECTION 6 PERMISSIBLE INVESTMENTS; SWEEP DIRECTION**

6.1. Permissible investments for the Account include, but are not limited to, any securities or property administered, advised, custodied, held, issued, offered, sponsored, supported by the credit of, underwritten, or otherwise serviced by Bank or by Bank's affiliate.

6.2. **Sweep Direction.** To the extent Bank has received no investment direction as to cash Assets held in the Account, Bank will use such Assets to purchase a position in the Account's designated sweep vehicle.

## **SECTION 7 SETTLEMENT**

7.1. Upon receipt of directions from Customer, Bank will settle purchases made with Assets and sales of Assets on a contractual basis according to Bank's instruction-deadline schedule and current securities-industry practices, if Bank has all the information and the Account has all the Assets necessary for the purchase or sale.

7.2. Customer hereby covenants not to (i) direct the purchase of an asset, notify a third party that Bank will settle the purchase, or cause or permit anyone else to provide such direction or notice, if the Account has insufficient funds to settle the purchase; (ii) cause or permit proceeds from the sale of an Asset to be used to pay for the earlier purchase of the same Asset; or (iii) cause or permit the sale of an Asset that the Account has not fully paid for.

7.3. With respect to any sale of an Asset on a non-delivery-versus-payment basis, Bank hereby covenants to use commercially reasonable efforts to obtain payment on the same business day that Bank delivered the Asset, and the Account (and not Bank) assumes all risk that payment is delayed or not received.

## **SECTION 8 PRICE-REPORTING; CLIENT-CONTROLLED ASSETS**

8.1. **Price-reporting.** For purposes of reporting the price of an Asset on an Account statement:

8.1.1. **Pricing from Vendor or Exchange.** If Bank receives a price from its third-party pricing vendor, or if a price is quoted on a National Securities Exchange, then Bank will report such price.

8.1.2. **Pricing from Other Sources.** If Bank does not receive a price from its third-party pricing vendor, and a price is not quoted on a National Securities Exchange, then Bank will report (i) the most recent price that Bank received from Customer or Customer's agent (and Customer hereby covenants that Customer and Customer's agents will use a pricing form acceptable to Bank as the means of providing prices to Bank), (ii) the most recent price that Bank received from the Asset's broker, fund accountant, general partner, issuer, investment manager, transfer agent, or other service provider, (iii) the Asset's par value, or (iv) a nominal value for the Asset.

8.1.3. **Limitations.** Customer hereby acknowledges that Bank is performing a routine, ministerial, non-discretionary price-reporting function and that the reported price might be neither fair market value nor fair value (under Accounting Standards or applicable law). Customer hereby covenants not to rely on the reported price as a substitute for (i) investigating the Asset's value in connection with a decision to acquire, hold, dispose of, or exchange any securities or



other investment property; (ii) obtaining and ensuring the reliability of an independent third-party appraisal with respect to such a decision; or (iii) obtaining Investment Advice.

8.1.4. **Pricing Sources; Methodology.** Upon Customer's request, Bank will provide Customer with information about Bank's pricing sources and methodologies.

8.2 **Client-controlled Assets.** Customer may direct Bank from time to time to include in the Account statements specific Client-controlled Assets that are registered in the name of Customer. In such a case, Bank has the right to exclude such assets from the Account statements or to include them with a notation about control. To the extent Bank includes them, Customer hereby acknowledges that:

8.2.1. Customer is responsible for reviewing (i) the Account statements to ensure that they include notations about the control of each such asset and (ii) any third-party reports made accessible by Bank to ensure that they do not inaccurately identify the holder of any such assets.

8.2.2. Bank is not responsible for performing any duties under this Agreement (other than statement-reporting duties, as limited herein) with respect to such assets, and Customer assumes all such duties.

8.2.3. When furnishing Account statements or making third-party reports accessible, Bank may rely on information provided by Customer or by Customer's agents, affiliates, or representatives with respect to such assets (including, but not limited to, information on the units, price, or marketability of such assets) without questioning the information. To that end, Customer will cause each holder of such assets to provide Bank with a copy of such holder's periodic Customer account statements with respect to such assets.

8.2.4. Such assets are subject to **Exhibit A (Fee Schedule)** hereto.

## **SECTION 9 LIMITATIONS ON DUTIES**

9.1. Customer hereby acknowledges that Bank does not provide any services under this Agreement (i) in a "fiduciary capacity" within the meaning of 12 CFR §9.2(e) or (ii) as a "fiduciary" as such term may be defined in State law or otherwise.

9.2. The duties of Bank will be strictly limited to those set forth in this Agreement, and no implied covenants, duties, responsibilities, representations, warranties, or obligations shall be read into this Agreement against Bank. Without limiting the generality of the foregoing, Bank shall have no duty to:

9.2.1. Evaluate or to advise anyone of the prudence, suitability, or propriety of action or proposed action of Customer in any particular transaction involving an Asset or the suitability or propriety of retaining any particular investment as an Asset; review, question, approve, or make inquiries as to any investment directions received under this Agreement; or review the securities or other property held in the Account with respect to prudence or diversification.

9.2.2. Act as trustee of the Assets.

9.2.3. Act as custodian of any assets other than the Assets.

9.2.4. Act as investment manager of the Assets, except to the extent the Assets are subject to Bank's discretion to manage under a separate written investment-management agreement (if any).

9.2.5. Provide Investment Advice.

9.2.6. Determine, monitor, question, or collect any contributions to the Account or monitor compliance with any applicable funding requirements.

9.2.7. Inspect, review, or examine any Client-controlled Asset or governing, offering, subscription, or similar document with respect thereto, to determine or question whether the asset or document is authentic, genuine, enforceable,

properly signed, appropriate for the represented purpose, is what it purports to be on its face, or for any other purpose, or to execute such document, regardless of whether Bank has physical possession of such asset or document.

9.2.8. (i) Collect any income, principal, or other distribution due and payable on an Asset if the Asset is in default or if payment is refused after due demand or (ii) except as expressly provided herein, to notify Customer in the event of such default or refusal.

9.2.9. Provide notice of, or forward, mini-tenders (which are tender offers for less than 5% of an outstanding equity or debt issue) for any equity issue or, if any of the following is true, for any debt issue: The debt is not registered with the SEC. The debt issue has a “first received, first buy” basis with no withdrawal privilege and includes a guarantee of delivery clause. Or, the tender offer includes the statement that “the purchase price includes all accrued interest on the note and has been determined in the sole discretion of the buyer and may be more than or less than the fair market value of the notes” or similar language.

9.2.10. Determine or question whether any direction received under this Agreement is prudent or contrary to applicable law; to solicit or confirm directions; or to take notice of facts not actually known by any Bank employee with direct responsibility for providing services under this Agreement.

9.2.11. Calculate, withhold, prepare, sign, disclose, file, report, remit, or furnish to any taxing authority or any taxpayer any federal, state, or local taxes, tax returns, or information returns that may be required to be calculated, withheld, prepared, signed, disclosed, filed, reported, remitted, or furnished with respect to the Assets or the Account, except to the extent such duties are required by law to be performed only by Bank in its capacity as custodian under this Agreement or are expressly set forth herein.

9.2.12. Monitor service providers hired by Customer or guarantee their performance.

9.2.13. Advance funds or securities or otherwise expend or risk its own funds or incur its own liability in the exercise of its powers or rights or performance of its duties under this Agreement.

## **SECTION 10 AUTHORIZED PERSONS; DELIVERY OF DIRECTIONS**

10.1. **Authorized Persons.** With respect to this Agreement:

10.1.1. Customer will notify Bank of the identity of each (i) employee of Customer who is authorized to act on Customer’s behalf, (ii) third-party agent that is authorized to act on Customer’s behalf, and (iii) employee of each third-party agent who is authorized to act on such agent’s behalf. In no event is any such agent authorized to execute this Agreement or any amendment thereto or to terminate this Agreement.

10.1.2. Bank may assume that any such employee or agent continues to be so authorized, until Bank receives notice to the contrary from Customer (or, with respect to any such employee of any such agent, from such agent).

10.1.3. Customer hereby represents and warrants that any such employee or agent was duly appointed and is appropriately monitored and covenants that Customer will furnish such employee or agent with a copy of this Agreement, as amended from time to time. Customer hereby acknowledges that (i) such employee’s or agent’s actions or omissions are binding upon Customer as if Customer had taken such actions or made such omissions itself and (ii) Bank is indemnified, released, and held harmless accordingly.

10.2. **Delivery of Directions.**

10.2.1. Any direction, notice, or other communication provided for in this Agreement will be given in writing and (i) unless the recipient has timely delivered a superseding address under this Agreement, addressed as provided under this Agreement, (ii) entered into Customer’s account in Bank’s on-line portal, or (iii) sent to Bank by Messaging System.

10.2.2. Any direction received under this Agreement by email or Messaging System, or entered into Customer's account in Bank's on-line portal, is deemed to be given in a writing signed by the sender. Customer hereby represents and warrants that Customer maintains commercially reasonable security measures for preventing unauthorized access to its portal account; to the email accounts of its employees, agents, and agents' employees; and to any Messaging System used by its employees, agents, and agents' employees, and Customer hereby assumes all risk to the Account resulting from Customer's failure to prevent such unauthorized access. Customer hereby acknowledges that Customer is fully informed of the protections and risks associated with the various methods of transmitting directions to Bank and that there may be more secure methods of transmitting directions than the methods selected by Customer and Customer's agents.

## **SECTION 11 FEES AND EXPENSES**

11.1. **Fees; Expenses.** Customer shall pay Bank compensation for providing services under this Agreement. A schedule of that compensation is attached as **Exhibit A (Fee Schedule)** hereto.

11.2. **Outstanding Fees and Expenses.** To the extent of (i) any outstanding compensation, expenses, fees, costs, or other charges incurred by Bank in providing services under this Agreement or (ii) Customer's other indebtedness to Bank, Customer hereby grants Bank a first-priority lien and security interest in, and right of set-off against, the Assets. Bank may execute that lien and security interest, and exercise that right, at any time.

11.3. **Advance of Funds or Securities.** To the extent of any advance of funds or securities under this Agreement, Customer hereby grants Bank a first-priority lien and security interest in, and right of set-off against, the Assets. Bank may execute that lien and security interest, and exercise that right, at any time. Furthermore, nothing in this Agreement constitutes a waiver of any of Bank's rights as a securities intermediary under Uniform Commercial Code §9-206, and Customer hereby acknowledges that the obligation to pay a purchase price to Bank arises at the time of the purchase.

## **SECTION 12 INDEMNIFICATION**

### **12.1. Indemnification.**

12.1.1. **Limited Mutual Indemnification Obligations.** Except to the extent the Losses (as defined below) result from the gross negligence or recklessness or intentional misconduct of the other party or its agents or employees, each party (the "Indemnifying Party") shall defend the other party (the "Indemnified Party"), its Affiliates, and their employees, Subcontractors, agents, officers, directors and shareholders ("Related Parties") from any Third Party Claim (as defined below) asserted by a third party (other than an Affiliate of the Indemnified Party) against the Indemnified Party, and shall indemnify and hold the Indemnified Party and its Related Parties harmless against any and all assessments, losses, liabilities, damages, costs or expenses, including attorneys' fees, consultant's fees, or court costs incident thereto ("Losses") awarded against the Indemnified Party by a final court judgment or an agreement settling such Third Party Claims in accordance with section 8.2. For purposes of this Agreement, the term "Third Party Claim" means any action, suit, proceeding, demand, litigation, or claim by a third party directly related or attributable to (a) the Indemnifying Party's or its agent's or employee's violation (or act causing the other party to be in violation) of any Applicable Law or Network Rule; (b) the Indemnifying Party's breach of any covenant or warranty made by the Indemnifying Party in this Agreement; (c) any material misrepresentation of Indemnifying Party in this Agreement or any material misrepresentation in or omission from any document, certificate or information furnished or to be furnished by Indemnifying Party under this Agreement; (d) any products or services offered, provided, manufactured, marketed, distributed, advertised, promoted or issued by or on behalf of Indemnifying Party (including the Cards); (e) the use of the licensed marks by or on behalf of Indemnifying Party; (f) the willful misconduct or fraudulent activity on the part of any employee or agent of Indemnifying Party; and (g) the Indemnifying Party's failure to make any payment to a customer, employee or other third party.

12.1.2 **Indemnification Procedures.** The Indemnified Party will notify the Indemnifying Party in a reasonably prompt manner of any Third-Party Claim that is asserted for which the Indemnified Party is seeking indemnification pursuant to this Article 8. The Indemnifying Party may thereafter assume control of such Third-Party Claim, provided, that the Indemnified Party will have the right to participate in the defense or settlement of such Third-Party Claim. The Indemnified Party will provide the Indemnifying Party with a reasonable amount of assistance in connection with defending or settling any such Third-Party Claim. Neither the Indemnifying Party nor the Indemnified Party may settle such Third-

Party Claim or consent to any judgment with respect thereto without the consent of the other party (which consent may not be unreasonably withheld or delayed).

12.1.3. The foregoing provisions shall survive the termination of this Agreement.

12.2. **Force Majeure.** No party is liable for any delay or failure in performing its obligations under this Agreement caused by wars (whether declared or not and including existing wars and the invocation of war powers), revolutions, insurrections, riots, civil commotion, acts of God, medical emergencies, disease outbreaks, accidents, fires, explosions; stoppages of labor, strikes, or other differences with employees (other than Bank's disputes with its employees); laws, regulations, orders, or other acts of any governmental authority; or any other circumstances beyond its reasonable control, regardless of whether such was already in existence as of the date of this Agreement. Nor will any such failure or delay give any party the right to terminate this Agreement.

12.3. **Damages.** No party is liable for any indirect, incidental, special, punitive, or consequential damages arising out of or in any way related to this Agreement or the performance of its obligations under this Agreement. This limitation applies even if the party has been advised of, or is aware of, the possibility of such damages.

12.4. **Statements.** Bank is not liable with respect to the propriety of Bank's actions or omissions reflected in a statement furnished under this Agreement, except to the extent a Statement Recipient objects to Bank within thirty (30) calendar days after such statement is furnished.

## **SECTION 13 TERMINATION**

13.1. **Termination of Agreement.** This Agreement terminates upon the effective date of Bank's resignation or removal under this Agreement.

13.2. **Resignation; Removal.**

13.2.1. Bank may resign under this Agreement by notice to Customer. Customer may remove Bank under this Agreement by notice to Bank. The resignation or removal shall be effective thirty (30) calendar days after delivery of the notice, except to the extent the parties agree in writing to a different effective date. By such effective date, Customer shall appoint a new custodian and notify Bank of the appointment. If Customer fails to do so, Bank shall have the right to petition a court at Account expense for appointment of a new custodian.

13.2.2. Upon receiving notice of such appointment, Bank will transfer Assets to the new custodian as directed by Customer or the court, as the case may be. However, Bank shall not be required to transfer any Assets until Bank has received payment or reimbursement for all (a) compensation, expenses, fees, costs, or other charges incurred by Bank in providing services under this Agreement and (b) funds or securities advanced under this Agreement.

## **SECTION 14 DATA PRIVACY, CONFIDENTIALITY, AND SECURITY**

14.1. **Definitions.** For purposes of this Section:

14.1.1. **"Applicable Privacy, Confidentiality, and Security Laws"** means, with respect to a party, all applicable federal, state, and local laws, rules, regulations, directives, and other binding requirements issued by any Governmental Authority (as defined below) pertaining to the privacy, confidentiality, or security of Confidential Information (as defined below).

14.1.2. **"Confidential Information"** means (i) all information, data, documents, records, and other materials that one party receives in connection with this Agreement or the Account from another party if already clearly and conspicuously marked as *"Confidential Information"* when received, but excluding Non-Confidential Information (as defined below), and (ii) any *"nonpublic personal information"* as defined in GLBA (as defined below) [15 U.S.C. §6809(4)] of Customer's

employees and the Account's beneficial owners that Bank receives in connection with this Agreement or the Account from another party.

14.1.3. **"GLBA"** means the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801 *et seq.*, and its implementing regulations, as amended.

14.1.4. **"Governmental Authority"** means, with respect to a party, a state or federal governmental entity having jurisdiction over such party with respect to the activities that are the subject matter of this Agreement.

14.1.5. **"Non-Confidential Information"** means information (i) of the disclosing party that was known by the receiving party without any obligation of confidentiality prior to the disclosing party's disclosure thereof; (ii) of a party that was or becomes publicly available other than pursuant to a breach of this Agreement by the other party; (iii) of a party that was received by the receiving party in good faith on a non-confidential basis from a third party that is not actually known to the receiving party to have disclosed such information in violation of a confidentiality agreement in favor of the other party; (iv) that is independently developed by one party without use of the other party's Confidential Information; or (v) of a party that is approved for disclosure by that party.

14.1.6. **"Services"** means the services provided by Bank pursuant to this Agreement.

14.2. **Compliance with Law.** Each party hereby represents and warrants that it complies with all Applicable Privacy, Confidentiality, and Security Laws.

14.3. **Privacy.**

14.3.1. **Program.** Customer hereby represents and warrants that it maintains an enterprise-wide privacy program that is consistent with its industry standards. Bank hereby represents and warrants that it maintains an enterprise-wide privacy program that (i) complies with federal banking law and regulations and (ii) is consistent with industry standards for providers of services similar to the Services.

14.3.2. **Use and Disclosure of Confidential Information.** Each party will use and disclose Confidential Information only as permitted by Applicable Privacy, Confidentiality, and Security Laws and this Agreement. Upon one party's request, the other party will provide a monthly written report to the requesting party regarding how Confidential Information has been used.

14.3.3. **Records Retention.** Each party will maintain commercially-standard records of Confidential Information for the period required by Applicable Privacy, Confidentiality, and Security Laws (or, in Bank's case and if longer, the period required by Bank's record-retention policy). Following the expiration of such period, each party will, to the extent practicable, promptly destroy all Confidential Information.

14.3.4. **Aggregated, Anonymized Data.** Customer hereby authorizes Bank to use Confidential Information in an aggregated, anonymized format (i) for the purpose of providing reports and analytics to other customers of Bank and to develop new products and services and (ii) for internal purposes that do not involve disclosure of such data to third parties.

14.3.5. **Consents.** If Customer is a *"financial institution"* as defined in GLBA [15 U.S.C. §6809(3)], then Customer hereby represents and warrants that Customer has obtained all consents from its customers as needed in order to permit Bank to provide the Services and to use Confidential Information as described in this Agreement.

14.4. **Information Security.**

14.4.1. **Program.** Customer hereby represents and warrants that it maintains an enterprise-wide information-security program that is consistent with its industry standards. Bank hereby represents and warrants that it maintains an enterprise-wide information-security program that (i) complies with federal banking law and regulations and (ii) is consistent with industry standards for providers of services similar to the Services.

14.4.2. **Safeguards.** Each party will maintain physical, electronic, and procedural safeguards that are designed to (i) maintain the security and confidentiality of Confidential Information; (ii) protect Confidential Information against anticipated threats or hazards to the security or integrity of Confidential Information; and (iii) prevent unauthorized access to; unauthorized use, disclosure, or modification of; or misuse or loss of such Confidential Information that could result in substantial harm or inconvenience to the other party.

14.4.3. **Notification of Breach.** Within seven (7) calendar days after a party becomes aware that Confidential Information has been compromised as a result of a breach of security at the party, the breached party will, to the extent permitted by law, provide written notice thereof to the other party. Such notice will include the breached party's estimate of the number of the other party's records affected and the nature of the information exposed, together with the steps to be taken by the breached party to limit such exposure and avoid a recurrence thereof. The breached party will cooperate in the other party's investigation relating to the breach and address the cause of the breach.

#### 14.5. **Business Continuity.**

14.5.1 **Business-Continuity Plan.** Customer hereby represents and warrants that it maintains a business-continuity plan that is consistent with its industry standards. Bank hereby represents and warrants that it maintains a business-continuity plan that (i) complies with federal banking law and regulations and (ii) is consistent with industry standards for providers of services similar to the Services.

14.5.2. **Transfer of Services.** In the event of a *force-majeure* event or a bankruptcy or insolvency of Bank that renders Bank unable to provide the Services, Bank will cooperate with Customer and the replacement vendor selected by Customer to transition performance of the Services to such replacement vendor, including through the delivery of any Account records to such replacement vendor. However, the foregoing will not require Bank to provide any Confidential Information of Bank to any third party unless such third party has executed a confidentiality agreement acceptable to Bank.

#### 14.6. **Audit.**

14.6.1. **Third-Party Audit.** Customer hereby represents and warrants that it obtains an independent risk assessment of its privacy program, information-security program, and business-continuity plan annually. Bank hereby represents and warrants that it obtains an independent auditor's System and Organization Controls (SOC) 2 Report or its equivalent annually. Upon one party's request, the other party will provide the most recent such report to the requesting party.

14.6.2. **Assessment.** No more than once per calendar year, each party has the right to assess the policies, standards, and practices of the other party with respect to the performance of this Agreement, to the extent necessary to verify the other party's compliance with the terms of this Section. Each party hereby acknowledges that information which the other party deems confidential or proprietary may not be considered necessary to verify the other party's compliance. The assessment will be conducted during regular business hours upon not less than ninety (90) calendar days written notice by the requesting party to the other party on a date agreed upon by them. The other party will make efforts to resolve deficiencies noted as a result of such assessment in a manner commensurate to the risk those deficiencies represent.

14.6.3. **Regulatory Audit.** Each party hereby authorizes the other party to provide information regarding the performance of this Agreement to a Governmental Authority with authority to review the party's service arrangements, but only when the Governmental Authority specifically requests such information.

14.7. **Insurance.** Customer hereby represents that it maintains cyber-liability insurance that is consistent with its industry standards. Bank hereby represents and warrants that (i) Bank maintains Cyber Liability Insurance, Bankers Professional Liability Insurance, and a Financial Institution Bond (Crime and Dishonesty Policy) and (ii) such insurance complies with federal banking law and regulations and is consistent with industry standards for providers of services similar to the Services. Upon one party's request, the other party will provide the requesting party with copies of a certificate of insurance for each form of insurance stated above.

14.8. **Third Party/Subcontractor.** Each party hereby acknowledges that it is responsible for the actions of its officers, directors, employees, and agents with respect to the privacy, confidentiality, and security of Confidential Information.

Customer will not, and will not ask Bank to, disclose Bank's Confidential Information to any online portal or platform maintained by any third party that Customer has hired to manage or assess Customer's vendor due-diligence and monitoring activities, unless (i) Customer has identified the third party (and the portal or platform) to Bank, (ii) the third party has provided information about its information-security processes and procedures to Bank, in a form acceptable to Bank, (iii) Bank has assessed those processes and procedures, and (iv) Bank has notified Customer that such disclosure to the portal or platform is permitted under this Agreement.

## **SECTION 15 MISCELLANEOUS**

15.1. **Services Not Exclusive.** Bank is free to render services to others, whether similar to those services rendered under this Agreement or of a different nature.

15.2. **Binding Obligations.** Customer and Bank each represent and warrant that (i) it has the power and authority to transact the business in which it is engaged and to execute, deliver, and perform this Agreement and has taken all action necessary to execute, deliver, and perform this Agreement and (ii) this Agreement constitutes its legal, valid, and binding obligation enforceable according to the terms hereof.

15.3. **Complete Agreement; Amendment.**

15.3.1. **Complete Agreement.** This Agreement contains a complete statement of all the arrangements between the parties with respect to its subject matter and supersedes any existing agreements between them concerning the subject.

15.3.2. **Amendment.** This Agreement may be amended at any time, in whole or in part, by a written instrument signed by Customer and Bank. Notwithstanding the foregoing, if the terms of **Exhibit A (Fee Schedule)** hereto set forth a method for amending such exhibit, then such terms alone govern amendments thereto.

15.3.3. **Control Agreement.** Customer has the power to direct Bank to enter into a separate written control agreement with respect to the Account or any Asset. Any such control agreement prevails over this Agreement to the extent such agreements are inconsistent with each other.

15.4. **Governing Law; Venue.** This Agreement will be governed, enforced, and interpreted according to the laws of the State without regard to conflicts of laws, except where pre-empted by federal law. All legal actions or other proceedings directly or indirectly relating to this Agreement will be brought in federal court (or, if unavailable, state court) sitting in the State. The parties submit to the jurisdiction of any such court in any such action or proceeding and waive any immunity from suit in such court or execution, attachment (whether before or after judgment), or other legal process in or by such court.

15.5. **Successors and Assigns.**

15.5.1. This Agreement binds, and inures to the benefit of, Customer, Bank, and their respective successors and assigns.

15.5.2. No party may assign any of its rights under this Agreement without the consent of each other party, which consent will not be unreasonably withheld. Customer hereby acknowledges that Bank will withhold consent unless and until Bank verifies an assignee's identity according to Bank's Customer Identification Program and, to that end, Customer hereby agrees to notify Bank of such assignment and provide Bank with the assignee's name, physical address, EIN, organizational documents, certificate of good standing, and license to do business, as well as other information that Bank may request. No consent is required if a party merges with, consolidates with, or sells substantially all of its assets to another entity, provided that such other entity assumes without delay, qualification, or limitation all obligations of that party under this Agreement by operation of law or by contract.

15.6. **Severability.** The provisions of this Agreement are severable. The invalidity of a provision herein will not affect the validity of any other provision.

15.7. **No Third-Party Beneficiaries.** This Agreement is made solely for the benefit of the parties. No person other than such parties has any rights or remedies under this Agreement.

15.8. **Solvency.** Customer hereby represents and warrants that Customer is neither insolvent nor subject to any pending bankruptcy proceeding. Customer will promptly notify Bank of any such insolvency or proceeding.

15.9. **Tax-Lot Selection-Method.** For the purpose of complying with IRS regulations requiring cost basis reporting, Customer hereby designates the tax-lot selection-method for the Account:

- Minimize Gain** – Shares are sold from tax lots having the highest per unit federal tax cost with a holding period of more than one year.
- First In First Out (FIFO)** – Shares are sold from tax lots having the earliest federal tax acquisition date.
- Last In First Out (LIFO)** – Shares are sold from tax lots having the most recent federal tax acquisition date.
- Highest Federal Cost First Out (HIFO)** – Shares are sold from tax lots having the highest federal tax cost per share.
- Lowest Federal Cost First Out (LOFO)** – Shares are sold from tax lots having the lowest federal tax cost per share.
- Specify Tax Lot** – Shares are sold from tax lots that you specify.
- Average Federal Tax Cost** – Shares are sold across all tax lots using the average cost. If the Account holds investments for which this method is not permitted, the FIFO default method will be used, unless Customer directs otherwise.
- Maximize Gain** – Shares are sold from tax lots having the lowest per unit federal tax cost.

If the foregoing does not designate one and only one tax-lot selection-method, then Customer is deemed to have designated FIFO method. If Customer wishes to use a tax-lot selection-method that is different from what is selected above for an individual trade, then Customer may designate such other selection-method when executing the trade.

15.10. **Shareholder Communications Act Election.** Under the Shareholder Communications Act of 1985, as amended, Bank must try to permit direct communications between a company that issues a security held in the Account (the “Securities-Issuer”) and any person who has or shares the power to vote, or the power to direct the voting of, that security (the “Voter”). Unless the Voter registers its objection with Bank, Bank must disclose the Voter’s name, address, and securities positions held in the Account to the Securities-Issuer upon the Securities-Issuer’s request (“Disclosure”). To the extent that Customer is the Voter, Customer hereby (i) acknowledges that failing to check one and only one box below will cause Customer to be deemed to have consented to Disclosure and (ii) registers its (*check only one*):

- Consent to Disclosure.
- Objection to Disclosure.

15.11. **Tax Reclaims.** To the extent Bank provides the Account with a service to minimize foreign withholding or reclaim foreign taxes withheld with respect to an Asset, Customer hereby directs Bank to disclose Customer’s name, address, and taxpayer identification number, as well as the Account’s position in the Asset, to Bank’s sub-custodians and other service providers, to the Asset’s issuer and the issuer’s agents, and to local (foreign) tax authorities as needed in order to provide such service.

15.12. **Abandoned Property.** Bank will escheat Assets pursuant to the applicable state’s abandoned property, escheat, or similar law, and Bank shall be held harmless therefrom. The provisions of this Section shall survive the termination of this Agreement.

15.13. **Legal Advice.** Customer hereby acknowledges that it (i) did not receive legal advice from Bank concerning this Agreement, (ii) had an adequate opportunity to consult an attorney of its choice before executing this Agreement, and (iii) executed this Agreement upon its own judgment and, if sought, the advice of such attorney.



15.14. **Waiver of Jury Trial.** Each party hereby irrevocably waives all right to a trial by jury in any action, proceeding, claim, or counterclaim (whether based on contract, tort, or otherwise) directly or indirectly arising out of or relating to this Agreement.

15.15. **Legal Action.** If Bank is served with a Legal Action, then Bank will, to the extent permitted by law, use commercially reasonable efforts to notify Customer of such service. Customer will reimburse Bank for any expenses, fees, costs, or other charges incurred by Bank in responding to the Legal Action, including, but not limited to, any fees charged by an attorney of Bank's choice. If Customer notifies Bank that Customer is seeking a protective order to resist the Legal Action, then Bank will provide reasonable cooperation at Customer's request and sole cost and expense. In any event, Bank may comply with the Legal Action at any time, except to the extent Bank has received a protective order that prevents Bank from complying.

15.16. **Interpleader.** With respect to Assets that are the subject of a dispute, Bank may file an interpleader action or other petition with a court of competent jurisdiction for directions with respect to the dispute. Customer will reimburse Bank for any expenses, fees, costs, or other charges incurred by Bank in filing such petition and implementing such directions, including, but not limited to, any fees charged by an attorney of Bank's choice. Before disbursing Assets pursuant to such directions, Bank will deduct therefrom an amount in payment or reimbursement for all (i) compensation, expenses, fees, costs, or other charges incurred by Bank in providing services under this Agreement and (ii) funds or securities advanced under this Agreement.

15.17. **Representations and Warranties.** Customer hereby covenants that, if any of the representations or warranties that it provides in this Agreement becomes inaccurate or incomplete, it will promptly notify Bank thereof and of any fact, omission, event, or change of circumstances related thereto.

15.18. **Publicity.** No party will disclose the existence of this Agreement or any terms thereof in advertising, promotional, or marketing materials without obtaining, in each case, the prior written consent of each other party.

15.19. **Shutdown.** Notwithstanding anything herein to the contrary, Bank shall have the power to segregate or restrict an asset, delay processing a direction or transaction, refuse to process a direction or transaction, suspend or close the Account, or terminate this Agreement at any time (i) to comply with Bank's economic sanctions or anti-money laundering policies or obligations, (ii) to safeguard against fraud, or (iii) pursuant to a court order or direction of an authorized governmental agency or as required by law, and Bank will incur no liability to any person or entity for any Harm in connection with any such segregation, restriction, delay, refusal, suspension, closure, or termination.

15.20. **Counterparts and Duplicates.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original, but all of which together shall constitute the same instrument. This Agreement and any administrative form under this Agreement may be proved either by a signed original or by a reproduced copy thereof (including, not by way of limitation, a microfiche copy or an electronic file copy).

15.21. **E-signature.** Each party hereby (i) consents to electronically sign this Agreement, amendments thereto, and Account forms requiring its signature, but may, by notice to each other party, withdraw such consent or opt-out of electronic signing and (ii) covenants to rely on DocuSign (or another e-sign vendor as subsequently agreed upon by all parties) to facilitate any such e-signatures. The party creating the e-signed document through its account with the e-sign vendor hereby covenants to retain the authoritative copy and provide a copy to each other party. No party hereby forfeits any power to use a conventional handwritten signature as a means of signing this Agreement, amendments thereto, and Account forms.

15.22. **Effective Date.** This Agreement will become effective when all parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

**IN WITNESS WHEREOF**, an authorized officer of each party hereby executes this Agreement on the date stated beneath that party's signature.

**CUSTOMER (AS DEFINED IN THIS AGREEMENT)**

By: \_\_\_\_\_  
(Signature of Customer's authorized officer)

\_\_\_\_\_  
(Printed name of Customer's authorized officer)

Its: \_\_\_\_\_  
(Title of Customer's authorized officer)

Dated: \_\_\_\_\_

U.S. Mail Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email Address:  
\_\_\_\_\_

**U.S. BANK NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name)

Its: Vice President and Relationship Manager

Dated: \_\_\_\_\_

U.S. Mail Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email Address:  
\_\_\_\_\_

**CUSTODY AGREEMENT**

**Exhibit A (Fee Schedule)**