



1 FINANCE AND ADMINISTRATION CABINET

2 Department of the Controller

3 Office of Financial Management

4 (Amendment)

5 200 KAR 14:011 Qualified Investments

6 RELATES TO: KRS 42.500(9)-(14), 42.520, 42.525

7 STATUTORY AUTHORITY: KRS 42.500(10), 42.520(2), 42.525

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.500(10) requires the State  
9 Investment Commission to promulgate administrative regulations for the investment and  
10 reinvestment of state funds. KRS 42.520(2) requires the commission to promulgate  
11 administrative regulations concerning the assignment of priorities to public depositories. KRS  
12 42.525(1) requires the commission to promulgate administrative regulations for the investment  
13 and reinvestment of state funds and the acquisition, retention, management, and disposition of  
14 investments. This administrative regulation establishes the standards that govern the  
15 commonwealth's investment and cash management programs.

16 Section 1. Definitions. (1) "Commission" means the State Investment Commission.

17 (2) "Floating rate" means that the interest rate:

18 (a) That is paid on the specific security changes periodically on a pre-established schedule;

19 (b) May be tied directly to an index plus some spread or margin; and

20 (c) Includes hybrid adjustable rate mortgages if the first repricing date is less than six (6)  
21 years from the issuance date.

1 (3) "Hedge" means a position in a financial instrument taken to minimize or eliminate the  
2 risk associated with an existing instrument or portfolio of instruments.

3 (4) "Interest rate swaps" means an agreement governed by an International Swap and  
4 Derivatives [Dealers] Association master contract between two (2) parties to exchange, or have  
5 the conditional right to exchange, specified cash flows.

6 (5) "NRSO" [~~"Nationally recognized rating agency"~~] means "Nationally Recognized  
7 Statistical Ratings Organization" [~~(NRSRO)~~], which is a credit rating agency that is registered  
8 with [as designated by] the Securities and Exchange Commission, and which provides its opinion  
9 on the creditworthiness of an entity and the financial obligations issues by that entity.

10 (6) "Office" means the Office of Financial Management.

11 (7) "Options" means a contract that provides the right, but not the obligation, to buy or sell a  
12 specific amount of a security within a predetermined time period and includes specific bonds or  
13 notes, an exchange traded futures contract, or the cash value of an index.

14 (8) "Pools" means the investment pools that are managed by the Office of Financial  
15 Management, under the guidance of the Commission [~~commission~~].

16 Section 2. The Commission [~~commission~~] shall:

17 (1) Not invest state funds in an institution or instrument that it deems unsafe and a threat to  
18 the security of state funds;

19 (2) Maintain adequate liquidity to meet the cash needs of the state;

20 (3) Within the limits established by this administrative regulation, invest in securities that  
21 maximize yield or return to the commonwealth; or

22 [~~(4) Not borrow money to enlarge the pool;~~] Section 3. The Commission may: (1) Engage in  
23 securities lending;

1 (2) Allow inter-pool transfers to meet short term cash needs; or

2 (3) Within the limited term pool, if borrowing exceed thirty-three (33) percent of the value of  
3 the pool's total assets resulting from a change in values of net pool assets at any time, the pool  
4 shall then reduce borrowing to no more than thirty-three (33) percent within three (3) business  
5 days and shall continue to use prudence in bringing the percentage of borrowing back into  
6 conformity.

7 Section 4 [3]. Interest earned on the cash balances shall be calculated daily on an accrual  
8 basis.

9 Section 5 [4]. Investment Criteria. (1) The criteria to determine the amount of funds per  
10 investment instrument shall be the:

11 (a) Liquidity needs of the state in aggregate as budgeted;

12 (b) Rates available per instrument; and

13 (c) Safety of principal and interest.

14 (2) An investment instrument shall qualify if it is specified by:

15 (a) KRS 42.500;

16 (b) This administrative regulation;

17 (c) 200 KAR 14:081; or

18 (d) 200 KAR 14:091.

19 Section 6 [5]. Investment Securities. The commission shall invest only in the following  
20 security types:

21 (1) U.S. Treasury, agency, and government sponsored entity agency securities with a maturity  
22 of less than seven (7) years, or an embedded put of less than three (3) years.

1 (2) Mortgage pass-through securities issued by U.S. government agencies or by government  
2 sponsored entities, including, Government National Mortgage Association, Fannie Mae, Freddie  
3 Mac, [~~government national mortgage association, Federal National Mortgage Association,~~  
4 ~~Federal Home Loan Mortgage Corporation,~~] and Small Business Administration [~~, and Student~~  
5 ~~Loan Marketing Association~~] with an average life of less than four (4) years at the time of  
6 purchase, using Bloomberg consensus prepayment projections, if available, or other reasonable  
7 prepayment assumptions if there is no consensus. The commission may hold pass-throughs  
8 purchased under this subsection which have an average life of less than six (6) years, using  
9 Bloomberg consensus prepayment projections, if available, or other reasonable prepayment  
10 assumptions if there is no consensus.

11 (3) Real estate mortgage investment conduit obligations, as defined by the Internal Revenue  
12 Code, also known as collateralized mortgage obligations, or CMOs, rated in the highest category  
13 by an NRSRO [~~A or higher by a nationally recognized rating agency~~] with an average life of less  
14 than four (4) years at the time of purchase, using Bloomberg consensus prepayment projections,  
15 if available, or other reasonable prepayment assumptions if there is no consensus. The  
16 commission may hold CMOs purchased under this subsection which have an average life of less  
17 than six (6) years, using Bloomberg consensus prepayment projections, if available, or other  
18 reasonable prepayment assumptions if there is no consensus.

19 (4) Asset-backed securities (ABS) rated in the highest category by an NRSRO [~~a nationally~~  
20 ~~recognized rating agency~~] with an average life of four (4) years or less.

21 (5) U.S. dollar denominated corporate and Yankee securities issued by foreign and domestic  
22 issuers, rated in one of the three (3) highest categories by an NRSRO [~~A or higher by a~~

1 ~~nationally recognized rating agency~~], with a maturity not longer than five (5) years, or an  
2 embedded put of less than three (3) years.

3 (6) U.S. dollar denominated sovereign debt rated in one of the three (3) highest categories by  
4 an NRSRO [~~A1 or higher by a nationally recognized rating agency~~], with a maturity not to  
5 exceed five (5) years.

6 (7) Money market securities, including:

7 (a) Commercial paper;

8 (b) Certificates of deposit; [~~and~~]

9 (c) Bankers' acceptances issued by banks having the highest short-term rating by an  
10 NRSRO; [~~Eurodollars and time deposits rated in the highest short term rating with assets in~~  
11 ~~excess of one (1) billion dollars and bankers' acceptances rated A or higher.~~]

12 (d) Maturities shall be limited to 180 days [~~six (6) months~~] for bankers' acceptances and 270  
13 days [~~nine (9) months~~] for all other money market securities.

14 (8) Repurchase [~~and reverse repurchase~~] agreements collateralized at a minimum of 102  
15 percent (marked to market daily) with treasuries, agencies, and agency [~~collateralized~~] mortgage  
16 backed obligations that meet the requirements established by subsection (4) of this section, with  
17 a maximum maturity of one (1) year if executed with approved broker-dealers as provided by  
18 Section 8 of this administrative regulation and a maximum of three (3) years for the Kentucky  
19 Bank Repurchase Program participants.

20 (9) Municipal obligations rated in one of the three (3) highest categories by an NRSRO [~~A or~~  
21 ~~higher by a nationally recognized rating agency~~], with a maturity not to exceed five (5) years.  
22 The maturity and credit restriction shall be waived for obligations issued by the Commonwealth  
23 of Kentucky or any entity within the Commonwealth of Kentucky.

1 (10) Mutual funds in [~~which at least ninety (90) percent of~~] the underlying holdings of the  
2 fund are in securities in which the pools could invest directly.

3 (11) In meeting credit standards listed previously in this section, the lowest rating issued by  
4 an NRSRO shall be used to determine compliance. The Commission, at a minimum on an  
5 annual basis, shall determine which NRSRO's shall be used [~~Any floating rate securities which~~  
6 ~~would otherwise qualify under this section except for maturity or average life restrictions~~].

7 Section 7 [6]. Limits on Investment Securities. (1) U.S. agency mortgage backed securities and  
8 collateralized mortgage obligations shall not exceed twenty-five (25) percent of total pool assets  
9 in aggregate.

10 (2) Asset-backed securities shall not exceed twenty (20) percent of total pool assets.

11 (3) U.S. dollar denominated corporate and Yankee and sovereign securities issued by foreign  
12 and domestic issuers shall not exceed thirty-five (35) [~~twenty-five (25)~~] percent of an individual  
13 pool [~~and \$25,000,000 per issuer~~] or \$25,000,000 per issuer within an individual pool, inclusive  
14 of commercial paper, bankers' acceptances, and certificates of deposit unless:

15 (a) These securities are guaranteed by the full faith and credit of the United States  
16 government; or

17 (b) These securities were purchased between February 19, 2009 and March 31, 2009.

18 (4) U.S. dollar denominated sovereign debt shall not exceed five (5) percent of any individual  
19 portfolio and \$25,000,000 per issuer.

20 (5) No more than ten (10) percent of total pool assets shall be invested in a single mutual  
21 fund.

22 (6) The credit and diversification requirements documented herein shall apply at the time of  
23 purchase based on book value for the Limited Term Pool and market value for other pools.

1 (7) The limits set forth in this section may be waived by unanimous vote of the commission.

2 Section 8 [7]. Risk Management. The pools may utilize interest rate swaps, over-the-counter  
3 and exchange traded U.S. Treasury contracts and options to manage the portfolio's exposure to  
4 interest rate risk. These instruments shall only be used if the results are demonstratively superior  
5 to cash market transactions.

6 Section 9 [8]. Pools and Operating Procedures. (1)(a) the limited-term pool shall be managed  
7 to meet the requirements of Section 2a.7 of the Investment Company Act of 1940. Terms used  
8 in this section shall have the definitions prescribed in the Investment Company Act of 1940.  
9 ~~[Except for the Budget Reserve Trust Fund, state funds held in accounts the interest of which~~  
10 ~~accrues to the General Fund shall be placed in the short term pool or the intermediate pool.]~~

11 (b) The limited [~~short~~]-term pool shall not purchase a security with a final maturity [~~duration~~]  
12 exceeding 397 days, except for governmental securities, which may have a final maturity of up  
13 to 762 days [~~one (1) year~~].

14 (c) The weighted average maturity, adjusted for interest rate resets and demand features,  
15 ~~[duration of the short term pool]~~ shall not exceed sixty (60) [~~ninety (90)~~] days; and the weighted  
16 average life, adjusted for demand features only but not interest rate resets, shall not exceed 120  
17 days.

18 (d) At a minimum:

19 1. Ten (10) percent of the pool shall be invested in cash, direct obligations of the U.S.  
20 government or securities that mature or are subject to a demand feature payable within one (1)  
21 business day and;

1 2. Thirty (30) percent of the pool shall be invested in cash, direct obligations of the U.S.  
2 government, government agency discount note maturing in sixty (60) days or less or securities  
3 that mature or are subject to a demand feature payable within five (5) business days.

4 (e) All securities purchased for the pool shall be rated by an NRSRO.

5 (f) No more than five (5) percent of the pool shall be invested in illiquid securities.

6 (g) No more than three (3) percent of the pool shall be invested in second tier securities and  
7 no more than five-one hundredths (.05) percent of the pool shall be invested in a second tier  
8 security issuer.

9 (h) The net asset value of pool shares shall be computed using the amortized cost method of  
10 valuing the pool's investments.

11 (i) The shadow net asset value using the market value of pool holdings shall be computed no  
12 less than monthly and made public within sixty (60) days of the calculation date.

13 (j) Stress testing of the pool based on redemption and changes in market value shall be  
14 performed no less than quarterly and reported to the Commission.

15 (k) Monthly portfolio listings shall be published to a public website and shall remain  
16 available for no less than six (6) months.

17 (2)(a) Except as provided by paragraph (b) of this subsection, state funds held in agency or  
18 university accounts, the interest of which accrues to the agency or university, shall be placed in  
19 the intermediate pool.

20 (b) These funds may be placed in the limited [~~short~~]-term pool, if the commission determines  
21 that the liquidity needs of an agency require shorter term investment.

22 (c) The duration of the intermediate pool shall not exceed three (3) years.

23 [~~(3)(a) Bond proceeds from state issued bonds may be placed in the bond proceeds pool.~~]

1 ~~—(b) The bond proceeds pool shall consist of U.S. Treasury, agency and government-~~  
2 ~~sponsored entity notes, bills and bonds, and repurchase agreements.~~

3 ~~—(4)(a) The portion of the Budget Reserve Trust Fund, the disposition of which the approval of~~  
4 ~~the General Assembly is required, and agency funds which the commission and agency~~  
5 ~~determine need not be expended for a period of two (2) years, shall be placed in the long term~~  
6 ~~pool.~~

7 ~~—(b) The duration of the long term pool shall not exceed four and one half (4.5) years.]~~

8 Section 10 [9]. Approved Broker-Dealers. (1) A broker-dealer who was approved by the  
9 commission prior to the effective date of this administrative regulation shall be considered an  
10 approved broker-dealer.

11 (2) Except as provided by subsection (1) of this section, a broker-dealer shall be approved by  
12 the commission if the broker-dealer has met the requirements established by subsection (3), (4),  
13 or (5) of this section, as applicable.

14 (3) An approved broker-dealer shall be a broker dealer who meets one (1) of the following  
15 qualifications:

16 (a) Is a primary dealer of the Federal Reserve [~~rated A1-P1 by a nationally recognized rating~~  
17 ~~agency~~];

18 (b) Maintains an office in Kentucky, and has either \$25,000,000 in excess net capital or has  
19 trades that are guaranteed by a primary dealer of the Federal Reserve [~~who is rated A1-P1 or~~  
20 ~~higher by a nationally recognized rating agency~~]; or

21 (c) Has a minimum of \$100,000,000 in excess net capital.

22 (4) An approved broker-dealer for repurchase agreements shall:

23 (a) [~~Be rated A1 or higher by a nationally recognized rating agency~~];

1 —(b)] Have transaction amounts limited to his excess net capital;

2 (b) [(e)] Have executed the:

3 1. Public Securities Association Master Repurchase Agreement prior to entering into a  
4 repurchase transaction; and

5 2. Appropriate third-party custodial agreement or Custodial Undertaking [~~undertaking~~] in  
6 connection [~~Connection~~] with Master Repurchase Agreement for tri-party repurchase  
7 agreements; and

8 (c) [(d)] Be primary dealer of the Federal Reserve [~~who is rated A1 P1 or higher by a~~  
9 ~~nationally recognized rating agency~~].

10 (5) An approved broker-dealer for hedge vehicles shall:

11 (a) Have at least \$100,000,000 in excess net capital;

12 (b) [~~Be rated A1 or higher by a nationally recognized rating agency~~];

13 —(e)]Have market value transactions limited to his excess net capital; and

14 (c) [(d)] Have executed the:

15 1. International Swap and Derivatives [~~Dealers~~] Association Agreement prior to the  
16 implementation of a swap; and

17 2. Commonwealth of Kentucky Master Agreement, Over-the-counter Option Transactions -  
18 U.S. Treasury Securities, prior to the implementation of an over the counter option transaction.

19 (6)(a) Within 180 days of the end of each broker-dealer's fiscal year, a broker-dealer shall  
20 submit a copy of the broker-dealer's audited financial statements for that fiscal year.

21 (b) A broker-dealer who wishes to be approved by the commission as an approved broker-  
22 dealer shall submit a copy of the broker-dealer's current audited financial statements

1 (7) Notwithstanding the broker-dealer requirements described in this section, the state may  
2 purchase securities directly from the issuer.

3 Section 11 [10]. Incorporation by Reference. (1) The following material is incorporated by  
4 reference:

5 (a) [~~Commonwealth of Kentucky, Bond Proceeds Pool, Prospectus, (12/97)~~];

6 —(b) [~~Commonwealth of Kentucky, Short-term Pool, Prospectus, (12/97)~~];

7 —(c) [~~Commonwealth of Kentucky, Intermediate-term Pool, Prospectus, (12/97)~~];

8 —(d) [~~Commonwealth of Kentucky, Long-term Pool, Prospectus, (12/97)~~];

9 —(e) "Securities Industry and Financial Markets Association Master Repurchase Agreement  
10 (12/08)";

11 (b) [(f)] "Custodial Undertaking in Connection with Master Repurchase Agreement, Bank of  
12 New York (12/08)";

13 (c) [(g)] "Custodial Undertaking in Connection with Master Repurchase Agreement, Chase  
14 Manhattan (12/08)";

15 (d) [(h)] "International Swap and Derivatives [Dealers'] Association Agreement (12/02)";  
16 and

17 (e) [(i)] "Commonwealth of Kentucky Master Agreement, Over-the-counter Option  
18 Transactions - U.S. Treasury Securities (12/97)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law,  
at State Investment Commission, Suite 76, Capitol Annex, Frankfort, Kentucky 40601, Monday  
through Friday, 8 a.m. to 4:30 p.m.

Approved:

*F. Thomas Howard by Jeff Masley*

F. Thomas Howard, Executive Director  
Department of the Controller  
Office of Financial Management

*9/12/12*

\_\_\_\_\_  
Date

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on October 24, 2012, from 10:00 a.m. to 12:00 p.m., in Room 383, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-6660 (telephone), (502) 564-9875 (fax).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 200 KAR 14:011

Contact person: DeVon Hankins, Policy Advisor and Legislative Liaison, Office of General Counsel, Office of the Secretary, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-6660 (telephone), (502) 564-9875 (fax)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides the direction for investment of state funds required by KRS 42.500 (10).

(b) The necessity of this administrative regulation: This regulation is required to place limitations on investment activities in order to limit the risk of loss of state funds through imprudent investment decisions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 42.500 (10) specifies particular requirements for this administrative regulation such as limits on the maturity of investments. This regulation specifies those particular limitations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on the investment of state funds and requires prudent investment activities which will limit the exposure of state funds to investment losses.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This regulation establishes limitations on the credit of entities in which the state may invest. This amendment tightens those restrictions for all security types while allowing for a larger investment in certain entities. The amendment also conforms the Limited Term pool restrictions to Securities and Exchange Commission Rule 2a-7. It also updates terminology to current market standards.

(b) The necessity of the amendment to this administrative regulation: This amendment brings the regulation up to the standards adopted by the State Investment Commission.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is compliant with KRS 42.500 (10).

(d) How the amendment will assist in the effective administration of the statutes: The amendment further clarifies investment activities to reduce the risk of loss of state funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation only affects actions by the Office of Financial Management.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Personnel in OFM will need to assure investment purchases meet the newly modified requirements set forth in this amendment. In addition, certain additional reporting/monitoring functions are required which will be performed by current staff.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment clarifies certain requirements for the Office of Financial Management and brings regulation into conformity with Securities and Exchange Commission Rule 2a-7.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None needed.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not): There is no tiering because it is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 200 KAR 14:011

Contact Person: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky, 40601

Phone number: (502) 564-6660 (telephone), (502) 564-9875 (fax)

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This regulation only affects the investment actions of the Office of Financial Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 42.500 requires the State Investment Commission to promulgate this regulation. Additionally, the regulation requires that the Limited Term pool be managed consistent with SEC Rule 2a-7 as required by current government accounting standard.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

None

(c) How much will it cost to administer this program for the first year?

No cost.

(d) How much will it cost to administer this program for subsequent years?

No cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

2012  
200 KAR 14:011  
Summary of Materials  
Incorporated by Reference

Pursuant to KRS 13A.2555, the following is a summary of the material incorporated by reference in 200 KAR 14:011:

1. "Securities Industry and Financial Markets Association Master Repurchase Agreement", (12/08)", effective July 12, 2012, is a 12 page agreement that governs the relationship between the Commonwealth and it's tri-party repurchase agreement counter-parties. It is an industry standard contract.
  
2. "Custodial Undertaking in Connection with Master Repurchase Agreement, Bank of New York (12/08)", effective December 29, 2008, is a 22 page agreement that governs the custodial duties of the Bank of New York related to various tri-party repurchase agreements.
  
3. "Custodial Undertaking in Connection with Master Repurchase Agreement, Chase Manhattan (12/08)", effective December 29, 2008, is a 22 page agreement that governs the custodial duties of the Chase Manhattan related to various tri-party repurchase agreements.
  
4. "International Swap and Derivatives Association Agreement (12/02)", effective February 14, 2011, is a 18 page agreement that governs the relationship between the

Commonwealth and its derivatives counter-parties in connection with any interest rate swap transactions undertaken to manage the state's investment portfolio.

5. "Commonwealth of Kentucky Master Agreement, Over-the-counter Option Transactions - U.S. Treasury Securities (12/97)", effective January 14, 1998, is a 8 page agreement that governs the relationship between the Commonwealth and any Treasury Option Transaction counter-parties.

The material incorporated by reference consists of the above agreements, totaling eighty-two (82) pages.

(Local Currency-Single Jurisdiction)

# ISDA<sup>®</sup>

International Swaps and Derivatives Association, Inc.

## MASTER AGREEMENT

dated as of February 14, 2011

Deutsche Bank AG, New York Branch and Kentucky Asset/Liability Commission have entered and/or anticipate entering into one or more transactions (each a “Transaction”) that are or will be governed by this Master Agreement (the “Master Agreement”), which includes the schedule (the “Schedule”), and the documents and other confirming evidence (each a “Confirmation”) exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

### 1. Interpretation

- (a) **Definitions.** The terms defined in Section 12 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this “Agreement”), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

- (a) **General Conditions.**
  - (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
  - (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for

payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of branches or offices through which the parties make and receive payments or deliveries.

(d) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of

any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

### 3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into) that:—

(a) **Basic Representations.**

(i) **Status.** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorize such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document

to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party any forms, documents or certificates specified in the Schedule or any Confirmation by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorizations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

#### 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an “Event of Default”) with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) or to give notice of a Termination Event) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) ***Credit Support Default.***

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) ***Misrepresentation.*** A representation made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) ***Default under Specified Transaction.*** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) ***Cross Default.*** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such

agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (ii) below or an Additional Termination Event if the event is specified pursuant to (iii) below:—

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(iii) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

## 6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the “Defaulting Party”) has occurred and is then continuing, the other party (the “Non-defaulting Party”) may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however,

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“Automatic Early Termination” is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) ***Right to Terminate Following Termination Event.***

(i) ***Notice.*** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) ***Two Affected Parties.*** If an Illegality under Section 5(b)(i)(1) occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iii) ***Right to Terminate.*** If:—

(1) an agreement under Section 6(b)(ii) has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality other than that referred to in Section 6(b)(ii), a Credit Event Upon Merger or an Additional Termination Event occurs,

either party in the case of an Illegality, any Affected Party in the case of an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(d) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss," and a payment method, either the "First Method" or the "Second Method." If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method," as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:—

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party over (B) the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) *Second Method and Market Quotation.* If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party less (B) the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Unpaid Amounts owing to X less (II) the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate

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and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## 7. Transfer

Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

## 8. Miscellaneous

(a) *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) *Amendments.* No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) *Survival of Obligations.* Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) *Remedies Cumulative.* Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

**9. Expenses**

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

**10. Notices**

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of

proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery ) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

## 11. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or

for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

## 12. Definitions

As used in this Agreement:—

**“Additional Termination Event”** has the meaning specified in Section 5(b).

**“Affected Party”** has the meaning specified in Section 5(b).

**“Affected Transactions”** means (a) with respect to any Termination Event consisting of an Illegality, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

**“Affiliate”** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

**“Applicable Rate”** means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

**“consent”** includes a consent, approval, action, authorization, exemption, notice, filing, registration or exchange control consent.

**“Credit Event Upon Merger”** has the meaning specified in Section 5(b).

**“Credit Support Document”** means any agreement or instrument that is specified as such in this Agreement.

**“Credit Support Provider”** has the meaning specified in the Schedule.

**“Default Rate”** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**“Defaulting Party”** has the meaning specified in Section 6(a).

**“Early Termination Date”** means the date determined in accordance with Section 6(a) or 6(b)(iii).

**“Event of Default”** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**“Illegality”** has the meaning specified in Section 5(b).

**“law”** includes any treaty, law, rule or regulation and **“lawful”** and **“unlawful”** will be construed accordingly.

**“Local Business Day”** means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

**“Loss”** means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party’s legal fees and out-of-pocket expenses referred to under Section 9. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

**“Market Quotation”** means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in

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consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

**"Non-default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**"Non-defaulting Party"** has the meaning specified in Section 6(a).

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"Reference Market-makers"** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**"Scheduled Payment Date"** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**"Set-off"** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or

subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**"Settlement Amount"** means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**"Specified Entity"** has the meaning specified in the Schedule.

**"Specified Indebtedness"** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**"Specified Transaction"** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**"Terminated Transactions"** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

**"Termination Event"** means an Illegality or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**"Termination Rate"** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

***“Unpaid Amounts”*** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the fair market values reasonably determined by both parties.

## **CUSTODIAL UNDERTAKING IN CONNECTION WITH MASTER REPURCHASE AGREEMENT**

This Custodial Undertaking In Connection With Master Repurchase Agreement (the "Agreement") is made and entered into as of the date set forth below by and among \_\_\_\_\_ ("Seller"), Commonwealth of Kentucky ("Buyer"), and JPMorgan Chase Bank, N.A. ("Bank").

**WHEREAS**, Buyer and Seller have entered into a Master Repurchase Agreement (the "Repurchase Agreement") dated December 29, 2008; and

**WHEREAS**, Buyer and Seller have requested that Bank undertake certain agency and custodial functions in connection with the Repurchase Agreement pursuant to the terms hereof; and

**WHEREAS**, Bank has agreed to act as agent and custodian for Seller and Buyer in connection with the Repurchase Agreement pursuant to the terms hereof;

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein and intending to be legally bound hereby, the parties hereto agree as follows:

### **1. Definitions.**

(a) **Additional Purchased Securities.** Securities provided by Seller and held by Bank for the benefit of Buyer to attain the Margin Value.

(b) **Business Day.** Any day, from Monday through Friday, on which Bank and Seller are open to transact business.

(c) **Buyer's Account.** The meaning set forth in Section 2 of this Agreement.

(d) **Clearing Corporation.** The meaning set forth in Section 7(h) of this Agreement.

(e) **Event of Default.** An Event of Default on the part of Seller or Buyer under the Repurchase Agreement.

(f) **Income.** With respect to any Security at any time, any principal thereof then payable and all interest, dividends or other distributions thereon.

(g) **Margin Percentage.** 102% or such other percentage as is specified on Schedule I hereto. Unless otherwise specified on Schedule I hereto, the Margin Percentage for cash shall be 100%.

(h) **Margin Value.** With respect to any Repurchase Transaction, the amount obtained by dividing the Market Value of each Security by the applicable Margin Percentage and aggregating such amounts. The Margin Value of Securities shall equal or exceed the Purchase Price at the times calculated by Bank pursuant to this Agreement.

(i) **Market Value.** The most recently available closing bid price (usually from the previous Business Day) for the particular Security as made available to Bank by a recognized pricing service which Bank uses for pricing such Security, plus, with respect to debt Securities, any accrued interest on such Securities (to the extent not reflected in such pricing). If no price is available, Bank shall be authorized to price any Security by contacting any dealer designated as a "primary dealer" by the Federal Reserve Bank of New York and relying upon any price quoted by such "primary dealer" as if it were quoted by a recognized pricing service or Bank may price such Security in accordance with the methodology utilized by Bank for such purpose in the ordinary course of its business. Notwithstanding the foregoing, cash shall be valued at face value.

(j) Purchase Date. With respect to any Repurchase Transaction, the Business Day on which Purchased Securities are sold to Buyer by Seller.

(k) Purchase Price. With respect to any Repurchase Transaction, the price at which Purchased Securities are sold to Buyer by Seller.

(l) Purchased Securities. The Securities sold by Seller to Buyer (including Securities substituted therefor) under a Repurchase Transaction. Purchased Securities shall also include Additional Purchased Securities.

(m) Repurchase Date. With respect to any Repurchase Transaction, the Business Day on which Seller is to repurchase the Purchased Securities from Buyer, which date may be the Business Day after the Purchase Date.

(n) Repurchase Price. With respect to any Repurchase Transaction, the price at which Purchased Securities are to be repurchased upon termination thereof.

(o) Repurchase Transaction. A transaction whereby Seller sells certain Securities to Buyer, subject to Buyer's agreement to resell such Securities to Seller at a future date at a stated price plus interest, all pursuant to and in accordance with the Repurchase Agreement.

(p) Securities. Debt obligations issued or guaranteed directly or indirectly by the United States government or any agency, instrumentality or establishment thereof (including, without limitation, government-sponsored enterprises and entities the obligations of which are registered in the form of an entry on the records of the Federal Reserve Bank of New York) or such other securities or property identified on Schedule I hereto. Securities shall always include cash.

(q) Seller's Account. The meaning set forth in Section 2 of this Agreement.

(r) Term Repurchase Transaction. The meaning set forth in Section 3(g) of this Agreement.

Any references to time shall mean the time in effect in New York, New York.

All provisions in this Agreement for the transfer, payment or receipt of funds or cash shall mean transfer of, payment in, or receipt of United States dollars in immediately available funds.

## **2. Maintenance of Accounts.**

(a) Each of Seller and Buyer hereby appoints Bank as custodian of all Securities at any time delivered to, and accepted by, Bank on its behalf in connection with this Agreement and as its agent to effect Repurchase Transactions as specified in this Agreement. Bank hereby accepts appointment as custodian and agent and agrees to establish and maintain Buyer's Account (as defined below) as provided hereunder.

(b) Bank maintains a cash account for cash and a custody account for securities and other property for the benefit of Seller (collectively, "Seller's Account"). Buyer instructs Bank to establish and maintain a cash account for cash and a custody account for securities and other property for the benefit of Buyer (collectively, "Buyer's Account"). Bank hereby acknowledges that Bank holds Buyer's Account and all securities, cash or other property from time to time deposited in Buyer's Account, as bailee and securities intermediary on Buyer's behalf, subject to this Agreement. Bank shall segregate all securities, cash and other property in Buyer's Account from the assets of Bank or other persons in its possession by appropriate identification on the books and records of Bank. Bank hereby waives any security interest, lien or right of setoff against Buyer's Account and the property therein.

(c) Bank and Buyer intend that the receipt and maintenance by Bank of property in Buyer's Account and property received by Bank from Buyer in connection with this Agreement until credited to Buyer's Account shall constitute a bailment under the laws of the State of New York subject to this Agreement and not a debtor-creditor relationship. With respect to cash, Bank and Buyer intend to create a special deposit account in favor of Buyer. Bank shall not pay any interest on any cash held at any time in Buyer's Account. The parties intend that: (i) Buyer's custody

account shall be a “securities account”, (ii) Bank shall be a “securities intermediary” and (iii) all property in Buyer’s Account, other than cash, shall be a “financial asset” and “investment property” (as such terms are defined in revised Articles 8 and 9 of the Uniform Commercial Code as the same may be (or deemed to be) in effect pursuant to applicable law or regulation). The parties acknowledge that Bank is a commercial bank acting as custodian for Buyer as a customer in connection with the securities contracts contemplated by this Agreement, and therefore, Buyer is a “financial institution” within the meaning of Section 101 of the federal Bankruptcy Code.

(d) All property from time to time in Seller’s Account shall be owned and controlled solely by Seller, and Bank shall follow only Seller’s instructions with respect to Seller’s Account. All property from time to time in Buyer’s Account shall be owned and controlled solely by Buyer, and Bank shall follow only Buyer’s instructions (including the instruction contained in the next sentence) with respect to Buyer’s Account. The provisions of this Agreement set forth circumstances in which Seller may give Bank instructions with respect to the transfer of Securities in Buyer’s Account, and Buyer hereby instructs Bank to follow such instructions of Seller in accordance with the provisions of this Agreement.

### **3. Specific Repurchase Transactions.**

(a) Upon receipt of instructions from Seller on the Purchase Date specifying the Purchased Securities, Purchase Price and Purchase Date with respect to a Repurchase Transaction, Bank shall on the Purchase Date, debit Buyer’s Account in an amount equal to the Purchase Price and credit the Purchase Price to Seller’s Account against the transfer of the Purchased Securities required to attain the Margin Value from Seller’s Account to Buyer’s Account. On the Repurchase Date, with further instructions from Seller, Bank shall transfer the Purchased Securities from Buyer’s Account to Seller’s Account against the credit to Buyer’s Account of immediately available funds in an amount specified by Seller which shall not be less than the Purchase Price and the debit of such amount from Seller’s Account.

(b) Bank shall be responsible for verifying that all Purchased Securities are Securities.

(c) Without any liability resulting to Bank, Bank may, but shall not be required to, effectuate a Repurchase Transaction in part in the event that either (i) Buyer fails timely to cause Buyer’s Account to be credited with an amount at least equal to the Purchase Price or (ii) Seller fails timely to cause Seller’s Account to be credited with the Purchased Securities required to attain the Margin Value and Bank does not advance the amount of such deficiency as contemplated in Section 3(d) below. In any such event, Seller and Buyer shall remain obligated to each other pursuant to the terms of the Repurchase Agreement.

(d) Notwithstanding anything to the contrary in this Agreement, it is expressly agreed and acknowledged by Buyer and Seller that Bank is not guaranteeing performance of or assuming any liability for the obligations of Buyer or Seller hereunder nor is it assuming any credit risk associated with Repurchase Transactions, which liabilities and risks are the responsibility of Buyer and Seller; further, it is expressly agreed that Bank is not undertaking to make credit available to Seller or Buyer to enable it to complete Repurchase Transactions. However, in the event that the Margin Value of the Purchased Securities in Seller’s Account does not equal or exceed the Purchase Price, or there is insufficient cash in Seller’s Account to fulfill Seller’s obligations to Buyer on the Repurchase Date or on any Business Day during a Term Repurchase Transaction as such obligations are specified to Bank, Bank may, at Bank’s option and without notice to Seller, advance the amount of such deficiency on Seller’s behalf and Seller shall be obligated to repay such amount on demand to Bank, plus interest at a rate to be determined from time to time. Notwithstanding the fact that Bank may from time to time make advances or loans pursuant to this paragraph or otherwise extend credit to Seller, whether or not as a regular pattern, Bank may at any time decline to extend such credit for any reason, including, but not limited to, if Bank believes Seller to be insecure or Bank believes Seller’s ability to perform its obligations hereunder may be impaired, or if Bank is precluded from extending such credit as a result of any law, regulation or applicable ruling. Notwithstanding anything in this Agreement to the contrary, Bank shall not be obligated to transfer from Seller’s Account to Buyer’s Account any cash or securities which it has a right not to transfer pursuant to any agreement between Seller and Bank.

(e) If instructions are not timely received by Bank from Seller with respect to specific Purchased Securities which are to be transferred from Seller’s Account to Buyer’s Account in connection with a Repurchase Transaction, Bank may transfer in Bank’s sole discretion any Securities with a Margin Value equal to or greater than the Purchase Price.

(f) Seller may substitute other Securities for any Purchased Securities without notice to Buyer provided that the Purchased Securities in Buyer's Account after the substitution have a Margin Value equal to or greater than the Purchase Price.

(g) In connection with any Repurchase Transaction the Repurchase Date of which is not the Business Day immediately following the Purchase Date (each, a "Term Repurchase Transaction"), Bank shall (i) transfer at the beginning of each Business Day after the Purchase Date (but not including the Repurchase Date) all Purchased Securities subject to such Repurchase Transaction from Buyer's Account to Seller's Account against the transfer from Seller's Account to Buyer's Account of cash in an amount equal to the Purchase Price for such Repurchase Transaction (such cash to constitute cash margin unless otherwise specified by Seller) and (ii) transfer at the end of each Business Day after the Purchase Date (but not including the Repurchase Date) from Buyer's Account to Seller's Account such cash margin against the transfer from Seller's Account to Buyer's Account of Securities having a Margin Value equal to or greater than the amount of such cash margin.

(h) Seller and Buyer agree that in effecting Repurchase Transactions, Bank's transfers between Seller's Account and Buyer's Account, including without limitation, substitutions, are intended to be, and shall be deemed to be, simultaneous.

(i) Buyer and Seller agree and acknowledge that the amounts and values of cash and Securities to be transferred by Bank in accordance with the provisions of this Agreement may differ from those required in accordance with the provisions of the Repurchase Agreement, and Bank shall have no liability in respect of any such differences. Seller and Buyer shall in all events remain obligated to each other pursuant to the terms of the Repurchase Agreement.

4. **Income.** Bank shall credit to Seller's Account all Income paid by or on behalf of issuers in respect of Purchased Securities in the event that any such amounts are received by Bank. Notwithstanding the foregoing, in the event Bank receives a written notice from Buyer of an Event of Default by Seller, Bank shall credit such amounts thereafter received by Bank to Buyer's Account. Bank shall be entitled to withhold taxes or other levies, if any, on Income received by Bank prior to crediting it to Seller's Account or Buyer's Account, as applicable. Seller and Buyer hereby acknowledge that all payments of Income are subject to the rules and procedures of the appropriate Clearing Corporation.

5. **Bank's Obligation to Hold Securities.** Seller, Buyer and Bank agree that the Securities in Buyer's Account from time to time will be held for Buyer by Bank as bailee and securities intermediary on Buyer's behalf, that the Bank will follow Buyer's instructions directing transfer with respect to any Securities in Buyer's Account and that in no event shall any consent of the Seller be required for the taking of any such action by Bank. Buyer hereby covenants, for the benefit of Seller, that Buyer will not instruct Bank to deliver any Purchased Securities or Additional Purchased Securities to any person other than Seller until the date, if any, when an Event of Default shall have occurred as to which Seller is the defaulting party. The foregoing covenant is for the benefit of Seller only and shall in no way be deemed to constitute a limitation on Buyer's right at any time to instruct Bank with respect to the transfer of Securities or on Bank's obligation to act upon such instructions.

6. **Daily Statement to Seller and Buyer.** Bank shall send to Seller and Buyer a statement describing the Purchased Securities held in Buyer's Account as of the close of each Business Day. The statement shall be sent by the close of the Business Day following the date to which such statement applies. The statement shall include the Market Value of such Purchased Securities as of the date to which the statement applies. No statement will be sent with respect to a Business Day on which there are no Purchased Securities in Buyer's Account as of the close of the Business Day. Buyer and Seller shall promptly review all such statements and shall promptly advise Bank of any error, omission, or inaccuracy in the Purchased Securities positions reported. Bank shall undertake to correct any errors, failures, or omissions that are reported to Bank by Buyer or Seller to the extent possible. Any such corrections shall be reflected on subsequent statements.

7. **Care of Property; Reliance on Instructions; and Pricing of Securities.**

(a) Bank shall exercise the reasonable care of a professional custodian with respect to property in Buyer's

Account. Notwithstanding anything to the contrary in this Agreement, Bank shall not be liable for any costs, expenses, damages, liabilities or claims (collectively, "Damages"), resulting from its action or omission to act in connection with this Agreement, except to the extent that such Damages result from the negligence or willful misconduct of Bank. In the case of loss of property in Buyer's Account caused by Bank's negligence or willful misconduct, Bank's liability for lost property shall be limited to the Market Value thereof at the date of the discovery of such loss. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL BANK BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOST PROFITS) EVEN IF BANK HAS BEEN ADVISED AS TO THE POSSIBILITY THEREOF AND REGARDLESS OF THE FORM OF ACTION. Bank, at its option, may insure itself against loss from any cause but shall be under no obligation to obtain insurance directly for the benefit of either Seller or Buyer. In matters concerning or relating to this Agreement, Bank shall not be responsible for compliance with any statute or regulation regarding the establishment or maintenance of margin credit, including but not limited to Regulations T or X of the Board of Governors of the Federal Reserve System or with any rules or regulations of the Office of the Controller of the Currency. Bank shall not be liable for any acts or omissions of the other parties to this Agreement. Bank shall not have any duty to require that any cash, securities or other property be delivered to it or to determine that the amount and form of property deposited in the accounts comply with any applicable requirements other than as specified in this Agreement.

(b) Bank, at any time, without any resulting liability to it, may act hereunder in reliance upon any instructions or notices Bank believes to be genuine; provided, however, that all instructions and notices to Bank shall be by a signed writing (via telecopy or otherwise), by electronic communication or by oral communication, including the code which may be assigned by Bank to Buyer from time to time. Instructions to Bank from Seller may also be given in the manner specified in the Clearance Agreement between Bank and Seller. Bank reserves the right to confirm payment orders and/or institute any other reasonable security procedures to verify payment orders or other instructions.

(c) Until written notice to the contrary is given to another party to this Agreement by Buyer and such other party has had a reasonable time to amend its records, such other party shall be entitled to act on the belief that the persons listed on Schedule II hereto (whether or not any such person is an officer or employee of Buyer) are authorized to act on behalf of Buyer, and that any one of them has authority to transfer Securities, give notices and otherwise act under this Agreement on behalf of Buyer. In addition, a party shall be entitled to assume that any person whom it in good faith believes is authorized to act on behalf of Buyer is authorized to act on behalf of Buyer and has authority to transfer Securities, give notices and otherwise act under this Agreement on behalf of Buyer.

(d) All transfers of cash from Buyer to Bank shall be made to the appropriate account listed on Schedule III hereto, unless otherwise specified in a notice to Buyer by Bank. All transfers of cash from Bank to Buyer shall be made to the appropriate account listed on Schedule III hereto, until otherwise specified in a written notice to Bank by Buyer with Bank having had a reasonable time to amend its records.

(e) Bank may rely upon a recognized pricing service (or its equivalent as provided in the definition of Market Value) or a recognized credit rating service in determining the Market Value or credit rating of the Securities, as applicable, and shall in no circumstances be liable for any errors made by such service or its equivalent.

(f) All credits, debits or transfers shall be deemed to have been completed at such time as recorded on Bank's books.

(g) Bank shall have no duties or obligations whatsoever except such duties and obligations as are specifically set forth in this Agreement, and no covenant or obligation shall be implied in this Agreement against Bank. Bank shall have no discretion whatsoever with respect to the management, disposition or investment of Buyer's Account or Seller's Account and is not a fiduciary to Buyer or Seller.

(h) Transfer of Securities to Bank hereunder may be accomplished by crediting a proprietary or pledgee account of Bank with the Federal Reserve Bank of New York, The Depository Trust and Clearing Corporation, the Government Securities Clearing Corporation or any other central securities depository or clearing agency which it is or may become standard market practice to use for the comparison and settlement of securities trades (each, a "Clearing Corporation") or by delivery of physical certificates to Bank in negotiable form. Seller and Buyer agree that Bank's use

of a Clearing Corporation in connection with the Repurchase Transactions contemplated under this Agreement is authorized and shall fully comply with all terms and conditions of this Agreement regarding Bank's transfer and custody of such Securities. Buyer and Seller acknowledge and understand that all transfers of Securities by a Clearing Corporation will be subject to the then applicable rules and procedures of such Clearing Corporation. Bank shall not be responsible for the risk of holding Securities through Clearing Corporations; no Clearing Corporation shall be, or shall be deemed to be, an agent of Bank; Bank shall have no liability for the acts or omissions of any Clearing Corporation and Bank assumes no credit risk, including insolvency or bankruptcy risk, with respect to any such entity. Notwithstanding anything to the contrary contained in this Agreement, Bank shall be authorized, in its discretion, to accept a trust receipt from any securities intermediary as a Security.

(i) Bank is not a party to the Repurchase Agreement. Bank has not examined the Repurchase Agreement, has no responsibility for the content thereof and is not, and shall not be deemed to be, on notice as to any provision thereof. Bank's obligations hereunder shall not be affected by, nor does Bank assume any liability under, the Repurchase Agreement.

(j) Bank shall not be deemed to have independent knowledge or notice of the existence of an Event of Default. Bank shall be entitled to rely on Buyer's or Seller's written notice (including, without limitation, telecopy notice) thereof and shall have no duty to inquire into the nature or validity of an Event of Default.

(k) Bank may, with respect to questions of law, apply for and obtain the advice and opinion of counsel and shall not be deemed to be negligent or have engaged in willful misconduct in any action taken or omitted by Bank in good faith in conformity with such advice or opinion.

(l) Without limiting the generality of the foregoing, Bank shall be under no obligation to inquire into, and shall not be liable for:

(i) subject to Section 3(b) hereof, the title, validity or genuineness of any securities, other property or document;

(ii) the legality of the purchase, sale, delivery or transfer of any securities or other property, the propriety of the price for which the same is acquired, sold, delivered or transferred or the enforceability of any trust receipt received by Bank pursuant to this Agreement;

(iii) the due authority to act on behalf of Buyer of any person Bank in good faith believes is authorized to act on behalf of Buyer;

(iv) the due authority to act on behalf of Seller of any person Bank in good faith believes is authorized to act on behalf of Seller;

(v) the due authority of Seller, Buyer or any entities for which Buyer acts to deliver, transfer, obtain or hold any particular property pursuant to this Agreement.

(m) Buyer and Seller agree that Bank shall have no obligation to monitor whether any Securities transferred or to be transferred hereunder derive all or a portion of their value from changes in the value of underlying securities, mortgages or other obligations or one or more currencies, commodities, indices or other factors ("Derivative Securities"). Accordingly, the parties agree that notwithstanding anything to the contrary in this Agreement, it shall be Buyer's and Seller's responsibility to ensure that Securities do not include Derivative Securities unless they have otherwise agreed. Bank shall have no liability whatsoever for any loss, damage or expense arising out of any ineligibility of Derivative Securities which are the subject of Repurchase Transactions.

(n) Bank does not in any way undertake to, and shall not have any responsibility to, monitor or ascertain the compliance of any transactions in the Securities with any exemptions from registration under the Securities Act of 1933, as amended, or of any other state or federal securities laws.

(o) Notwithstanding anything to the contrary in this Agreement, Bank shall not be required to buy or sell or arrange for the purchase or sale of any Securities in connection with this Agreement or to follow any instructions other than those directing the transfer of Securities.

(p) In the event the funds or Securities available in Buyer's Account or Seller's Account are inadequate to effectuate Repurchase Transactions in accordance with Section 3 hereof, Bank shall have no obligation to perform the functions specified in Section 3 hereof.

**8. Compensation.** Seller hereby agrees to pay Bank compensation for the services to be rendered hereunder, based upon rates which shall be determined from time to time in a manner agreed upon by Bank and Seller.

**9. Indemnification.** Seller and Buyer hereby agree, jointly and severally, to indemnify Bank for, and hold it harmless against, any loss, liability or expense in connection with, arising out of or in any way related to this Agreement or the Repurchase Agreement, or any action or omission by Bank in connection with this Agreement, including the reasonable costs, expenses and fees of attorneys chosen by Bank incurred in defending any claim of such liability, except that Seller and Buyer shall not be liable for any loss, liability or expense to the extent that it is determined to be the direct result of acts or omissions on the part of Bank constituting negligence or willful misconduct. Notwithstanding the foregoing, Bank shall be absolutely indemnified by each other party for, and held harmless against, any loss, liability or expense (including the reasonable costs, expenses and fees of attorneys chosen by Bank incurred in defending any claim of such liability) incurred as a result of complying with the instructions of Buyer or Seller, including without limitation any such compliance which constitutes or is alleged to constitute a violation of the rights of any party or a violation of an injunction, stay, order or law. These indemnification obligations shall survive the termination of any Repurchase Transaction, the Repurchase Agreement, this Agreement or all of them. For purposes of this Section, "Bank" shall mean Bank, any existing or future parent company of Bank, any existing or future direct or indirect subsidiary of such parent company and any director, officer, employee or agent of any of the foregoing.

**10. Event of Default; Continuing Disputes; Effect of Notice of Levy, Etc.**

(a) If either Buyer or Seller shall declare an Event of Default, it shall promptly deliver a written notice of an Event of Default to Bank and to the other party. Such notice shall identify the name of the defaulting party, the Event of Default and the Repurchase Transactions which are the subject of such Event of Default. Bank shall promptly notify the defaulting party of Bank's receipt of a written notice of an Event of Default.

(b) From and after Bank's receipt of a written notice of an Event of Default from Buyer or Seller, Bank is hereby instructed not to follow the instructions of the defaulting party with respect to the non-defaulting party's Account, Bank shall be entitled to follow the instructions of the non-defaulting party with respect to the non-defaulting party's Account and, if the non-defaulting party is Seller, Bank is hereby further instructed to follow the instructions of Seller to accept into Buyer's Account cash in substitution of any Securities therein provided that the Securities in Buyer's Account after the substitution have a Margin Value equal to or greater than the Purchase Price. Bank shall have no obligation to verify any amount(s) owed by Seller to Buyer pursuant to the Repurchase Agreement. Without any liability resulting to Bank, Bank shall be entitled to rely solely on Seller's instructions specifying the amount of cash to credit to Buyer's Account in connection with a substitution effected in accordance with this Section. In no event shall Bank have any duty to sell or otherwise foreclose or enforce any lien upon or security interest in or realize the value of any Securities pursuant to a notice of an Event of Default or Seller's or Buyer's instructions.

(c) Notwithstanding anything to the contrary in this Agreement, in the event of any dispute between, conflicting claims by or conflicting instructions from Seller or Buyer with respect to the Securities, cash or other matter covered by this Agreement, Bank shall follow the instructions of Buyer and disregard the instructions of Seller with respect to Buyer's Account except as set forth in Section 10(b).

(d) Bank shall not be required to deliver or transfer cash, securities or other property in contravention of any order, stay, judgment, levy, restraining notice, seizure or other similar notice or restraint imposed by law or issued or directed by a governmental agency or court, or officer thereof, asserting jurisdiction over Bank, any existing or future parent company of Bank, any existing or future direct or indirect subsidiary of such parent company or any director, officer, employee or agent of any of the foregoing, which on its face affects such cash, securities or other property. Bank

shall give Buyer and Seller prompt notice of any such notice or order of which it is aware.

**11. Funds Transfer Name/Identifying Number Inconsistencies.**

(a) Buyer requests that Bank execute payment orders issued in the name of Buyer conforming to the terms specified in the attached Schedule II ("Repetitive Payment Orders") received by Bank by telephone, facsimile or written correspondence using the following security procedure.

(i) Buyer agrees that Repetitive Payment Orders will be effective as the funds transfer instructions of Buyer, whether or not authorized, if such payment orders are verified pursuant to the security procedure provided herein or such other security procedure that Bank or Buyer may agree to.

(ii) Bank will execute a Repetitive Payment Order when the payment details and/or line number is identified to Bank. If a Repetitive Payment Order does not conform to the terms of an authenticated line number, Bank will not execute the Repetitive Payment Order unless it can verify the payment order by another security procedure.

(iii) Included in Schedule II is a list of the individuals and telephone numbers designated by Buyer to establish Repetitive Payment Orders.

(iv) The failure of the Bank to comply with the procedure provided herein shall not render a payment order that is otherwise authorized under the law of agency unauthorized.

(v) Instructions from Buyer to change Schedule II must be provided to Bank in writing. Bank will initiate a callback to designated persons at Buyer to authenticate changes to Schedule II payment orders prior to implementation.

(vi) If Bank is authorized by Buyer to accept Repetitive Payment Orders from an investment manager or other agent, this Section 11 shall apply equally to instructions issued in the name of the investment manager or other agent.

(b) In executing or paying a payment order, Bank may rely upon the identifying number (e.g. Fedwire routing number or account number) of any party as instructed in the payment order. Seller assumes full responsibility for any inconsistency between the name and identifying number of any party in the payment orders issued to Bank in Seller's name. Buyer assumes full responsibility for any inconsistency between the name and identifying number of any party in payment orders issued to Bank in Buyer's name.

(c) Bank, Buyer and Seller agree that the procedures outlined in this Section 11 constitute a commercially reasonable security procedure.

**12. Representations and Warranties.**

(a) Buyer represents and warrants that (i) it is a duly organized and validly existing commonwealth under the laws of the Commonwealth of Kentucky with all necessary power and authority to execute and deliver this Agreement and to perform all of the duties and obligations to be performed by it hereunder and under the Repurchase Agreement, (ii) this Agreement and performance of all transactions contemplated hereunder and under the Repurchase Agreement have been duly authorized, executed and delivered in accordance with all requisite action, (iii) the person executing this Agreement on its behalf has been duly and properly authorized to do so, (iv) this Agreement constitutes a valid, legal and binding obligation enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency, or similar laws relating to or limiting creditors' rights generally, or by equitable principles, (v) the execution, delivery and performance of this Agreement and the transactions contemplated hereunder and under the Repurchase Agreement will not violate any agreement by which it is bound or by which any of its assets are affected, or its charter or by-laws, or any statute, regulation, rule, order or judgment applicable to it, (vi) it has the unqualified right to buy the Securities from Seller and resell the Securities to Seller upon the terms and subject to the conditions set forth in the Repurchase Agreement, (vii) all of the Purchased Securities while held in Buyer's Account shall not at any time be or become subject to any lien, claim, security interest or encumbrance of any person or entity other than Buyer except as

permitted by this Agreement, and all of such Purchased Securities, upon delivery to Seller, will be free and clear of any lien, claim, security interest or encumbrance (except any lien, claim, security interest or encumbrance to which such Purchased Securities were subject at the time of delivery by Seller to Buyer), (viii) the establishment of Buyer's Account and its operation by the parties designated herein have been duly authorized and no other action is required prior to commencing operation of such account, (ix) its principal executive office is located at 702 Capitol Annex, Suite 76, Frankfort, KY 40601, (x) it is subject to regulation by KRS 42.500, (XI) it is not a "financial institution" for purposes of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"), (xii) it is not an "insured depository institution" for purposes of the Federal Deposit Insurance Act (the "FDIA"), and, if it is, it shall during the term of this Agreement comply with the written agreement and related requirements of Section 1823(e) of the FDIA and (xiii) it will deliver to Bank a complete copy of the Repurchase Agreement and all amendments thereto or modifications thereof promptly upon Bank's request.

(b) Buyer further represents and warrants that if it is acting as agent for one or more third parties, Buyer is either authorized by virtue of standing instructions or is a fiduciary or an agent with the authority to enter into, execute and bind such third parties to this Agreement and the Repurchase Transactions effected for such third parties. Buyer is authorized to make, and makes each of the representations and warranties above applicable to Buyer for each of such third parties. If Buyer acts beyond the authority granted to it by any such third party or any entity acting on behalf of such third party or exceeds any limitations on transactions imposed by Seller and agreed to by Buyer, Buyer will be liable for all such actions as if it were the principal with respect thereto provided that the same shall not limit in any manner the liability of such third party or any other party for such actions and related transactions.

(c) Seller represents and warrants that (i) it is a duly organized and validly existing General Partnership under the laws of the State of New York with all necessary power and authority to execute and deliver this Agreement and to perform all of the duties and obligations to be performed by it hereunder and under the Repurchase Agreement, (ii) this Agreement and performance of all transactions contemplated hereunder and under the Repurchase Agreement have been duly authorized, executed and delivered in accordance with all requisite corporate action, (iii) the person executing this Agreement on its behalf has been duly and properly authorized to do so, (iv) this Agreement constitutes a valid, legal and binding obligation enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency, or similar laws relating to or limiting creditors' rights generally, or by equitable principles, (v) the execution, delivery and performance of this Agreement and the transactions contemplated hereunder and under the Repurchase Agreement will not violate any agreement by which it is bound or by which any of its assets are affected, or its charter or by-laws, or any statute, regulation, rule, order or judgment applicable to it, (vi) it has the unqualified right to sell, buy, transfer, assign and/or pledge the Securities transferred on its behalf hereunder, and all of such Securities upon delivery to Buyer, will be free and clear of any lien, claim, security interest or encumbrance, (vii) it is acting as principal for its own account and (viii) it will deliver to Bank a complete copy of the Repurchase Agreement and all amendments thereto and modifications thereof promptly upon Bank's request.

(d) Bank represents and warrants that (i) it is duly organized and validly existing national banking association under the laws of the United States of America with all necessary power and authority to execute and deliver this Agreement and to perform all of the duties and obligations to be performed by it hereunder, (ii) this Agreement and performance of all transactions contemplated hereunder have been duly authorized, executed and delivered in accordance with all requisite corporate action, (iii) the person executing the Agreement on its behalf has been duly and properly authorized to do so, (iv) this Agreement constitutes a valid, legal and binding obligation enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency, or similar laws relating to or limiting creditors' rights generally, or by equitable principles and (v) the execution, delivery and performance of this Agreement and the transactions contemplated hereunder will not violate any agreement by which it is bound or by which any of its assets are affected, or its charter or by-laws, or any statute, regulation, rule, order or judgment applicable to it.

These representations and warranties shall be deemed to be repeated on each day on which a Repurchase Transaction is outstanding.

**13. Entire Agreement; Modification; Amendment.** This Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior oral or written agreements in regard thereto. No modification or amendment of this Agreement shall be binding unless in writing and executed by each of the parties. In the event of conflict between this Agreement and the Repurchase Agreement, this Agreement shall control.

14. **Termination.** This Agreement shall terminate forthwith upon termination of the Repurchase Agreement and written notice thereof to Bank by Seller or Buyer or may be terminated by any party hereto on ten Business Days' prior written notice to the other parties; provided, however, that, any such termination shall not affect any Repurchase Transaction then outstanding.

15. **Severability.** If any provision of this Agreement is held to be unenforceable as a matter of law, the other terms and provisions hereof shall not be affected thereby and shall remain in full force and effect.

16. **Rights and Remedies.** The rights and remedies conferred upon the parties hereto shall be cumulative, and the exercise or waiver of any thereof shall not preclude or inhibit the exercise of any additional rights and remedies; provided, however, that nothing in this Section shall be construed as permitting any party, person or entity under any circumstances, to make any claim against Bank for special, indirect or consequential damages arising under or in connection with this Agreement.

17. **Headings.** Section headings are for reference purposes only and shall not be construed as a part of this Agreement.

18. **And/Or.** The term "or" shall include the conjugate form so that each use of the term "or" should be interpreted as "and/or".

19. **Assignment.** This Agreement shall be binding upon the parties' respective successors and permitted assigns. Neither Buyer nor Seller may assign its rights and/or obligations hereunder without the prior written consent of the other parties. Any attempted assignment without such consent shall be null and void.

20. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

21. **No Implied Waivers.** The right of any party under any provision of this Agreement shall not be affected by its prior failure to require the performance of any other party under such provision or any other provision of this Agreement, nor shall the waiver by any party of a breach of any provision hereof constitute a waiver of any succeeding breach of the same or any other provision or constitute a waiver of the provision itself.

22. **Notices.** All notices shall be given to the party entitled to receive such notices at the following addresses, telephone numbers and teletype numbers unless otherwise specified in a notice given pursuant to this Section:

(a) **To Seller.** Unless and until Seller shall give written notice to Buyer and Bank to the contrary, all notices to Seller shall be sent to it at \_\_\_\_\_, attention of \_\_\_\_\_, all notices by telephone to Seller shall be made \_\_\_\_\_ at \_\_\_\_\_ and all notices by teletype to Seller shall be made \_\_\_\_\_.

(b) **To Buyer.** Unless and until Buyer shall give written notice to Seller and Bank to the contrary, all written notices to Buyer shall be sent to it 702 Capitol Avenue, Suite 76, Frankfort, KY 40601 attention of Executive Director, all notices by telephone to Buyer shall be made at 502-564-2924 and all notices by teletype to Buyer shall be made to 502-564-5946.

(c) **To the Bank.** Unless and until the Bank shall give written notice to Seller and Buyer to the contrary, all written notices to Bank shall be sent to it at 4 New York Plaza, New York, New York 10004-2477, attention of Brokers and Dealers Clearance Department, all notices by telephone to Bank shall be made to Jon Ciciola, Managing Director at (212) 623-3211 and all notices by teletype to Bank shall be made to (212) 623-5959.

(d) **Troubleshooting List.** Until written notice to the contrary is given to the other parties by Seller or Buyer, as applicable, the persons listed on Schedule VI hereto may be contacted after business hours as necessary in connection with this Agreement.

(e) **Other.** All notices and instructions shall be deemed given when received.

23. **Force Majeure.** Bank shall not be liable for any failure or delays arising out of conditions beyond its reasonable control, including, but not limited to, work stoppages, fire, civil disobedience, delays associated with hardware malfunction or availability, riots, rebellions, storms, electrical failures, acts of God and similar occurrences.

24. **GOVERNING LAW.** This Custodial Undertaking shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the conflict of law principles thereof, except that the capacity, power, or authority of Buyer to enter into this agreement and any transaction shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Each party hereto (i) irrevocably consents to the exclusive jurisdiction and venue of any state or federal court situated in the Borough of Manhattan in the City New York in connection with any action or proceeding arising out of or in connection with the Agreement, except that, pursuant to KRS 45A.245, venue for any suit, action, or proceeding brought in connection with any dispute involving Buyer arising hereunder shall lie in the circuit court of Franklin County, Kentucky to the extent permitted by statute; (ii) irrevocably waives the right to object to the venue of any such court on the ground of inconvenient forum; and (iii) irrevocably waives any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Agreement or any Repurchase Transaction. Buyer hereby confirms that to the extent set forth in KRS 45A.245 Buyer has waived immunity on the grounds of sovereignty from judicial process or proceeding in connection with this Custodial Undertaking. To the extent that, in any jurisdiction, any other party hereto, by itself or on behalf of its principal, may now or hereafter be entitled to claim, for itself or its assets, or for its principal or such principal's assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, such party irrevocably agrees not to claim, and it hereby waives, such immunity.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the 29<sup>th</sup> day of December, 2008.

JPMORGAN CHASE BANK, N.A.

By:

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

COMMONWEALTH OF KENTUCKY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHEDULE I

Custodial Undertaking in Connection with Master Repurchase Agreement dated as of December 29, 2008, among The Commonwealth of Kentucky (“Buyer”), \_\_\_\_\_ (“Seller”) and JPMorgan Chase Bank, N.A.

	Yes/No	Margin		Yes/No	Margin
U.S. TREASURIES			AGENCY REMICS/CMOS		
BILLS	YES	102%	REMIC TYPES:		
BONDS	YES	102%	RESIDUALS	YES	102%
NOTES	YES	102%	INVERSE IO FLOATERS	YES	102%
STRIPS	YES	102%	IO ettes	YES	102%
SYNTHETIC TREASURIES (e.g. CATS, COUGRS, TIGRS)	YES	102%	INTEREST ONLY (IO)	YES	102%
			PRINCIPAL ONLY (PO)	YES	102%
			INVERSE FLOATERS	YES	102%
AGENCY DEBENTURES			COMPANION FLOATERS	YES	102%
FAMC (Fed Agriculture Mtge Corp)	YES	102%	SEQUENTIAL FLOATERS	YES	102%
FCFAC (Farm Credit Finan. Asst.)	YES	102%	PAC & OTHER SEQUENTIAL FLOATERS	YES	102%
FFCB (Farm Credit System Banks)	YES	102%	Z BONDS	YES	102%
FmHA (Farmers Home Admin.)	YES	102%	COMPANION BONDS	YES	102%
FHLB (Federal Home Loan Banks)	YES	102%	SEQUENTIAL BONDS	YES	102%
FHLMC (Federal Home Loan Mtge)	YES	102%	TAC BONDS	YES	102%
FICO (Financing Corporation)	YES	102%	PAC & OTHER SCHEDULED BONDS	YES	102%
FLBB (Federal Land Bank Bonds)	YES	102%	EQUITIES		
FNMA (Federal Nat'l Mtge Corp)	YES	102%	COMMON	NO	
REFCO (Resolution Funding Corp)	YES	102%	PREFERRED	NO	
SLMA (Student Loan Mtge Corp)	YES	102%			
TVA (Tennessee Valley Authority)	NO				
USPS (U.S. States Postal Service)	NO				
AGENCY STRUCTURED NOTES	YES	102%	PRIVATE LABELS MBS & CMOS		
			MBS PASS THROUGHs	YES	102%
INTERNATIONAL AGENCIES			CMO TYPES:		
ADBB (Asian Development Bank)	NO		RESIDUALS	YES	102%
AFDB (African Development Bank)	NO		INVERSE IO FLOATERS	YES	102%
IADB (International Finance Corp)	NO		IO ettes	YES	102%
IFCO (International Finance Corp)	NO		INTEREST ONLY (IO)	YES	102%
WLDB (World Bank)	NO		PRINCIPAL ONLY (PO)	YES	102%
			INVERSE FLOATERS	YES	102%
CASH	YES	100%	COMPANION FLOATERS	YES	102%
			SEQUENTIAL FLOATERS	YES	102%
GNMA			PAC & OTHER SEQUENTIAL FLOATERS	YES	102%
TRUST RECEIPTS	YES	102%	Z BONDS	YES	102%
GNMA I/II-SINGLE FAMILY	YES	102%	COMPANION BONDS	YES	102%
GNMA I/II-OTHERS-FIXED RATE	YES	102%	SEQUENTIAL BONDS	YES	102%
GNMA I/II-OTHERS-ADJUST. RATE	YES	102%	TAC BONDS	YES	102%
			PAC & OTHER SCHEDULED BONDS	YES	102%
AGENCY MORTGAGE BACKS					
TRUST RECEIPTS	YES	102%			
PASS THROUGHs-FIXED RATE	YES	102%	ASSET BACKED SECURITIES		

PASS THROUGH-ADJUST. RATE	YES	102%	CREDIT CARD & OTHER ASSET BACKS	NO	
MBS STRIPS (IO, PO, RECOMB)	YES	102%			
	Yes/No	Margin		Yes/No	Margin
CORPORATES			MONEY MARKETS		
INVESTMENT GRADE (>=BBB-)	NO		COMMERCIAL PAPER (>=A1/P1)	NO	
NON-INVESTMENT GRADE (<=BB+)	NO		COMMERCIAL PAPER (<=A2/P2)	NO	
MEDIUM-TERM NOTE (>=BBB-)	NO		BANKERS ACCEPTANCE	NO	
MEDIUM-TERM NOTE (<=BB+)	NO		CD (DOMESTIC & EURO)	NO	
			BANK NOTES	NO	

BUYER ACKNOWLEDGES AND AGREES THAT IF A CLASS OF SECURITY CONTAINS NEW ISSUES OF SECURITIES, SUCH NEW ISSUES OF SECURITIES SHALL BE DEEMED TO BE ELIGIBLE SECURITIES.

The Commonwealth of Kentucky

By, Title and Date:

By, Title and Date:

Accepted:  
JPMorgan Chase Bank, N.A.

By, Title and Date:

## PRICING SOURCES

### PRICING FORMULA

Custodian may rely on its affiliates to obtain prices on its behalf. GNMA securities for which a price is not available from The Bond Buyer may be priced at Custodian's discretion based on a pricing formula determined by Custodian.

### ALTERNATIVE PRICING SERVICES

Prices shall be those available at close of business the previous Business Day or the last quote available. The pricing services may be changed to other independent pricing services from time to time by agreement of Custodian and Seller.

SCHEDULE II

The following individuals have been designated as authorized persons of Buyer and Seller, respectively, in connection with the Custodial Undertaking in Connection With Master Repurchase Agreement dated as of December 29, 2008

BUYER

Name, Title Purpose	Specimen Signatures
F. Thomas Howard, Executive Director	_____
Dwight L. Price, Jr., Portfolio Administrator	_____
Stephen Jones, CFA, Portfolio Manager	_____
Kim Bechtel, Financial Technician	_____

SELLER

Name, Title Purpose	Specimen Signatures
_____	_____
_____	_____
_____	_____
_____	_____

## SCHEDULE III

### CASH

Instructions for The Commonwealth of Kentucky

Description of Cash Accounts

A. Buyer's Account

ABA: 042000013

Name: US Bank

Beneficiary Account Number: 112950027

Beneficiary Name: Tri-Party Repo Account/19-CK006

SCHEDULE IV

Notice:

If to Buyer:

Title: Tom Howard, Executive Director  
Address: Office of Financial Management  
76 Capitol Annex  
Frankfort, Kentucky 40601-3453  
Telephone: (502) 564-2924 Fax: (502) 564-7416

If to Seller:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

If to Custodian:

JPMorgan Chase Bank, N.A.  
4 New York Plaza  
New York, NY 10004-2477  
Broker and Dealers Clearance Department  
Phone: (212) 623-7219  
Fax: (212) 623-5959

**BUYER WILL BE ACTING AS**

Principal

Agent/Trustee

If Buyer has checked the box as Agent/Trustee, attached as Schedule C is a complete list of buyer's customers for which it will be acting as agent or acting in a trust capacity.

## SCHEDULE V

The Commonwealth of Kentucky intends to utilize the Facsimile/Designated Account/Call Back Service of the Custodian Bank to secure funds transfer instructions issued under this Tri-Party Custody Arrangement. The persons on List A below are authorized to issue Facsimile Funds Transfer Instructions and the persons on List B below are authorized to confirm the authenticity of such instructions. We will notify you promptly should any of these authorizations be rescinded by the Commonwealth.

A. Persons Authorized To Issue Funds Transfer Instructions:

NAME	TITLE	SPECIMEN SIGNATURE
F. Thomas Howard	Executive Director	_____
Dwight L. Price, Jr.	Portfolio Administrator	_____
Stephen Jones, CFA	Portfolio Manager	_____
Kim Bechtel	Financial Technician	_____

B. Persons Authorized To Confirm Funds Transfer Instructions:

NAME	TITLE	Telephone Number
F. Thomas Howard	Executive Director	(502) 564-2924
Dwight L. Price, Jr.	Portfolio Administrator	(502) 564-2924
Stephen Jones, CFA	Portfolio Manager	(502) 564-2924
Kim Bechtel	Financial Technician	(502) 564-2924

## SCHEDULE VI

The Commonwealth of Kentucky intends to utilize the Facsimile/Designated Account/Call Back Service of the Custodian Bank to secure funds transfer instructions issued under this Tri-Party Custody Arrangement. The persons on List A below are authorized to issue Facsimile Funds Transfer Instructions and the persons on List B below are authorized to confirm the authenticity of such instructions. We will notify you promptly should any of these authorizations be rescinded by the Commonwealth.

### A. Persons Authorized To Issue Funds Transfer Instructions:

NAME	TITLE	SPECIMEN SIGNATURE
Adam Rulo	Trade Services Representative, U.S. Bank Trust Trade Services	_____
Amanda Covert	Trade Services Representative, U.S. Bank Trust Trade Services	_____

### B. Persons Authorized To Confirm Funds Transfer Instructions:

NAME	TITLE	TELEPHONE NUMBER
Adam Rulo	Trade Services Representative, U. S. Bank Trust Trade Services	(314) 418-1747
Amanda Covert	Trade Services Representative, U.S. Bank Trust Trade Services	(314) 418-3550

## APPENDIX I

To: JPMorgan Chase Bank, N.A.  
Broker Dealer Clearance Department  
4 New York Plaza  
New York, NY 10004-2477  
Attention: Vice President

This notice is given pursuant to Paragraph 5E of the Custodial Undertaking in Connection With Master Repurchase Agreement by and among The Commonwealth of Kentucky ("Buyer"), \_\_\_\_\_ ("Seller") and JPMorgan Chase Bank, N.A. ("Custodian") dated as of December 29, 2008 (the "Custodial Undertaking"). Buyer hereby instructs Custodian to transfer the Purchase Securities and cash in Buyer's Account (as defined in the Custodial Undertaking) to:

ABA: 042000013  
Bank or Depository: U.S. Bank N.A.  
City: St. Louis, MO  
Account Name: Tri-Party Repo 19-CK006  
Account Number: 112950027

Date:

By:

Title: Executive Director

**CUSTODIAL UNDERTAKING IN CONNECTION  
WITH MASTER REPURCHASE AGREEMENT**

\*\*\*\*\*

BY AND AMONG

**THE COMMONWEALTH OF KENTUCKY**  
(BUYER)

AND

\_\_\_\_\_  
(SELLER)

AND

**THE BANK OF NEW YORK MELLON**  
(CUSTODIAN)

**THIS CUSTODIAL UNDERTAKING** is made and entered into as of the date set forth below by and among Buyer, Seller, and Custodian.

## **RECITALS**

**WHEREAS**, Buyer and Seller have entered into a Master Repurchase Agreement dated as of \_\_\_\_\_ (as it may be amended by the parties thereto, the "Master Repurchase Agreement"), and may from time to time enter into Transactions with respect to Eligible Securities (as hereinafter defined); and

**WHEREAS**, Custodian has agreed to act as agent for Buyer and Seller in order to effect Transactions on their behalf, all as more particularly set forth herein;

**NOW, THEREFORE**, in consideration of the mutual promises hereinafter set forth, the parties hereto agree as follows:

### **1. DEFINITIONS**

Whenever used in this Custodial Undertaking, the following words shall have the meanings set forth below. Capitalized terms used but not defined herein shall have the meanings given them in the Master Repurchase Agreement.

**A. "Authorized Person"** shall mean any person, whether or not any such person is an officer or employee of Buyer or Seller, as the case may be, duly authorized to give Oral Instructions and Written Instructions on behalf of Buyer or Seller, such persons and their specimen signatures to be designated in Schedule II attached hereto; as such Schedule II may be amended from time to time.

**B. "Book-Entry Securities"** shall mean Book-Entry Treasury Securities as defined in 31 C.F.R. Part 357.2 and any other securities registered in the form of an entry on the records of the Book-Entry System.

**C. "Book-Entry System"** shall mean the Treasury/Reserve Automated Debt Entry System maintained at The Federal Reserve Bank of New York ("FRBNY").

**D. "Business Day"** shall mean any day on which Custodian, Seller, the Book-Entry System and appropriate Clearing Corporation(s) are open for business.

**E. "Buyer's Account"** shall mean the custodial account maintained by Custodian on behalf of Buyer for the deposit of Eligible Securities with respect to Transactions and, for such purpose, Buyer's Account shall be deemed to be a "securities account" within the meaning of the UCC. For purposes of this Custodial Undertaking, Buyer's Account shall include any account for the deposit of cash in connection therewith.

**F. "Clearing Corporation"** shall mean The Depository Trust Company, Government Securities Clearing Corporation and any other clearing corporation within the meaning of Section 8-102 of the UCC, otherwise authorized to act as a securities depository or clearing agency.

**G. "Clearing Corporation Securities"** shall mean securities which are registered in the name of Custodian or its nominee in the form of an entry on the records of a Clearing Corporation.

**H. "Eligible Securities"** shall mean those types of Securities which Buyer, Seller and Custodian have agreed shall be eligible for Transactions by inclusion on a Schedule of Eligible Securities substantially in the form of Schedule I hereto, as such Schedule of Eligible Securities may be amended from time to time, and cash.

**I. "Margin Percentage"** shall mean the percentage indicated on Schedule I with respect to specific types of Eligible Securities, as Schedule I may be amended from time to time.

**J. "Margin Value"** shall mean the amount obtained by dividing the Market Value of Securities by the applicable Margin Percentage.

**K. "Market Value of Securities"** shall mean with respect to any Security as of any date, the sum of (i) the market value of such Security based on the most recently available closing bid price (usually from the previous Business Day) for the particular Security as made available to Custodian by pricing information services which Custodian uses generally for pricing such Securities, and (ii) accrued but unpaid Income, if any, on the particular Security (to the extent not included therein). In the case of cash and certificates of deposit, the face amount shall be deemed the Market Value. In the event that Custodian is unable to obtain the price of a particular Security from such pricing information services on any Business Day, the Market Value shall be as determined by Custodian in the reasonable exercise of its discretion based on information furnished to Custodian by one or more brokers (excluding Seller) in such Security or Custodian may price such Security using a formula utilized by Custodian for such purpose in the ordinary course of its business.

**L. "Notice of Default"** shall mean a written notice delivered by Buyer to Custodian and Seller, or by Seller to Custodian and Buyer, informing Custodian and the defaulting party of an Event of Default pursuant to Paragraph 11 of the Master Repurchase Agreement and setting forth the specific Event of Default thereunder.

**M. "Oral Instructions"** shall mean verbal instructions actually received by Custodian from an Authorized Person.

**N. "Physical Securities"** shall mean securities and money market instruments issued in definitive form which are not Book-Entry Securities or Clearing Corporation Securities.

**O. "Purchased Securities"** shall mean Eligible Securities transferred to Buyer's Account in connection with Transactions.

**P. "Securities"** shall mean Book-Entry Securities, Clearing Corporation Securities, Physical Securities and cash.

**Q. "Seller's Account"** shall mean Seller's clearing account on Custodian's Government Securities Clearance System ("GSCS"), any other account in which Securities are held by Custodian on behalf of Seller pursuant to the terms of this Custodial Undertaking and any account for the deposit of cash maintained in connection therewith.

**R. "UCC"** shall mean the Uniform Commercial Code.

**S. "Written Instructions"** shall mean written communications actually received by Custodian from an Authorized Person or from a person reasonably believed by Custodian to be an Authorized Person by telex, facsimile, through GSCS or any other electronic system whereby the receiver of such communications is able to verify by codes, passwords or otherwise with a reasonable degree of certainty the identity of the sender of such communications.

All references to time in this Custodial Undertaking shall mean the time in effect on that day in New York, New York. Except as may otherwise apply for Income payable on particular Securities or as otherwise may be agreed to in writing by the parties hereto, all provisions in this Custodial Undertaking for the transfer, payment or receipt of funds or cash shall mean transfer of, payment in, or receipt of, United States dollars in immediately available funds.

## **2. APPOINTMENT OF CUSTODIAN; ACCOUNTS**

**A.** Buyer and Seller hereby appoint Custodian as custodian of all Securities and cash at any time delivered to Custodian in connection with Transactions subject to this Custodial Undertaking and as their agent to effect Transactions. Custodian hereby accepts appointment as custodian and agent.

**B.** Buyer and Seller each authorizes and instructs Custodian to utilize the Book-Entry System, Clearing

Corporations and the receipt and delivery of physical certificates or any combination thereof in connection with its performance hereunder. Book-Entry Securities and Clearing Corporation Securities credited to Buyer's Account and Seller's Account will be represented in accounts at the Book-Entry System and the appropriate Clearing Corporation in the name of Custodian or its nominee which include only assets held by Custodian for its customers and shall not include any assets held by Custodian in its individual capacity. Transactions with respect to Book-Entry Securities and Clearing Corporation Securities will be effected in accordance with, and subject to, the rules, regulations, operating procedures and custody arrangements of the Book-Entry System and each Clearing Corporation, respectively.

### 3. REPRESENTATIONS AND WARRANTIES

**A. Buyer, Seller and Custodian.** Buyer, Seller and Custodian each represents and warrants, which representations and warranties shall be deemed to be repeated on each Purchase Date and each Repurchase Date, that:

(i) It is duly organized and existing under the laws of the jurisdiction of its organization with full power and authority to execute and deliver this Custodial Undertaking and to perform all of the duties and obligations to be performed by it hereunder;

(ii) This Custodial Undertaking is, and each Transaction (with respect to Buyer and Seller only) will be, legally and validly entered into, does not, and will not, violate any ordinance, charter, by-law, rule or statute applicable to it, and is enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency or similar laws, or by equitable principles relating to or limiting creditors' rights generally; and

(iii) The person executing this Custodial Undertaking on its behalf has been duly and properly authorized to do so.

**B. Further Representations of Custodian.** Custodian further represents and warrants, which representations and warranties shall be deemed to be repeated on each Purchase Date and each Repurchase Date, that:

(i) It is a New York trust company with its principal office at One Wall Street, New York, New York 10286;

(ii) It will maintain Buyer's Account as a custody account and shall administer Buyer's Account in the same manner it administers similar accounts established for the same purpose; and

(iii) It maintains a book-entry securities account with FRBNY and each Clearing Corporation in which it holds Securities hereunder.

### 4. DEPOSIT OF CASH AND ELIGIBLE SECURITIES

**A. Seller's Instructions.** On each Business Day that Seller and Buyer agree to enter into a Transaction subject to this Custodial Undertaking, Seller shall deliver to Custodian, prior to 2:00 p.m., Oral or Written Instructions containing the following information:

(i) the Purchase Date and Purchase Price;

(ii) the Repurchase Date and Repurchase Price (or rate); and

(iii) name of Buyer.

**B. Seller's Tender of Securities.** By the close of business on the Purchase Date, Seller shall transfer, or cause to be transferred, to Seller's Account sufficient Eligible Securities to complete Transactions on such Purchase Date. In connection therewith, Seller shall either deliver to Custodian Oral or Written Instructions identifying the Eligible

Securities to be sold by Seller to Buyer, including a description setting forth the face amount of each Eligible Security and where applicable, the CUSIP number for each such Eligible Security and where applicable, the CUSIP number for each such Eligible Security or instruct Custodian to identify Eligible Securities in Seller's Account to be transferred to Buyer's Account.

C. **Buyer's Purchase Price.** Prior to 4:00 p.m. on the Purchase Date, Buyer shall transfer, or cause to be transferred, to Buyer's Account sufficient cash such that the total cash balance in Buyer's Account after such transfer equals or exceeds the Purchase Price contained in Seller's Oral or Written Instructions.

## 5. EFFECTING TRANSACTIONS

A. **Purchase Date.** On the Purchase Date for any Transaction subject to this Custodial Undertaking, Custodian shall transfer to Seller's Account cash from Buyer's Account in an amount equal to the Purchase Price and transfer from Seller's Account to Buyer's Account Eligible Securities in accordance with Seller's Oral or Written Instructions with respect to such Transaction, subject to the following provisions:

(i) **Determination of Eligible Securities; Negotiability.** Custodian shall determine that Securities to be transferred to Buyer's Account are Eligible Securities and that Physical Securities are in negotiable form. Any Securities which are not Eligible Securities and any Physical Securities which are not in negotiable form shall not be included in the calculations set forth below and shall not be transferred to Buyer's Account.

(ii) **Determination of Margin Value.** Custodian shall determine the Margin Value of Eligible Securities to be transferred to Buyer's Account.

(iii) **Payment of Purchase Price.** Provided the Margin Value of Eligible Securities to be transferred to Buyer's Account equals or exceeds the Purchase Price with respect to such Transaction, Custodian shall transfer such Eligible Securities from Seller's Account to Buyer's Account and shall disburse from Buyer's Account to Seller's Account cash in an amount equal to the Purchase Price.

(iv) **Maintenance of Buyer's Account.**

(a) **Physical Securities.** Custodian shall take possession of each Eligible Security which is a Physical Security at a secure facility at one of its offices in New York City and, during the term of a particular Transaction, shall identify such Physical Securities on its books and records as belonging to Buyer.

(b) **Book-Entry Securities.** Each Eligible Security which is either (i) a Book-Entry Security, or (ii) a part of a fungible bulk of Book-Entry Securities shall be continuously maintained by Custodian in the Book-Entry System. During the term of a particular Transaction, Custodian shall identify such Book-Entry Securities on its books and records as belonging to Buyer.

(c) **Clearing Corporation Securities.** Each Eligible Security which is either (i) a Clearing Corporation Security, or (ii) part of a fungible bulk of Clearing Corporation Securities shall be continuously maintained by Custodian in an account with the appropriate Clearing Corporation. During the term of a particular Transaction, Custodian shall continuously identify such Clearing Corporation Securities on its books and records as belonging to Buyer.

(v) **Intent of Buyer and Seller.** Buyer and Seller agree that it is intended that Custodian act as a "securities intermediary" as such term is defined in the UCC with respect to Transactions hereunder and that each transfer of Securities effected by Custodian hereunder shall be a "transfer" of securities as provided in the UCC. In addition, the parties intend that all Securities (excluding cash) in Buyer's Account and Seller's Account shall be treated as "financial assets", as such term is defined in the UCC.

**B. Trust Receipts.** Custodian is hereby authorized and directed to accept trust receipts as may be set forth in Schedule I hereto (each, a "Trust Receipt") evidencing either the holding by the issuer of such Trust Receipt (a "Trust Receipt Issuer") of Eligible Securities subject to Transactions or the crediting by the Trust Receipt Issuer to the account of Custodian of Eligible Securities subject to Transactions. Any Trust Receipt may be accompanied by an electronic file sent by Seller to Custodian containing information concerning the Eligible Securities represented by such Trust Receipts including CUSIP number, par amount, maturity date and interest rates, upon which Custodian shall be entitled to rely without inquiry in performing its duties hereunder. Buyer may by Written Instructions direct Custodian not to accept Trust Receipts from particular Trust Receipt Issuers. Custodian shall hold Trust Receipts at a secure facility at one of its offices in New York City and, during the term of a particular Transaction, shall identify the Eligible Securities represented by such Trust Receipts on its books and records as belonging to Buyer.

**C. Custodian's Inability to Complete a Transaction.** If Custodian is unable to complete a Transaction because Seller has failed to provide complete Oral or Written Instructions as required by Paragraphs 4A and 4B or either Buyer or Seller has failed to arrange for the transfer of sufficient cash or Eligible Securities to Buyer's Account or Seller's Account, respectively, Custodian shall, promptly notify Seller and Buyer and await the receipt of such Oral or Written Instructions, cash or Eligible Securities. If Custodian has not received Oral or Written Instructions from Seller by 4:30 p.m., sufficient cash from Buyer by the close of the FRBNY money wire or sufficient Eligible Securities by the close of GSCS or the appropriate Clearing Corporation or such time as Custodian may designate with respect to particular types of Physical Securities, Buyer and Seller irrevocably agree and instruct Custodian to effect the Transaction as follows: (i) if the cash balance in Buyer's Account shall be less than the Purchase Price set forth in Seller's Instructions, the cash balance in Buyer's Account shall be deemed to be the Purchase Price, the remaining terms of the Transaction shall be determined in accordance with Paragraph 5A, and Seller shall provide Custodian with further Oral or Written Instructions with respect to a recalculated Repurchase Price for such Transaction; (ii) if the cash in Buyer's Account exceeds the Margin Value of Eligible Securities in Seller's Account, Custodian shall credit to Seller's Account cash in an amount equal to the Margin Value of the Eligible Securities, and the difference between the amount credited to Seller's Account and the Purchase Price shall be retained by Buyer and held by Custodian in Buyer's Account and shall be designated cash held in substitution for Purchased Securities in Buyer's Account in accordance with Paragraph 6B. In any event, Buyer and Seller shall remain obligated to each other pursuant to the original terms of each Transaction.

**D. Simultaneous Transaction.** Buyer and Seller agree that in effecting Transactions transfers between Buyer's Account and Seller's Account are intended to be, and shall be deemed to be, simultaneous.

**E. Ownership of Securities.** (i) Upon the transfer of cash to Seller's Account and the transfer of Eligible Securities to Buyer's Account, it is agreed by Seller and Buyer that, subject to Seller's right of substitution pursuant to Paragraph 6B and notwithstanding the credit of Income to Seller's Account pursuant to Paragraph 5G, the Purchased Securities shall be for all purposes the property of Buyer. Buyer agrees, however, that, subject to Paragraph 8 hereof and Paragraph 11 of the Master Repurchase Agreement, it will resell to Seller on the Repurchase Date the Purchased Securities at the Repurchase Price.

(ii) Buyer, Seller and Custodian agree that all Purchased Securities and cash held in Buyer's Account from time to time will be held by Custodian as agent of Buyer, that Custodian will take such actions with respect to Buyer's Account and any Purchased Securities and cash therein as Buyer shall direct, and that in no event shall any consent of Seller be required for the taking of any such action by Custodian. Buyer hereby covenants that Buyer will not instruct Custodian to deliver any Securities to any person other than Seller until an Event of Default has occurred as to which Seller is the defaulting party. The foregoing covenant is for Seller's benefit only and shall not constitute a limitation on Buyer's right at any time to instruct Custodian and Custodian's obligation to act upon such instructions. Custodian shall not be liable for any Losses (as defined in paragraph 9A) incurred or sustained by Buyer, Seller or any third party as a result of Custodian transferring any Purchased Securities or cash in Buyer's Account pursuant to Buyer's instructions (whether or not subsequent to receipt of a Notice of Default) and shall have no further obligation or responsibility to Seller or Buyer under this Custodial Undertaking with respect to any Purchased Securities or cash transferred from Buyer's Account.

(iii) Any instruction to Custodian to transfer Purchased Securities or cash from Buyer's Account during the term

of a Transaction shall be set forth in a written notice in substantially the form attached hereto as Schedule II. Buyer shall deliver such notice to a Vice President or above in Custodian's Broker Dealer Services Division and shall send Seller a copy of same. Custodian shall, as promptly as practicable under the circumstances, act in accordance with such instructions; it being understood and agreed that Custodian shall have no liability for its inability to comply with Buyer's instructions if the rules or systems of the Book-Entry System and/or applicable Clearing Corporation prevent Custodian from transferring Purchased Securities from Buyer's Account. Buyer shall pay to Custodian all applicable fees, costs and charges associated with such transfer from Buyer's Account.

**F. No Lien or Pledge by Custodian.** Custodian agrees that Purchased Securities shall not be subject to any security interest, lien or right of setoff by Custodian or any third party claiming through Custodian and Custodian shall not pledge, encumber, hypothecate, transfer, dispose of, or otherwise grant any third party an interest in, any Purchased Securities.

**G. Payment of Income.** Until such time that Custodian shall receive a Notice of Default from Buyer pursuant to Paragraph 8, Custodian shall credit to Seller's Account Income received by Custodian. After receipt of such Notice of Default from Buyer, Custodian shall credit to Buyer's Account Income received by Custodian.

**H. Confirmations.** Custodian shall provide Buyer and Seller with confirmation statements reflecting Purchased Securities and cash positions in Buyer's Account on each Business Day or as otherwise may be requested by Buyer. Buyer and Seller shall promptly review all such confirmation statements and shall promptly advise Custodian of any error, omission or inaccuracy in such statements. Custodian shall undertake to correct any errors, failures or omissions that are reported to Custodian by Buyer or Seller. Any such corrections shall be reflected on subsequent confirmation statements.

**I. Deliveries by Custodian.** Subject to this Custodial Undertaking, all transfers of Securities or cash by Custodian to Buyer from Buyer's Account shall be made to Buyer by delivery to the account(s) designated in Schedule III, as may be amended from time to time by delivery to and receipt by Custodian of a new Schedule III.

## **6. VALUATION AND SUBSTITUTIONS OF SECURITIES**

**A. Valuation of Securities.** At the opening of each Business Day during which a Transaction subject to this Custodial Undertaking shall remain outstanding, Custodian shall determine the Margin Value of all Purchased Securities.

(i) **Margin Deficit.** In the event the Purchase Price of outstanding Transactions is greater than the aggregate Margin Value of all Purchased Securities, Custodian shall so notify Seller prior to 2:00 p.m. On the date of any such notice, Seller shall promptly transfer to Buyer's Account additional Eligible Securities ("Additional Eligible Securities") such that, after transfer thereof to Buyer's Account, the aggregate Margin Value of all Purchased Securities (including Additional Eligible Securities) equals or exceeds the Purchase Price of outstanding Transactions. If Seller fails to transfer an appropriate amount of Additional Eligible Securities on the date of any such notice, Custodian shall notify Buyer and Seller and await further instructions from Buyer. All Additional Eligible Securities transferred to Buyer's Account shall be deemed to be Purchased Securities.

(ii) **Margin Excess.** In the event the then aggregate Margin Value of Purchased Securities shall exceed the Purchase Price of outstanding Transactions (such excess amount, the "Margin Excess"), Custodian shall so notify Seller and, upon Oral or Written Instructions from Seller, Custodian shall transfer Purchased Securities from Buyer's Account to Seller's Account having a Market Value equal to the Margin Excess. Buyer hereby irrevocably authorizes Custodian to accept the Oral or Written Instructions of Seller identifying the specific Purchased Securities to be released from Buyer's Account pursuant hereto. Upon transfer from Buyer's Account, released Securities shall cease to be Purchased Securities for all purposes hereunder.

**B. Substitutions of Purchased Securities.** Buyer hereby authorizes Custodian, upon Oral or Written Instructions from Seller, to transfer Purchased Securities to Seller against transfer to Buyer's Account of substitute

Eligible Securities ("Substitute Eligible Securities") determined by Custodian to have an aggregate Margin Value equal to or greater than the aggregate Margin Value of Purchased Securities released hereunder. All Substitute Eligible Securities transferred to Buyer's Account shall be deemed to be Purchased Securities.

## **7. REPURCHASE DATE**

On the Repurchase Date for any Transaction, subject to Paragraph 8 hereof and Paragraph 11 of the Master Repurchase Agreement, Buyer hereby irrevocably instructs Custodian to tender to Seller the Purchased Securities with respect to such Transaction and to transfer such Purchased Securities from Buyer's Account to Seller's Account. Seller hereby irrevocably instructs Custodian at the time Purchased Securities are transferred to Seller's Account to make payment to Buyer of the Repurchase Price by debiting cash from Seller's Account and crediting cash to Buyer's Account. If on the Repurchase Date Seller's Account does not contain sufficient cash available to repurchase all Purchased Securities with respect to any Transactions, Custodian shall notify Seller and Buyer and Seller shall give Custodian Oral or Written Instructions identifying which Purchased Securities, if any, are to be repurchased and the Repurchase Price.

## **8. DEFAULT**

In the event that Buyer or Seller delivers a Notice of Default to Custodian, Custodian shall notify the defaulting party of its receipt of such Notice of Default and act in accordance with the instructions of the non-defaulting party with respect to such non-defaulting party's rights pursuant to Paragraph 11 of the Master Repurchase Agreement. Custodian may fully rely without further inquiry on the statements set forth in such Notice of Default. In addition, Buyer and Seller acknowledge and agree that the provisions of Paragraph 12 of the Master Repurchase Agreement shall be fully effective with respect to all Transactions entered into between them, irrespective of whether such Transactions are entered into in connection with this Custodial Undertaking, directly between Buyer and Seller or otherwise.

## **9. CONCERNING CUSTODIAN**

**A. Limitation of Liability; Indemnification.** Custodian shall not be liable for any costs, expenses, damages, liabilities or claims, including reasonable fees of counsel (collectively, "Losses"), resulting from its action or inaction in connection with this Custodial Undertaking, including Losses which are incurred by reason of any action or inaction by the Book-Entry System, any Clearing Corporation or Trust Receipt Issuer, or their successors or nominees, except for those Losses arising out of Custodian's negligence, bad faith or willful misconduct. In no event shall Custodian be liable to Buyer, Seller or any third party for special, indirect or consequential damages, or lost profits or loss of business, arising under or in connection with this Custodial Undertaking. Custodian may, with respect to questions of law, apply for and obtain the advice and opinion of counsel, and shall be fully protected with respect to anything done or omitted by it in good faith in conformity with such reasonable advice or opinion. Buyer and Seller agree, jointly and severally, to indemnify Custodian and to hold it harmless against any and all Losses (including claims by Buyer or Seller) which are sustained by Custodian as a result of Custodian's action or inaction in connection with this Custodial Undertaking, except those Losses arising out of Custodian's negligence, bad faith or willful misconduct. It is expressly understood and agreed that Custodian's right to indemnification hereunder shall be enforceable against Buyer and Seller directly, without any obligation to first proceed against any third party for whom they may act, and irrespective of any rights or recourse that Buyer or Seller may have against any such third party. This indemnity shall be a continuing obligation of Buyer and Seller notwithstanding the termination of any Transactions or of this Custodial Undertaking.

**B. No Guaranty by Custodian.** It is expressly agreed and acknowledged by Buyer and Seller that Custodian is not guaranteeing performance of or assuming any liability for the obligations of Buyer or Seller hereunder nor is it assuming any credit risk associated with Transactions hereunder, which liabilities and risks are the responsibility of Buyer and Seller, further, it is expressly agreed that Custodian is not undertaking to make credit available to Seller or Buyer to enable it to complete Transactions hereunder.

**C. No Duty of Inquiry.** Without limiting the generality of the foregoing, Custodian shall be under no obligation to inquire into, and shall not be liable for:

(i) The validity of the issue of any Securities purchased or sold by or for Buyer or Seller, the legality of the purchase or sale, or the validity or enforceability of any Trust Receipt received by Custodian hereunder;

(ii) The due authority of any Authorized Person to act on behalf of Buyer or Seller with respect to cash or Securities held in Buyer's Account or Seller's Account; or

(iii) The due authority of Buyer, Seller or any entities for which Buyer acts to purchase, sell or hold any particular Security hereunder.

**D. Securities in Default.** Custodian shall not be under any duty or obligation to take action to effect collection of any amount if the Securities upon which such amount is payable are in default, or if payment is refused after due demand or presentation, unless and until (i) it shall be directed to take such action by Written Instructions and (ii) it shall be assured to its satisfaction of reimbursement of its costs and expenses in connection with any such action.

**E. Custodian Fee.** Custodian shall be entitled to receive and Seller agrees to pay to Custodian such compensation as may be agreed upon from time to time between Custodian and Seller and Custodian's out-of-pocket expenses.

**F. Reliance on Oral/Written Instructions.** Custodian shall be entitled to rely upon any Written Instruction or Oral Instruction received by Custodian and reasonably believed by Custodian to be delivered by an Authorized Person. Buyer and Seller agree to forward to Custodian Written Instructions confirming any and all Oral Instructions in such manner that such Written Instructions are received by Custodian by the close of business of the same day that such Oral Instructions are given to Custodian. Buyer and Seller agree that the fact that such confirming Written Instructions are not received or that contrary Written Instructions are received by Custodian shall in no way affect the validity or enforceability of the transactions previously authorized and effected by Custodian.

**G. Reliance on Pricing Services.** Custodian is authorized to utilize any generally recognized pricing information service (including brokers and dealers of Securities) in order to perform its valuation responsibilities hereunder, and Seller and Buyer agree to hold Custodian harmless from and against any Losses incurred as a result of errors or omissions of any such pricing information service, broker or dealer.

**H. Force Majeure.** Custodian shall not be responsible or liable for any failure or delay in the performance of its obligations under this Custodial Undertaking arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, acts of God, earthquakes, fires, floods, wars, civil or military disturbances, sabotage, epidemics, riots, loss or malfunctions of utilities, computer (hardware or software) or communications service, labor disputes, acts of civil or military authority, or governmental, judicial or regulatory actions; provided however, that Custodian shall use its best efforts to resume performance as promptly as practicable under the circumstances.

**I. No Additional Duties.** Custodian shall have no duties or responsibilities except such duties and responsibilities as are specifically set forth in this Custodial Undertaking, and no covenant or obligation shall be implied in this Custodial Undertaking against Custodian.

**J. No Duty Regarding Derivatives.** If Buyer and Seller have selected Eligible Securities which derive all or a portion of their value from changes in the value of underlying securities, mortgages or other obligations, or one or more currencies, commodities, indices or other factors (hereinafter referred to as "Derivative Securities"), the parties understand that Custodian shall have no obligation to monitor whether any such Eligible Securities are also Derivative Securities. Accordingly, the parties agree that anything in the Custodial Undertaking to the contrary notwithstanding, it shall be Buyer's and Seller's responsibility to ensure that Eligible Securities do not include Derivative Securities unless they have otherwise agreed. Custodian shall have no liability whatsoever for any loss, damage or expense arising out of the ineligibility of Derivative Securities which are the subject of Transactions pursuant to the Custodial Undertaking.

**K. Continuing Disputes.** In the event of any dispute or conflicting claims, by the Buyer and /or Seller and any other person with respect to cash or Securities or any other matter covered by this Custodial Undertaking, Custodian shall promptly notify Buyer and Seller and shall act solely on joint, identical Written Instructions of Buyer and Seller. If such Written Instructions are not received by Custodian, Custodian shall decline to comply with any and all claims, demands or instructions with respect to such cash or Securities so long as such dispute or conflict shall continue, and Custodian shall not be liable for failure to act or comply with such claims, demands or instructions. Custodian shall be entitled to refuse to act or comply until either (i) such conflicting or adverse claims or demands shall have been determined in a court of competent jurisdiction or settled by agreement between the conflicting parties and Custodian shall have received evidence satisfactory to it of the same or (ii) Custodian shall have received security or an indemnity satisfactory to it and sufficient to hold it harmless from and against any and all Losses which it may incur by reason of taking any action or inaction, except Custodian shall accept cash from Seller in substitution of any Purchased Securities provided such cash is equal to the Market Value of such Purchased Securities. The provision contained in this Paragraph 9K shall not in any way be deemed to limit or restrict Buyer's or Seller's other rights and remedies described in this Custodial Undertaking.

## **10. TERMINATION**

Any of the parties hereto may terminate this Custodial Undertaking by giving to the other parties a notice in writing specifying the date of such termination, which shall be not less than thirty (30) days after the date of giving of such notice. Upon termination hereof, Seller shall pay to Custodian such compensation as may be due to Custodian as of the date of such termination, and shall likewise reimburse Custodian for any disbursements and expenses made or incurred by Custodian and payable or reimbursable hereunder. If Buyer and Seller do not provide Written Instructions designating a successor custodian prior to the termination date, Custodian shall, at Buyer's expense, continue to hold Purchased Securities and cash in Buyer's Account until the Repurchase Date with respect to each outstanding Transaction, or until it has received a Notice of Default in connection therewith, and Written Instructions with respect to delivery of such Purchased Securities. If Custodian has not received delivery instructions with respect to Purchased Securities and/or cash in Buyer's Account, Custodian may, in its sole discretion, hold Book-Entry Securities and Clearing Corporation Securities in escrow for the benefit of and at the expense of Buyer and deliver Physical Securities and cash to Buyer at the address provided below.

## **11. MISCELLANEOUS**

**A. Authorized Persons.** Buyer and Seller each agrees to furnish to Custodian a new Schedule II in the event that any Authorized Person ceases to be an Authorized Person or in the event that other or additional Authorized Persons are appointed and authorized. Until such new Schedule II is received, Custodian shall be fully protected in acting under the provisions of this Custodial Undertaking upon Oral Instructions or Written Instructions from a person reasonably believed to be an Authorized Person as set forth in the last delivered Schedule II.

**B. Access to Books and Records.** Upon reasonable request, Buyer and Seller shall have access to Custodian's books and records maintained in connection with this Custodial Undertaking during Custodian's normal business hours. Upon reasonable request, copies of any such books and records shall be provided to Buyer or Seller at its expense.

**C. Invalidity of any Provision.** In case any provision in or obligation under this Custodial Undertaking shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations shall not in any way be affected or impaired thereby, and if any provision is inapplicable to any person or circumstances, it shall nevertheless remain applicable to all other persons and circumstances.

### **D. Parties, Entire Agreement, Amendments.**

**(i) The Custodial Undertaking.** Buyer, Seller, and Custodian agree that this Custodial Undertaking constitutes the entire agreement among the parties hereto with respect to Transactions subject to this

Custodial Undertaking and may not be amended or modified in any manner except by a written agreement executed by the parties hereto.

(ii) **The Custodial Undertaking and the Master Repurchase Agreement.** Buyer and Seller acknowledge and agree that the Master Repurchase Agreement in conjunction with this Custodial Undertaking represents the entire agreement between Buyer and Seller with respect to Transactions. Buyer and Seller acknowledge and agree that Custodian is not party to the Master Repurchase Agreement.

**E. Binding Agreement.** This Custodial Undertaking shall extend to and shall be binding upon the parties hereto, and their respective successors and assigns; provided, however, that this Custodial Undertaking shall not be assignable by any party without the written consent of the other parties.

**F. Applicable Law/Jurisdiction.** This Custodial Undertaking shall be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law doctrine, except that the capacity, power, or authority of Buyer to enter into this agreement and any transaction shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Each party hereto hereby consents to the jurisdiction of a state or federal court situated in New York City, New York in connection with any dispute arising hereunder, except that pursuant to KRS 45A.245, venue for any suit, action, or proceeding brought in connection with any dispute involving Buyer arising hereunder shall lie in the circuit court of Franklin County, Kentucky. Each party hereto hereby waives trial by jury in any proceeding involving, directly or indirectly, any matter in any way arising out of, related to, or connected with, this Custodial Undertaking.

**G. Waiver of Immunity.** Buyer hereby confirms that to the extent set forth in KRS 45A.245 Buyer has waived immunity on the grounds of sovereignty from judicial process or proceeding in connection with this Custodial Undertaking. To the extent that in any jurisdiction any other party may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, that party irrevocably agrees not to claim, and it hereby waives, such immunity in connection with this Custodial Undertaking.

**H. Headings and References.** The headings and captions in this Custodial Undertaking are for reference only and shall not affect the construction or interpretation of any of its provisions.

**I. Counterparts.** This Custodial Undertaking may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute only one instrument.

**J. Inconsistency with Master Repurchase Agreement.** In the event of any inconsistency between the terms and conditions of the Master Repurchase Agreement and this Custodial Undertaking with respect to the rights, duties or obligations of Custodian and Transactions subject to this Custodial Undertaking, the terms and conditions of this Custodial Undertaking shall govern.

**K. Notices.** Any notice authorized or required by this Custodial Undertaking shall be sufficiently given if addressed to the receiving party and hand delivered or sent by mail, telex or facsimile to the individuals at the addresses specified in Schedule IV or to such other person or persons as the receiving party may from time to time designate in writing. Such notice shall be effective upon receipt.

**L. Confidentiality.** The parties hereto agree not to disclose to any other party and to keep confidential the terms and conditions of this Custodial Undertaking (including fee arrangement) and any amendment, supplement or Schedule hereto. In the event that any party hereto breaches any provision of this section, any other party shall be entitled to temporary and permanent injunctive relief against the breaching party without the necessity of proving actual damages. Notwithstanding the foregoing, Custodian may disclose Buyer's or Seller's name, address, securities position and other information to such persons and to such extent as required by law, the rules of the stock exchange or regulatory or self-regulatory organization or any order or decree of any court or administrative body that is binding on Custodian or any Clearing Corporation or the terms of the organizational documents of the issuer of any Security or the terms of the

Security itself. The foregoing agreement shall not be applicable to any information that is publicly available when provided or that thereafter becomes publicly available other than through a breach by the relevant party of its obligations contained in this section, or that is required to be disclosed by the relevant party by judicial or administrative process in connection with any action, claim or otherwise with the other party. Information shall be deemed "publicly available" if it becomes a matter of public knowledge or is contained in materials available to the public or is obtained by the relevant party from any source other than the other party (or either of their directors, officers, trustees, employees or outside advisors), provided that such source has not to the relevant party's actual knowledge entered into a confidentiality agreement with the other party with respect to such information.

**M. Parties Deemed Principals.** Unless the parties hereto execute and deliver a Custodial Agency Annex pursuant to which the identity of all principals for whom any party may act in connection with this Custodial Undertaking is disclosed, each party shall be responsible for the performance of its obligations hereunder as a principal. The execution and delivery of a Custodial Agency Annex shall relieve any party of its obligations hereunder to the extent provided by applicable law.

**IN WITNESS WHEREOF**, the parties hereto have caused this Custodial Undertaking to be executed by their respective corporate officers, thereunto duly authorized, as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**THE COMMONWEALTH OF KENTUCKY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: Executive Director

**THE BANK OF NEW YORK MELLON**

By: \_\_\_\_\_  
Title: \_\_\_\_\_



MBS STRIPS (IO, PO, RECOMB)	YES	102%		
	<u>Yes/No</u>	<u>Margin</u>		<u>Yes/No</u> <u>Margin</u>
<b><u>CORPORATES</u></b>			<b><u>MONEY MARKETS</u></b>	
INVESTMENT GRADE (>=BBB-)	NO		COMMERCIAL PAPER (>=A1/P1)	NO
NON-INVESTMENT GRADE (<=BB+)	NO		COMMERCIAL PAPER (<=A2/P2)	NO
MEDIUM-TERM NOTE (>=BBB-)	NO		BANKERS ACCEPTANCE	NO
MEDIUM-TERM NOTE (<=BB+)	NO		CD (DOMESTIC & EURO)	NO
			BANK NOTES	NO

BUYER ACKNOWLEDGES AND AGREES THAT IF A CLASS OF SECURITY CONTAINS NEW ISSUES OF SECURITIES, SUCH NEW ISSUES OF SECURITIES SHALL BE DEEMED TO BE ELIGIBLE SECURITIES.

**The Commonwealth of Kentucky**

By, Title and Date:

By, Title and Date:

**Accepted:**  
**The Bank of New York Mellon**

By, Title and Date:

## **PRICING SOURCES**

### **PRICING FORMULA**

Custodian may rely on its affiliates to obtain prices on its behalf. GNMA securities for which a price is not available from The Bond Buyer may be priced at Custodian's discretion based on a pricing formula determined by Custodian.

### **ALTERNATIVE PRICING SERVICES**

Prices shall be those available at close of business the previous Business Day or the last quote available. The pricing services may be changed to other independent pricing services from time to time by agreement of Custodian and Seller.

## **SCHEDULE II**

The following individuals have been designated as Authorized Persons of Buyer and Seller, respectively, in connection with the Custodial Undertaking in Connection With Master Repurchase Agreement dated as of \_\_\_\_\_.

### **BUYER**

<b><u>Name, Title Purpose</u></b>	<b><u>Specimen Signatures</u></b>
F. Thomas Howard, Executive Director	_____
Dwight L. Price, Jr., Portfolio Administrator	_____
Stephen Jones, CFA, Portfolio Manager	_____
Kim Bechtel, Financial Technician	_____

### **SELLER**

<b><u>Name, Title Purpose</u></b>	<b><u>Specimen Signatures</u></b>
_____	_____
_____	_____
_____	_____
_____	_____

## **SCHEDULE III**

### **CASH**

#### **Instructions for The Commonwealth of Kentucky**

##### **Description of Cash Accounts**

###### **A. Buyer's Account**

**ABA:** 042000013

**Name:** US Bank

**Beneficiary Account Number:** 112950027

**Beneficiary Name:** Tri-Party Repo Account/19-CK006

**SCHEDULE IV**

**Notice:**

**If to Buyer:**

**Title:** Tom Howard, Executive Director

**Address:** Office of Financial Management  
76 Capitol Annex

Frankfort, Kentucky 40601-3453

**Telephone:** (502) 564-2924 **Fax:** (502) 564-7416

**If to Seller:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

**If to Custodian:**

The Bank of New York Mellon

One Wall Street, 5<sup>th</sup> Floor

New York, NY 10286

Broker/Dealer Services

Attn: Tri-Party Services

Phone: (212) 635-4857

Fax: (212) 635-1190

**BUYER WILL BE ACTING AS**

Principal  Agent/Trustee

If Buyer has checked the box as Agent/Trustee, attached as Schedule C is a complete list of buyer's customers for which it will be acting as agent or acting in a trust capacity.

## SCHEDULE V

The Commonwealth of Kentucky intends to utilize the Facsimile/Designated Account/Call Back Service of the Custodian Bank to secure funds transfer instructions issued under this Tri-Party Custody Arrangement. The persons on List A below are authorized to issue Facsimile Funds Transfer Instructions and the persons on List B below are authorized to confirm the authenticity of such instructions. We will notify you promptly should any of these authorizations be rescinded by the Commonwealth.

### A. Persons Authorized To Issue Funds Transfer Instructions:

<u>NAME</u>	<u>TITLE</u>	<u>SPECIMEN SIGNATURE</u>
F. Thomas Howard	Executive Director	_____
Dwight L. Price, Jr.	Portfolio Administrator	_____
Stephen Jones, CFA	Portfolio Manager	_____
Kim Bechtel	Financial Technician	_____

### B. Persons Authorized To Confirm Funds Transfer Instructions:

<u>NAME</u>	<u>TITLE</u>	<u>Telephone Number</u>
F. Thomas Howard	Executive Director	(502) 564-2924
Dwight L. Price, Jr.	Portfolio Administrator	(502) 564-2924
Stephen Jones, CFA	Portfolio Manager	(502) 564-2924
Kim Bechtel	Financial Technician	(502) 564-2924

## SCHEDULE VI

The Commonwealth of Kentucky intends to utilize the Facsimile/Designated Account/Call Back Service of the Custodian Bank to secure funds transfer instructions issued under this Tri-Party Custody Arrangement. The persons on List A below are authorized to issue Facsimile Funds Transfer Instructions and the persons on List B below are authorized to confirm the authenticity of such instructions. We will notify you promptly should any of these authorizations be rescinded by the Commonwealth.

### A. Persons Authorized To Issue Funds Transfer Instructions:

<u>NAME</u>	<u>TITLE</u>	<u>SPECIMEN SIGNATURE</u>
Adam Rulo	Trade Services Representative, U.S. Bank Trust Trade Services	_____
Amanda Covert	Trade Services Representative, U.S. Bank Trust Trade Services	_____

### B. Persons Authorized To Confirm Funds Transfer Instructions:

<u>NAME</u>	<u>TITLE</u>	<u>TELEPHONE NUMBER</u>
Adam Rulo	Trade Services Representative, U. S. Bank Trust Trade Services	(314) 418-1747
Amanda Covert	Trade Services Representative, U.S. Bank Trust Trade Services	(314) 418-3550

## APPENDIX I

To: The Bank of New York  
Broker Dealer Services  
One Wall Street, 4<sup>th</sup> Floor  
New York, NY 10286  
Attention: Vice President

This notice is given pursuant to Paragraph 5E of the Custodial Undertaking in Connection With Master Repurchase Agreement by and among The Commonwealth of Kentucky (“Buyer”), \_\_\_\_\_ (“Seller”) and The Bank of New York Mellon (“Custodian”) dated as of \_\_\_\_\_ (the “Custodial Undertaking”). Buyer hereby instructs Custodian to transfer the Purchase Securities and cash in Buyer’s Account (as defined in the Custodial Undertaking) to:

ABA: 042000013  
Bank or Depository: U.S. Bank N.A.  
City: St. Louis, MO  
Account Name: Tri-Party Repo 19-CK006  
Account Number: 112950027

Date:

By:

Title: Executive Director

## MASTER REPURCHASE AGREEMENT

Dated as of September 11, 2012

**Between** The Commonwealth of Kentucky

**and:**

### 1. Applicability

From time to time the parties hereto may enter into transactions in which one party ("Seller") agrees to transfer to the other ("Buyer") securities or other assets ("Securities") against the transfer of funds by Buyer, with a simultaneous agreement by Buyer to transfer to Seller such Securities at a date certain or on demand, against the transfer of funds by Seller. Each such transaction shall be referred to herein as a "Transaction" and, unless otherwise agreed in writing, shall be governed by this Agreement, including any supplemental terms or conditions contained in Annex I hereto and in any other annexes identified herein or therein as applicable hereunder.

### 2. Definitions

- (a) **"Act of Insolvency"**, with respect to any party, (i) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency, or similar law, or such party seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (ii) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (A) is consented to or not timely contested by such party, (B) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (C) is not dismissed within 15 days, (iii) the making by such party of a general assignment for the benefit of creditors, or (iv) the admission in writing by such party of such party's inability to pay such party's debts as they become due;
- (b) **"Additional Purchased Securities"**, Securities provided by Seller to Buyer pursuant to Paragraph 4(a) hereof;
- (c) **"Buyer's Margin Amount"**, with respect to any Transaction as of any date, the amount obtained by application of a Buyer's Margin Percentage to the Repurchase Price for such Transaction as of such date;
- (d) **"Buyer's Margin Percentage"**, with respect to any Transaction as of any date, a percentage (which may be equal to the Seller's Margin Percentage) agreed to by Buyer and Seller or, in the absence of any such agreement, the percentage obtained by dividing the Market Value of the Purchased Securities on the Purchase Date by the Purchase Price on the Purchase Date for such Transaction;
- (e) **"Confirmation"**, the meaning specified in Paragraph 3(b) hereof;
- (f) **"Income"**, with respect to any Security at any time, any principal thereof and all interest, dividends or other distributions thereon;
- (g) **"Margin Deficit"**, the meaning specified in Paragraph 4(a) hereof;
- (h) **"Margin Excess"**, the meaning specified in Paragraph 4(b) hereof;
- (i) **"Margin Notice Deadline"**, the time agreed to by the parties in the relevant Confirmation, Annex I hereto or otherwise as the deadline for giving notice requiring same-day satisfaction of margin maintenance obligations as provided in Paragraph 4 hereof (or, in the absence of any such agreement, the deadline for such purposes established in accordance with market practice);
- (j) **"Market Value"**, with respect to any Securities as of any date, the price for such Securities on such date obtained from a generally recognized source agreed to by the parties or the most recent closing bid quotation from such a source, plus

accrued Income to the extent not included therein (other than any Income credited or transferred to, or applied to the obligations of, Seller pursuant to Paragraph 5 hereof) as of such date (unless contrary to market practice for such Securities);

- (k) **"Price Differential"**, with respect to any Transaction as of any date, the aggregate amount obtained by daily application of the Pricing Rate for such Transaction to the Purchase Price for such Transaction on a 360 day per year basis for the actual number of days during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) the date of determination (reduced by any amount of such Price Differential previously paid by Seller to Buyer with respect to such Transaction);
- (l) **"Pricing Rate"**, the per annum percentage rate for determination of the Price Differential;
- (m) **"Prime Rate"**, the prime rate of U.S. commercial banks as published in *The Wall Street Journal* (or, if more than one such rate is published, the average of such rates);
- (n) **"Purchase Date"**, the date on which Purchased Securities are to be transferred by Seller to Buyer;
- (o) **"Purchase Price"**, (i) on the Purchase Date, the price at which Purchased Securities are transferred by Seller to Buyer, and (ii) thereafter, except where Buyer and Seller agree otherwise, such price increased by the amount of any cash transferred by Buyer to Seller pursuant to Paragraph 4(b) hereof and decreased by the amount of any cash transferred by Seller to Buyer pursuant to Paragraph 4(a) hereof or applied to reduce Seller's obligations under clause (ii) of Paragraph 5 hereof;
- (p) **"Purchased Securities"**, the Securities transferred by Seller to Buyer in a Transaction hereunder, and any Securities substituted therefor in accordance with Paragraph 9 hereof. The term "Purchased Securities" with respect to any Transaction at any time also shall include Additional Purchased Securities delivered pursuant to Paragraph 4(a) hereof and shall exclude Securities returned pursuant to Paragraph 4(b) hereof;
- (q) **"Repurchase Date"**, the date on which Seller is to repurchase the Purchased Securities from Buyer, including any date determined by application of the provisions of Paragraphs 3(c) or 11 hereof;
- (r) **"Repurchase Price"**, the price at which Purchased Securities are to be transferred from Buyer to Seller upon termination of a Transaction, which will be determined in each case (including Transactions terminable upon demand) as the sum of the Purchase Price and the Price Differential as of the date of such determination;
- (s) **"Seller's Margin Amount"**, with respect to any Transaction as of any date, the amount obtained by application of a Seller's Margin Percentage to the Repurchase Price for such Transaction as of such date;
- (t) **"Seller's Margin Percentage"**, with respect to any Transaction as of any date, a percentage (which may be equal to the Buyer's Margin Percentage) agreed to by Buyer and Seller or, in the absence of any such agreement, the percentage obtained by dividing the Market Value of the Purchased Securities on the Purchase Date by the Purchase Price on the Purchase Date for such Transaction.

### 3. **Initiation; Confirmation; Termination**

- (a) An agreement to enter into a Transaction may be made orally or in writing at the initiation of either Buyer or Seller. On the Purchase Date for the Transaction, the Purchased Securities shall be transferred to Buyer or its agent against the transfer of the Purchase Price to an account of Seller.
- (b) Upon agreeing to enter into a Transaction hereunder, Buyer or Seller (or both), as shall be agreed, shall promptly deliver to the other party a written confirmation of each Transaction (a "Confirmation"). The Confirmation shall describe the Purchased Securities (including CUSIP number, if any), identify Buyer and Seller and set forth (i) the Purchase Date, (ii) the Purchase Price, (iii) the Repurchase Date, unless the Transaction is to be terminable on demand, (iv) the Pricing Rate or Repurchase Price applicable to the Transaction, and (v) any additional terms or conditions of the Transaction not inconsistent with this Agreement. The Confirmation, together with this Agreement, shall constitute conclusive evidence of the terms agreed between Buyer and Seller with respect to the Transaction to which the Confirmation relates, unless with respect to the Confirmation specific objection is made promptly after receipt thereof. In the event of any conflict between the terms of such Confirmation and this Agreement, this Agreement shall prevail.
- (c) In the case of Transactions terminable upon demand, such demand shall be made by Buyer or Seller, no later than such time as is customary in accordance with market practice, by telephone or otherwise on or prior to the business day on which such termination will be effective. On the date specified in such demand, or on the date fixed for termination in the case of Transactions having a fixed term, termination of the Transaction will be effected by transfer to Seller or its agent of the Purchased Securities and any Income in respect thereof received by Buyer (and not previously credited or transferred to, or applied to the obligations of, Seller pursuant to Paragraph 5 hereof) against the transfer of the Repurchase Price to an account of Buyer.

#### **4. Margin Maintenance**

- (a) If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Buyer is less than the aggregate Buyer's Margin Amount for all such Transactions (a "Margin Deficit"), then Buyer may by notice to Seller require Seller in such Transactions, at Seller's option, to transfer to Buyer cash or additional Securities reasonably acceptable to Buyer ("Additional Purchased Securities"), so that the cash and aggregate Market Value of the Purchased Securities, including any such Additional Purchased Securities, will thereupon equal or exceed such aggregate Buyer's Margin Amount (decreased by the amount of any Margin Deficit as of such date arising from any Transactions in which such Buyer is acting as Seller).
- (b) If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Seller exceeds the aggregate Seller's Margin Amount for all such Transactions at such time (a "Margin Excess"), then Seller may by notice to Buyer require Buyer in such Transactions, at Buyer's option, to transfer cash or Purchased Securities to Seller, so that the aggregate Market Value of the Purchased Securities, after deduction of any such cash or any Purchased Securities so transferred, will thereupon not exceed such aggregate Seller's Margin Amount (increased by the amount of any Margin Excess as of such date arising from any Transactions in which such Seller is acting as Buyer).
- (c) If any notice is given by Buyer or Seller under subparagraph (a) or (b) of this Paragraph at or before the Margin Notice Deadline on any business day, the party receiving such notice shall transfer cash or Additional Purchased Securities as provided in such subparagraph no later than the close of business in the relevant market on such day. If any such notice is given after the margin Notice Deadline, the party receiving such notice shall transfer such cash or Securities no later than the close of business in the relevant market on the next business day following such notice.
- (d) Any cash transferred pursuant to this Paragraph shall be attributed to such Transactions as shall be agreed upon by Buyer and Seller.
- (e) Seller and Buyer may agree, with respect to any or all Transactions hereunder, that the respective rights of Buyer or Seller (or both) under subparagraphs (a) and (b) of this Paragraph may be exercised only where a Margin Deficit or Margin Excess, as the case may be, exceeds a specified dollar amount or a specified percentage of the Repurchase Prices for such Transactions (which amount or percentage shall be agreed to by Buyer and Seller prior to entering into any such Transactions).
- (f) Seller and Buyer may agree, with respect to any or all Transactions hereunder, that the respective rights of Buyer and Seller under subparagraphs (a) and (b) of this Paragraph to require the elimination of a Margin Deficit or a Margin Excess, as the case may be, may be exercised whenever such a Margin Deficit or Margin Excess exists with respect to any single Transaction hereunder (calculated without regard to any other Transaction outstanding under this Agreement).

#### **5. Income Payments**

Seller shall be entitled to receive an amount equal to all Income paid or distributed on or in respect of the Securities that is not otherwise received by Seller, to the full extent it would be so entitled if the Securities had not been sold to Buyer. Buyer shall, as the parties may agree with respect to any Transaction (or, in the absence of any such agreement, as Buyer shall reasonably determine in its discretion), on the date such Income is paid or distributed either (i) transfer to or credit to the account of Seller such Income with respect to any Purchased Securities subject to such Transaction or (ii) with respect to Income paid in cash, apply the Income payment or payments to reduce the amount, if any, to be transferred to Buyer by Seller upon termination of such Transaction. Buyer shall not be obligated to take any action pursuant to the preceding sentence (A) to the extent that such action would result in the creation of a Margin Deficit, unless prior thereto or simultaneously therewith Seller transfers to Buyer cash or Additional Purchased Securities sufficient to eliminate such Margin Deficit, or (B) if an Event of Default with respect to Seller has occurred and is then continuing at the time such Income is paid or distributed.

#### **6. Security Interest**

Although the parties intend that all Transactions hereunder be sales and purchases and not loans, in the event any such Transactions are deemed to be loans, Seller shall be deemed to have pledged to Buyer as security for the performance by Seller of its obligations under each such Transaction, and shall be deemed to have granted to Buyer a security interest in, all of the Purchased Securities with respect to all Transactions hereunder and all Income thereon and other proceeds thereof.

#### **7. Payment and Transfer**

Unless otherwise mutually agreed, all transfers of funds hereunder shall be in immediately available funds. All Securities

transferred by one party hereto to the other party (i) shall be in suitable form for transfer or shall be accompanied by duly executed instruments of transfer or assignment in blank and such other documentation as the party receiving possession may reasonably request, (ii) shall be transferred on the book-entry-system of a Federal Reserve Bank, or (iii) shall be transferred by any other method mutually acceptable to Seller and Buyer.

#### 8. Segregation of Purchased Securities

To the extent required by applicable law, all Purchased Securities in the possession of Seller shall be segregated from other securities in its possession and shall be identified as subject to this Agreement. Segregation may be accomplished by appropriate identification on the books and records of the holder, including a financial or securities intermediary or a clearing corporation. All of Seller's interest in the Purchased Securities shall pass to Buyer on the Purchase Date and, unless otherwise agreed by Buyer and Seller, nothing in this Agreement shall preclude Buyer from engaging in repurchase transactions with the Purchased Securities or otherwise selling, transferring, pledging or hypothecating the Purchased Securities, but no such transaction shall relieve Buyer of its obligations to transfer Purchased Securities to Seller pursuant to Paragraphs 3, 4 or 11 hereof, or of Buyer's obligation to credit or pay Income to, or apply Income to the obligations of, Seller pursuant to Paragraph 5 hereof.

#### **Required Disclosure for Transactions in Which the Seller Retains Custody of the Purchased Securities**

Seller is not permitted to substitute other securities for those subject to this Agreement and therefore must keep Buyer's securities segregated at all times, unless in this Agreement Buyer grants Seller the right to substitute other securities. If Buyer grants the right to substitute, this means that Buyer's securities will likely be commingled with Seller's own securities during the trading day. Buyer is advised that, during any trading day that Buyer's securities are commingled with Seller's securities, they [will]\* [may]\*\* be subject to liens granted by Seller to [its clearing bank]\* [third parties]\*\* and may be used by Seller for deliveries on other securities transactions. Whenever the securities are commingled, Seller's ability to resegment substitute securities for Buyer will be subject to Seller's ability to satisfy [the clearing]\* [any]\*\* lien or to obtain substitute securities.

\* Language to be used under 17 C.F.R. §403.4 (e) if Seller is a government securities broker or dealer other than a financial institution.

\*\* Language to be used under 17 C.F.R. §403.5 (d) if Seller is a financial institution.

#### 9. Substitution

- (a) Seller may, subject to agreement with and acceptance by Buyer, substitute other Securities for any Purchased Securities. Such substitution shall be made by transfer to Buyer of such other Securities and transfer to Seller of such Purchased Securities. After substitution, the substituted Securities shall be deemed to be Purchased Securities.
- (b) In Transactions in which the Seller retains custody of Purchased Securities, the parties expressly agree that Buyer shall be deemed, for purposes of subparagraph (a) of this Paragraph, to have agreed to and accepted in this Agreement substitution by Seller of other Securities for Purchased Securities; *provided, however*, that such other Securities shall have a Market Value at least equal to the Market Value of the Purchased Securities for which they are substituted.

#### 10. Representations

Each Buyer and Seller represents and warrants to the other that (i) it is duly authorized to execute and deliver this Agreement, to enter into the Transactions contemplated hereunder and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance, (ii) it will engage in such Transactions as principal (or, if agreed in writing, in the form of an annex hereto or otherwise, in advance of any Transaction by the other party hereto, as agent for a disclosed principal), (iii) the person signing this Agreement on its behalf is duly authorized to do so on its behalf (or on behalf of any such disclosed principal), (iv) it has obtained all authorizations of any governmental body required in connection with this Agreement and the Transactions hereunder and such authorizations are in full force and effect and (v) the execution, delivery and

performance of this Agreement and the Transactions hereunder will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected. On the Purchase Date for any Transaction Buyer and Seller shall each be deemed to repeat all the foregoing representations made by it.

#### 11. Events of Default

In the event that (i) Seller fails to transfer or Buyer fails to purchase Purchased Securities upon the applicable Purchase Date, (ii) Seller fails to repurchase or Buyer fails to transfer Purchased Securities upon the applicable Repurchase Date, (iii) Seller or Buyer fails to comply with Paragraph 4 hereof, (iv) Buyer fails, after one business day's notice, to comply with Paragraph 5 hereof, (v) an Act of Insolvency occurs with respect to Seller or Buyer, (vi) any representation made by Seller or Buyer shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, or (vii) Seller or Buyer shall admit to the other its inability to, or its intention not to, perform any of its obligations hereunder (each an "Event of Default"):

- (a) The nondefaulting party may, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), declare an Event of Default to have occurred hereunder and, upon the exercise or deemed exercise of such option, the Repurchase Date for each Transaction hereunder shall, if it has not already occurred, be deemed immediately to occur (except that, in the event that the Purchase Date for any Transaction has not yet occurred as of the date of such exercise or deemed exercise, such Transaction shall be deemed immediately canceled.) The nondefaulting party shall (except upon the occurrence of an Act of Insolvency) give notice to the defaulting party of the exercise of such option as promptly as practicable.
- (b) In all Transactions in which the defaulting party is acting as Seller, if the nondefaulting party exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Paragraph, (i) the defaulting party's obligations in such Transactions to repurchase all Purchased Securities, at the Repurchase Price therefor on the Repurchase Date determined in accordance with subparagraph (a) of this Paragraph, shall thereupon become immediately due and payable, (ii) all Income paid after such exercise or deemed exercise shall be retained by the nondefaulting party and applied to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder, and (iii) the defaulting party shall immediately deliver to the nondefaulting party any Purchased Securities subject to such Transactions then in the defaulting party's possession or control.
- (c) In all Transactions in which the defaulting party is acting as Buyer, upon tender by the nondefaulting party of payment of the aggregate Repurchase Prices for all such Transactions, all right, title and interest in and entitlement to all Purchased Securities subject to such Transactions shall be deemed transferred to the nondefaulting party, and the defaulting party shall deliver all such Purchased Securities to the nondefaulting party.
- (d) If the nondefaulting party exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Paragraph, the nondefaulting party, without prior notice to the defaulting party, may:
  - (i) as to Transactions in which the defaulting party is acting as Seller, (A) immediately sell, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the nondefaulting party may reasonably deem satisfactory, any or all Purchased Securities subject to such Transactions and apply the proceeds thereof to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Securities, to give the defaulting party credit for such Purchased Securities in an amount equal to the price therefor on such date, obtained from a generally recognized source or the most recent closing bid quotation from such a source against the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder; and
  - (ii) as to Transactions in which the defaulting party is acting as Buyer, (A) immediately purchase, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the nondefaulting party may reasonably deem satisfactory, securities ("Replacement Securities") of the same class and amount as any Purchased Securities that are not delivered by the defaulting party to the nondefaulting party as required hereunder or (B) in its sole discretion elect, in lieu of purchasing Replacement Securities, to be deemed to have purchased Replacement Securities at the price therefor on such date, obtained from a generally recognized source or the most recent closing offer quotation from such a source.

Unless otherwise provided in Annex I, the parties acknowledge and agree that (1) the Securities subject to any Transaction hereunder are instruments traded in a recognized market, (2) in the absence of a generally recognized source for prices or bid or offer quotations for any Security, the nondefaulting party may establish the source therefor in its sole discretion and (3) all prices, bids and offers shall be determined together with accrued Income (except to the extent contrary to market practice with respect

to the relevant Securities).

- (e) As to Transactions in which the defaulting party is acting as Buyer, the defaulting party shall be liable to the nondefaulting party for any excess of the price paid (or deemed paid) by the nondefaulting party for Replacement Securities over the Repurchase Price for Purchased Securities replaced thereby and for any amounts payable by the defaulting party under Paragraph 5 hereof or otherwise hereunder.
- (f) For purposes of this Paragraph 11, the Repurchase Price for each Transaction hereunder in respect of which the defaulting party is acting as Buyer shall not increase above the amount of such Repurchase Price for such Transaction determined as of the date of the exercise or deemed exercise by the nondefaulting party of the option referred to in subparagraph (a) of this Paragraph.
- (g) The defaulting party shall be liable to the nondefaulting party for (i) the amount of all reasonable legal or other expenses incurred by the nondefaulting party in connection with or as the result of an Event of Default, (ii) damages in an amount equal to the cost (including all fees, expenses and commissions) of entering into replacement transactions and entering into or terminating hedge transactions in connection with or as a result of an Event of Default, and (iii) any other loss, damage, cost or expense directly arising or resulting from the occurrence of an Event of Default in respect of a Transaction.
- (h) To the extent permitted by applicable law, the defaulting party shall be liable to the nondefaulting party for interest on any amounts owing by the defaulting party hereunder, from the date the defaulting party becomes liable for such amounts hereunder until such amounts are (i) paid in full by the defaulting party or (ii) satisfied in full by the exercise of the nondefaulting party's rights hereunder. Interest on any sum payable by the defaulting party to the nondefaulting party under this Paragraph 11 (h) shall be at a rate equal to the greater of the Pricing Rate for the relevant Transaction or the Prime Rate.
- (i) The nondefaulting party shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or applicable law.

## **12. Single Agreement**

Buyer and Seller acknowledge that, and have entered hereinto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and have been made in consideration of each other. Accordingly, each of Buyer and Seller agrees (i) to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, (ii) that each of them shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transactions hereunder and (iii) that payments, deliveries and other transfers made by either of them in respect of any Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Transactions hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

## **13. Notices and Other Communications**

Any and all notices, statements, demands or other communications hereunder may be given by a party to the other by mail, facsimile, telegraph, messenger or otherwise to the address specified in Annex II hereto, or so sent to such party at any other place specified in a notice of change of address hereafter received by the other. All notices, demands and request hereunder may be made orally, to be confirmed promptly in writing, or by other communication as specified in the preceding sentence.

## **14. Entire Agreement; Severability**

This Agreement shall supersede any existing agreements between the parties containing general terms and conditions for repurchase transactions. Each provision and agreement herein shall be treated as separate and independent from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

## **15. Non-assignability; Termination**

- (a) The rights and obligations of the parties under this Agreement and under any Transaction shall not be assigned by either party without the prior written consent of the other party, and any such assignment without the prior written consent of the other party shall be null and void. Subject to the foregoing, this Agreement and any Transactions shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement may be terminated by either party upon giving written notice to the other, except that this Agreement shall, notwithstanding such notice, remain

applicable to any Transactions then outstanding.

- (b) Subparagraph (a) of this Paragraph 15 shall not preclude a party from assigning, charging or otherwise dealing with all or any part of its interest in any sum payable to it under Paragraph 11 hereof.

#### **16. Governing Law**

This Agreement shall be governed by the laws of the State of New York without giving effect to the conflict of law principles thereof.

#### **17. No Waivers, Etc.**

No express or implied waiver of any Event of Default by either party shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by any party shall constitute a waiver of its right to exercise any other remedy hereunder. No modification or waiver of any provision of this Agreement and no consent by any party to a departure herefrom shall be effective unless and until such shall be in writing and duly executed by both of the parties hereto. Without limitation on any of the foregoing, the failure to give a notice pursuant to Paragraph 4(a) or 4(b) hereof will not constitute a waiver of any right to do so at a later date.

#### **18. Use of Employee Plan Assets**

- (a) If assets of an employee benefit plan subject to any provision of the Employee Retirement Income Security Act of 1974 ("ERISA") are intended to be used by either party hereto (the "Plan Party") in a Transaction, the Plan Party shall so notify the other party prior to the Transaction. The Plan Party shall represent in writing to the other party that the Transaction does not constitute a prohibited transaction under ERISA or is otherwise exempt therefrom, and the other party may proceed in reliance thereon but shall not be required so to proceed.
- (b) Subject to the last sentence of subparagraph (a) of this Paragraph, any such Transaction shall proceed only if Seller furnishes or has furnished to Buyer its most recent available audited statement of its financial condition and its most recent subsequent unaudited statement of its financial condition.
- (c) By entering into a Transaction pursuant to this Paragraph, Seller shall be deemed (i) to represent to Buyer that since the date of Seller's latest such financial statements, there has been no material adverse change in Seller's financial condition which Seller has not disclosed to Buyer, and (ii) to agree to provide Buyer with future audited and unaudited statements of its financial condition as they are issued, so long as it is a Seller in any outstanding Transaction involving a Plan Party.

#### **19. Intent**

- (a) The parties recognize that each Transaction is a "repurchase agreement" as that term is defined in Section 101 of Title 11 of the United States Code, as amended (except insofar as the type of Securities subject to such Transaction or the term of such Transaction would render such definition inapplicable), and a "securities contract" as that term is defined in Section 741 of Title 11 of the United States Code, as amended (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).
- (b) It is understood that either party's right to liquidate Securities delivered to it in connection with Transactions hereunder or to exercise any other remedies pursuant to Paragraph 11 hereof, is a contractual right to liquidate such Transaction as described in Sections 555 and 559 of Title 11 of the United States Code, as amended.
- (c) The parties agree and acknowledge that if a party hereto is an "insured depository institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Transaction hereunder is a "qualified financial contract," as that term is defined in FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).
- (d) It is understood that this Agreement constitutes a "netting contract" as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") and each payment entitlement and payment obligation under any Transaction hereunder shall constitute a "covered contractual payment entitlement" or "covered contractual payment obligation", respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a "financial institution" as that term is defined in FDICIA).

#### **20. Disclosure Relating to Certain Federal Protections**

The parties acknowledge that they have been advised that:

- (a) in the case of Transactions in which one of the parties is a broker or dealer registered with the Securities and Exchange Commission ("SEC") under Section 15 of the Securities Exchange Act of 1934 ("1934 Act"),

the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 ("SIPA") do not protect the other party with respect to any Transaction hereunder:

- (b) in the case of Transactions in which one of the parties is a government securities broker or a government securities dealer registered with the SEC under Section 15C of the 1934 Act, SIPA will not provide protection to the other party with respect to any Transaction hereunder; and
- (c) in the case of Transactions in which one of the parties is a financial institution, funds held by the financial institution pursuant to a Transaction hereunder are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, as applicable.

The Commonwealth of Kentucky

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ANNEX I  
SUPPLEMENTAL TERMS AND CONDITIONS**

**Annex sections refer to the corresponding section in the  
Master Repurchase Agreement**

**A. SECTION 1:**

Buy and Sell Interpretation. The buyer is a governmental entity, therefore, both parties agree that all Transactions conducted pursuant to this Agreement must be interpreted as purchases and sales of Securities.

**B. SECTION 4:**

Margin Ratios. Unless otherwise agreed on by the parties to the transaction, for purposes of calculating the Margin Amount, a ratio of 102 percent shall be applied daily to the Purchase Price.

Purchased Securities are herewith defined to be **only** direct obligations of the U.S. Government, its agencies, corporations, instrumentalities, and other obligations backed by full faith and credit of the U.S. Government. (See Exhibit A.)

Market Value. In determining market value, dealers' bid prices shall be used, as quoted daily in *The Wall Street Journal* or Bloomberg Financial Markets or other acceptable recognized media to the Buyer, and accrued interest shall be included.

Margin Maintenance. For term repurchase agreements, the Seller shall, upon receipt of notice from the Commonwealth or the Commonwealth's custodian, maintain the required Margin Amount in the Commonwealth's custodian bank, or the required margin ratios shall be increased as mutually agreed in writing to compensate for possible market price losses or gains.

**C. SECTIONS 2, 3 AND 4:**

Purchased Securities. All Purchased Securities must be marketable instruments for which price information is available on regular business days in *The Wall Street Journal* or other recognized source, i.e., Bloomberg Financial Markets. In the event that such price information is not available, Buyer may require the Seller to deliver different Securities, or shall increase the margin ratio to 105 percent.

**D. SECTION 5:**

Income Payments. Unless there is a Margin Deficit or an Event of Default, the Buyer agrees to transfer any Income payments received on Purchased Securities. Buyer will use its best efforts to make such a transfer the same day such payment is received but in no event later than the next Business Day following notification by the Commonwealth's custodian of receipt of the Income payment.

Income payments received after the Repurchase Date will be transferred to the Seller at the Seller's expense, unless mutually agreed to otherwise.

**E. SECTION 7:**

Delivery. Notwithstanding the provisions of Section 7 (Payment and Transfer), all transactions shall be accomplished through "delivery vs. payment", unless the parties otherwise agree prior to the transfer of funds.

**F. SECTION 9:**

Substitution. In the event that Seller proposes to substitute Securities for any Purchased Securities, Seller shall absorb wire transfer fees incurred by the Buyer. Seller shall obtain oral consent of Buyer prior to the substitution, which shall be followed by a written confirmation of the substitution.

**G. SECTION 10:**

Seller's Obligation to Inform Buyer:

(a) Seller shall maintain compliance with applicable federal regulatory standards and guidelines regarding capital adequacy and net capitalization. Seller shall be obligated to inform Buyer as described below.

(b) Any Transaction undertaken pursuant to this agreement shall proceed only if Seller furnishes or has furnished to Buyer

its most recent publicly available audited statement of financial condition and its most recent subsequent unaudited statements of financial condition.

- (c) Notwithstanding the foregoing, if the Seller fails to furnish its most recent audited and/or unaudited financial statements, the Buyer shall provide written notice to the Seller of such failure and the Seller must provide the appropriate financial statements within 10 calendar days of receipt of such notice.
- (d) By entering into a Transaction pursuant to this agreement, Seller shall be deemed to represent to Buyer that since the date of Seller's latest financial statements, there have been no developments in the business or affairs of Seller of which any responsible officer has obtained knowledge in the ordinary course of such officer's functions, which development has resulted in or which is likely, in the reasonable judgment of Seller, to result in a material adverse change in Seller's financial condition that has not been disclosed in writing to Buyer, and Seller further agrees to provide Buyer with future audited and unaudited statements to financial condition as they are issued to the public.

**H. SECTION 16:**

Governing Law. The laws of the State of New York shall govern the transactions pursuant to this agreement. All Purchased Securities shall be lawful for purposes of governmental investments in the Commonwealth of Kentucky, as described in Exhibit A.

In case of conflicts between the Agreement and Annex I, Annex I will govern. In case of conflict between Annex I and Annex II, Annex I will prevail.

**I. AUTHORIZED PERSONNEL:**

Only those persons identified below may execute transactions pursuant to this agreement:

SELLER	BUYER (Commonwealth)
_____	<u>Dwight L. Price, Jr.</u>
_____	<u>Stephen Jones, CFA</u>
_____	<u>Kim Bechtel</u>
_____	_____
_____	_____
_____	_____

**ANNEX II**

**NAMES AND ADDRESSES FOR COMMUNICATIONS BETWEEN PARTIES**

BANK:

U.S. Bank, N.A., Trust  
One US Bank Plaza, 17<sup>th</sup> Floor  
7<sup>th</sup> & Washington  
St. Louis, MO 63101

COMMONWEALTH:

Executive Director  
Office of Financial Management  
702 Capitol Avenue  
Room 76, Capitol Annex  
Frankfort, Kentucky 40601-3453

## EXHIBIT A

The following types of Securities shall be deemed to be eligible Securities for repurchase transactions with the Commonwealth of Kentucky pursuant to KRS 42.500.

Obligations backed by the full faith and credit of the United States or a U.S. Government agency, including but not limited to:

1. U.S. Treasury;
2. Export-import bank of the United States;
3. Farmers Home Administration;
4. Governmental national mortgage corporation; and
5. Merchant marine bonds;

Obligations of any corporation of the U.S. Government including but not limited to:

1. Federal home loan mortgage corporation;
2. Federal farm credit banks;
  - (a) Bank for cooperatives;
  - (b) Federal intermediate credit banks;
  - (c) Federal land banks;
3. Federal home loan banks;
4. Federal national mortgage association; and
5. Tennessee Valley Authority obligations

All Securities shall carry a minimum margin requirement of 102%.

# COMMONWEALTH OF KENTUCKY

## MASTER AGREEMENT

### OVER-THE-COUNTER OPTION TRANSACTIONS - U.S. TREASURY SECURITIES

#### I. Description of Option Contracts

**1. Applicability.** Over-The-Counter ("OTC") Options ("Option Contracts") are each written on underlying securities with an aggregate face value of \$250,000 or more, which shall in each case be direct obligations of the United States Government ("U.S. Treasury Securities") of the type referred to in Rule 3a12-7 promulgated by the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934 (the "1934 Act").

**2. Confirmation of Option Contracts.** Each Option Contract shall be confirmed by written confirmation (a "Confirmation") issued by the dealer to the Commonwealth. The dealer shall send such Confirmation to the Commonwealth within one Business Day of entering into an Option Contract. Each Confirmation shall identify the writer and the holder and set forth (i) the identity and the par value of the underlying U.S. Treasury Securities that are subject to the Option Contract, (ii) the exercise price, (iii) the expiration date (which shall be a Business Day) (the "Expiration Date"), (iv) the premium for the Option Contract, (v) whether the Option Contract is a call or a put, (vi) whether the Option Contract is an American Option or a European Option, (vii) any other trading terms applicable to an Option Contract that have been agreed to by the parties, and (viii) any other terms not inconsistent with this Agreement. Each Confirmation, together with this Agreement, shall conclusively evidence the terms of the Option Contract covered thereby unless the Confirmation is objected to in writing by the holder or unless a corrected Confirmation is sent by the writer, in either case within five Business Days of the day on which the Option Contract is entered into.

**3. Payment of Premium.** The premium shall be due in immediately available funds on the Business Day following the day on which an Option Contract is entered into.

**4. Exercise of Option Contracts.** An "American Option" is an Option Contract which is exercisable between 9:00 A.M. and 4:00 P.M., New York time, on any Business Day up to and including its Expiration Date. A "European Option" is an Option Contract which is exercisable between 9:00 A.M. and 4:00 P.M., New York time, only on its Expiration Date. Exercise shall in either case be accomplished by the holder advising the writer by telephone of such exercise. In the case of an American Option, if the notice of exercise is received by the writer after 4:00 P.M., New York time, on any Business Day prior to its Expiration Date, such notice of exercise shall be deemed to be given on the opening of business on the next Business Day. In the case of a European Option, notice of exercise may be given to the writer prior to the Expiration Date, but such notice shall be irrevocable once given and such exercise shall be effective only as of the Expiration Date.

**5. Automatic Exercise.** Unless otherwise instructed by the holder prior to 4:00 P.M., New York time, on its Expiration Date, and subject to the remedies available under paragraph IV(2) hereof if an Event of Default has occurred, an Option Contract shall be deemed to be automatically exercised if at 4:00 P.M., New York time, on such date: (a) its underlying securities have less than three years to maturity and it is at least 1/4 point in-the-money; (b) its underlying securities have at least three but less than ten years to maturity and it is at least 1/2 point in-the-money; or (c) its underlying securities have at least ten years to maturity and it is at least 1 point in-the-money. For purposes of determining the "in-the-money" amount of an Option Contract under this paragraph I(5), the market value of its underlying securities shall mean the arithmetic median of the bid quotations, in the case of a call Option Contract, and asked quotations, in the case of a put Option Contract, for the underlying securities representing at least \$1 million in aggregate face amount, as reported at 4:00 P.M., New York time, on the Expiration Date by inter-dealer brokers maintaining time-dated screens or, if no quotations for such securities are available, the arithmetic median of such bid quotations, in the case of a call Option Contract, and asked quotations, in the case of a put Option Contract, for such other securities representing at least \$1 million in aggregate face amount as provide a basis from which to extrapolate the value of the underlying securities, reported at the time and in the manner stated above. All determinations and calculations under the preceding sentence shall be made in a manner and by methods that are commercially reasonable in the

interdealer market for the underlying securities. Notwithstanding the foregoing, an automatic exercise of an Option Contract under this paragraph I(5) shall have no force or effect unless at least one party thereto notifies the other, by telephone or in writing, of such automatic exercise by 10:00 A.M., New York time, on the Business Day following such Contract's Expiration Date.

**6. Settlement.** If an Option Contract is exercised, all transfers of underlying securities and payments therefor shall settle on a delivery versus payment basis on the first Business Day following the exercise date. The method of settlement shall be the method that, in accordance with customary trade practices, is employed with respect to the underlying securities. All payments shall be made in immediately available funds. As used herein with respect to U.S. Treasury Securities, "transfer" is intended to have the same meaning as when used in Section 8-313 of the New York Uniform Commercial Code or, where applicable, in any federal regulation governing transfers of such securities.

## II. Performance Assurance and Right to Further Assurances

1. The parties agree to provide performance assurance as margin to secure their respective obligations hereunder and under any Option Contract in accordance with the Annex (Performance Assurance Provisions), which is attached hereto and made a part hereof.

2. If a party has reasonable cause to believe that the other party will not meet one or more of its obligations under this Agreement or under any Option Contract, it may demand reasonable assurances of performance from the other party by giving oral or written notice reasonably calculated to provide actual notice.

## III. Representations

Each party represents and warrants continually throughout the term hereof that: (1) it has duly executed, and has all requisite power, authority and approvals to enter into, and to perform its obligations under, this Agreement; (2) this Agreement is, and each Option Contract will be, its legal, valid and binding obligation; (3) the execution and implementation of this Agreement will not cause it to violate or contravene any law, regulation or court or governmental order by which it is bound or to which it is subject; (4) it will have and deliver good title, free and clear of all liens, claims and encumbrances, to any underlying securities it is required

to transfer upon exercise of any Option Contract it has written.

## IV. Default

1. Each of the following shall constitute an Event of Default under this Agreement:

(i) If either party hereto (the "Defaulting Party") fails, when due, to transfer any underlying securities or to make any payment required hereunder or under any Option Contract or breaches any of its other obligations hereunder or under any Option Contract in a material respect, or if any representation made by the Defaulting Party shall have been incorrect or untrue in a material respect when made, and such default is not cured within one Business Day after written notice thereof from the other party hereto (the "Non-Defaulting Party");

(ii) if the Defaulting Party repudiates any of its obligations hereunder or under any Option Contract;

(iii) the commencement by the Defaulting Party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar laws, or a request by such party for the appointment of a receiver, liquidator, trustee, custodian or similar official for such party or any substantial portion of its property; or the commencement of any such case or proceeding against such party seeking such an appointment, or the filing against such party of an application for a protective decree under the Securities Investor Protection Act of 1970, which (A) is consented to or not timely contested by such party, (B) results in the entry of an order for relief, such an appointment, the issuance of such a protective decree or the entry of an order having a similar effect, or (C) is not dismissed within 15 days; or the making by the Defaulting Party of a general assignment for the benefit of creditors; or the admission in writing by the Defaulting Party of its inability to pay its debts as they become due; or

(iv) if the Defaulting Party does not provide reasonable assurances of performance within the time specified by the Non-Defaulting Party pursuant to paragraph II(2) hereof.

The Non-Defaulting Party may, in its sole discretion, waive or permit the party which has committed an Event of Default to cure such default.

2. If an Event of Default occurs then, without

prejudice to any other rights under this Agreement or at law, the Non-Defaulting Party shall have, in addition to all applicable rights and remedies under applicable law, the right, without notice or advertisement of any kind whatsoever, to take one or more of the following actions:

(a) Accelerate and treat any of the Defaulting Party's obligations hereunder and under any Option Contract as due;

(b) suspend any payment and any transfers of any securities required to be made to the Defaulting Party under this Agreement and any Option contract not liquidated pursuant to this Agreement;

(c) liquidate from time to time one or more Option Contracts by (i) closing out each Option Contract being liquidated so that the same is cancelled immediately and establish a settlement payment therefor by determining an amount equal to (x) the Non-Defaulting Party's then current open market offer for an equivalent Option Contract if the Option contract being liquidated was written by the Defaulting Party or (y) the Non-Defaulting Party's then current open market bid for an equivalent Option contract if the Option contract being liquidated was written by the Non-Defaulting Party, and (ii) netting such settlement payments to calculate a single liquidated amount that is due by one party to the other (the "Net Settlement Payment"), subject to the right of set off provided herein;

(d) liquidate all collateral held as performance assurance by selling such performance assurance to others, or in lieu of actually selling to others, the Non-Defaulting Party may deem itself to have purchased some or all of the performance assurance at the price or prices obtained therefor as determined in accordance with paragraph I(5) hereof;

(e) if the Defaulting Party fails to transfer any underlying securities when due, to borrow or purchase such securities in order to transfer such securities;

(f) set off the sum of (i) any Net Settlement Payment owed to the Defaulting Party and (ii) the proceeds of the liquidation of collateral held as performance assurance against the sum of (iii) any Net Settlement Payment owed to the Non-Defaulting Party and (iv) the Liquidation Expenses (as defined in paragraph IV(3) hereof); and

(g) take any other action it deems necessary in the

reasonable exercise of its discretion and any other action available to it at law or in equity.

3. In addition to any other amounts it may owe or be liable for hereunder or under any Option Contract, the Defaulting Party shall be liable to the Non-Defaulting Party for and, for purposes of paragraph IV(2)(f) hereof, "Liquidation Expenses" shall include, any and all costs, expenses, damages, losses and liabilities incurred by the Non-Defaulting Party in connection with any Event of Default or the exercise of any of its rights under paragraph IV, including, without limitation: (i) all transaction costs, costs of collection and reasonable attorney's fees incurred by the Non-Defaulting Party in connection with the liquidation of one or more Option Contracts, (ii) all reasonable attorney's fees incurred in connection with the enforcement of any rights or remedies hereunder or under any Option Contract, (iii) market losses and reasonable expenses incurred in liquidating any position that is attributable to any exercised Option contract and (iv) all losses sustained in borrowing or purchasing any underlying securities which are not transferred when due (including any premium paid as a result thereof).

## V. Miscellaneous

1. Neither party may assign any of its rights or delegate any of its obligations hereunder or under any Option Contract (whether by consolidation, merger, operation of law or otherwise) without the other party's prior written consent, except that either party may without consent assign its rights, but may not delegate any of its obligations, under this Agreement or any Option Contract to an "Affiliate" (as such term is defined under the 1934 Act) organized in the United States under state or federal law, provided that such affiliate satisfies each of the representations set forth in paragraph III hereof. Subject to the foregoing, this Agreement shall inure to the benefit of each party's successors by consolidation, merger or otherwise and permitted assigns. No Option Contract will be registered under the Securities Act of 1933 and in no event may an Option Contract be transferred in violation thereof.

2. Either party may take any action pursuant to this Agreement or any Option Contract on the basis of written or oral instructions which it reasonably believes originated from a person with actual or apparent authority to act for the other party hereto.

3. If any payment hereunder or under any Option Contract (other than a payment of performance

assurance) is not made when due, the party that is to receive such payment shall be entitled to interest, on demand, on such unpaid amount for the period the same remains unpaid, and such interest shall accrue daily at a rate equal to the Federal funds rate as then in effect as determined from generally recognized sources (but not in excess of the maximum legal rate under applicable law).

4. All rights and remedies of either party hereto arising under this Agreement or under any Option Contract as amended from time to time hereunder are cumulative and not exclusive of any other rights or remedies which such party may have at law or otherwise.

5. Except for the exercise of an Option contract pursuant to paragraph I hereof, no failure on the part of either party hereto to exercise, and no delay in exercising, any contractual right hereunder or under any Option contract shall operate as a waiver thereof, nor shall any single or partial exercise by either party hereto of any right preclude any other or future exercise thereof or the exercise of any other right.

6. This Agreement governs all Option Contracts between the parties hereto and supersedes all prior agreements and understandings (whether written or oral) between the parties with respect to OTC Options on U.S. Treasury Securities. No modification or waiver of any provision hereof nor any consent to any departure herefrom by either party shall be effective unless the same shall be in writing and signed by the parties hereto, and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

7. Except where oral notice is expressly permitted by this Agreement, any notice or Confirmation by either party hereto shall be in writing and sent to the address of the other party listed on the signature page hereto (or to such changed address as such party may indicate by written notice to the other party) and shall be deemed to have been received: (i) on the day sent (or if such day is not a Business Day, then on the next Business Day) if delivered by hand or given by telex or other telecommunication device capable of transmitting or creating a written record, (ii) on the third Business Day after the day sent if given by postage prepaid first class mail, and (iii) on the earlier receipt, if sent by both telex or other telecommunication device and mailed (except that any notice

of change of address shall only be effective upon actual receipt).

8. The term "Business Day" as used herein means any day on which the Federal Reserve Bank of New York and the government securities markets are open for business.

9. All Option Contracts are entered into by each party hereto as principal for its own account for investment (including hedging) purposes only. Neither party hereto shall be obligated to enter into Options Contracts with the other party.

10. Each party acknowledges that it has entered into this Agreement and will enter into each Option Contract hereunder, in consideration of and in reliance upon the fact that all transactions hereunder constitute a single business and contractual relationship and that each has been entered into in consideration of the other transaction. Accordingly, each party agrees (i) to perform all of its obligations in respect of each transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all transactions hereunder, (ii) that each of them shall be entitled to set off claims and apply property held by them in respect of any transaction against obligations owing to them in respect of any other transactions hereunder and (iii) that payments, deliveries and other transfers made by either of them in respect of any transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other transactions hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

11. This Agreement and all Option Contracts hereunder shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to principles of conflicts of law.

12. If any part of this Agreement shall be held to be void or unenforceable, it shall not affect any other part of this Agreement.

13. Except as to outstanding Option Contracts which shall continue to be governed by this Agreement, either party hereto may cancel this Agreement at any time on three Business Days' prior written notice to the other party.

## VI. Intent

The parties hereto recognize and intend that:

(a) Each Option contract is a "securities contract" as defined in 11 U.S.C. Section 101 et seq. (the "Bankruptcy Code").

(b) A party's right to liquidate Option Contracts and to exercise any other remedies upon the occurrence of an Event of Default constitutes a "contractual right" as defined in the Bankruptcy Code.

(c) Any cash, securities or other property provided as performance assurance shall constitute "margin payments" as defined in the Bankruptcy Code.

(d) All payments for, under, or in connection with Option Contracts, all payments for the underlying securities following the exercise of an Option Contract, and the transfer of any underlying securities shall constitute "settlement payments" as defined in the Bankruptcy Code.

# ANNEX

## (PERFORMANCE ASSURANCE PROVISIONS)

### TO MASTER DEALER AGREEMENT

### OVER-THE-COUNTER OPTION TRANSACTIONS - U.S. TREASURY SECURITIES

The parties shall provide performance assurance as margin to secure their respective obligations under outstanding Option Contracts in accordance with the following provisions:

#### I. Definitions

1. "Market Value" of any U.S. Treasury Security as of any day shall mean the value of such security based on the price therefor as reported in the Federal Reserve Bank of New York Composite 3:30 P.M. Quotations for U.S. Government Securities on such day if so quoted and, if not so quoted, then as determined by the holder of the Option Contract in the same manner set forth in paragraph I(5) of the Agreement to which this annex relates. "Market Value" of any other security as of any day shall mean the value of such security based on the closing price therefor as reasonably determined by the party entitled to hold such security.
2. "Exercise Value" of an Option Contract as of any day shall equal the product of (a) the exercise price (expressed as a percentage) specified in such Contract and (b) the face amount of the underlying security covered by such Contract.
3. "In-the-money" shall mean (a) for an Option Contract that is a call, the excess (if any) of the Market Value of its underlying securities over its Exercise Value and (b) for an Option Contract that is a put, the excess (if any) of its Exercise Value over the Market Value of its underlying securities.
4. "Out-of-the-money" shall mean (a) for an Option Contract that is a call, the excess (if any) of its Exercise Value over the Market Value of its underlying securities and (b) for an Option Con-

tract that is a put, the excess (if any) of the Market Value of its underlying securities over its Exercise Value.

5. For each Option contract, the writer's "Performance Assurance Requirement" as of any day shall equal such Contract's in-the-money amount on such day .

6. A party's "Aggregate Performance Assurance Requirement" as of any day shall equal the sum of the Performance Assurance Requirements on such day for all outstanding Option Contracts written by such party under this Agreement.

7. "Dealer" shall mean any financial institution in which the Commonwealth may from time to time enter into option contracts.

8. "Commonwealth" shall mean the Commonwealth of Kentucky.

#### II. Performance Assurance

1. At the close of business on any Business Day on which the difference between the parties' Aggregate Performance Assurance Requirements exceeds \$1,000,000, the parties may begin demanding performance assurance from each other. On that day and thereafter, if demanded, performance assurance shall be provided or returned so that the party having the smaller Aggregate Performance Assurance Requirement shall hold performance assurance, in the aggregate, equal to the amount of such difference and the other party shall hold no performance assurance; provided that all payments and returns of performance assurance shall be rounded to the nearest integral multiple of \$1,000,000 (and rounded up, if exactly between two such multiples). Subject to the remedies available to the Non-Defaulting Party under paragraph IV(2) of the Agreement, if at the close of business on any Business Day no Option Contracts are outstanding or the difference between the parties' Aggregate Performance Assurance Requirements equals or is less than \$1,000,000, all performance assurance held by either party shall be returned to the other party.
2. Performance assurance provided hereunder shall be in cash, U.S. Treasury bills valued at market and/or any other form of performance assurance or method of providing performance assurance agreed to by the parties (collectively "Collateral"). To secure its obligations hereunder and under outstanding Option Contracts, each

party grants to the other party a continuing first and senior security interest in and lien on all Collateral held by such other party. Performance assurance that is demanded by 10:00 A.M., New York time, on a Business Day shall be due by the close of business on the same Business Day and performance assurance that is demanded after 10:00 A.M., New York time, on a Business Day shall be due by the close of business on the next succeeding Business Day. Where securities provided as performance assurance are transferable by book-entry, such method shall be used to effect transfer hereunder. Where securities provided as performance assurance are not transferable by book-entry, such securities may be delivered in physical form.

3. Any payment or other distribution in respect of securities being held as performance assurance that is received by the party holding such securities shall be remitted or credited too the account of the party that provided such securities within one Business Day after such payment or other distribution is received by the party holding such securities; provided, however, that such remittance shall not be required if, after such remittance, the party providing such securities would not be in compliance with paragraph II(1) of this Annex. A party that has provided Collateral hereunder may, on any Business Day, substitute for all or part of such Collateral other Collateral, provided that the market value of such substituted Collateral is at least equal to that of the Collateral being substituted.

4. Subject to paragraph II(3) of this Annex and to the extent permitted by law, either party hereto may lend, pledge, repledge, hypothecate or otherwise use for its own purposes any cash, securities or other property which it receives as Collateral and nothing herein shall obligate either party to segregate any Collateral that it holds.

5. The Commonwealth shall not be required to provide performance assurance with respect to any Option Contract under which the Commonwealth has sold to the Dealer: a call option (a "Covered Call") for which the underlying securities are held by either (i) the Commonwealth, (ii) the Commonwealth's custodian or (iii) in the Commonwealth's securities lending program through a third party custodian; a put option in which the Commonwealth can demonstrate the ability to meet its contractual obligation. Current regulations prohibit the Commonwealth from entering into any options agreement that requires the posting of margins or performance assurances.

\_\_\_\_\_  
Name of Dealer

By: \_\_\_\_\_

\_\_\_\_\_  
Commonwealth of Kentucky

By: \_\_\_\_\_  
Executive Director  
Office of Financial  
Management and Economic Analysis

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Name of Dealer

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Office: \_\_\_\_\_

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

Telephone No.: \_\_\_\_\_

Telex No.: \_\_\_\_\_

Answerback: \_\_\_\_\_

Telefax No.: \_\_\_\_\_

\_\_\_\_\_  
Commonwealth of Kentucky

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: Executive Director

Office: Office of Financial Management  
and Economic Analysis

Address: Room 261

Capitol Annex

Frankfort, Kentucky 40601

Telephone No.: (502) 564-2924

Telefax No.: (502) 564-7416