

**DEPOSITARY AGREEMENT**

**Between**

**Massachusetts Port Authority**

**and**

**The Bank of New York Mellon Trust Company, N.A.,  
as Depositary**

**Dated as of July 3, 2017**

## **Depository Agreement**

This Depository Agreement is dated as of July 3, 2017 (this “Agreement”) and is between the **Massachusetts Port Authority**, a body politic and corporate, duly established and existing under Chapter 465 of the Acts of 1956 of The Commonwealth of Massachusetts, as amended, with a principal place of business at One Harborside Drive, Suite 200S, East Boston, Massachusetts 02128-2909 (the “Authority”), and **The Bank of New York Mellon Trust Company, N.A.**, a national banking association duly established and validly existing under and by virtue of the laws of the United States, with its corporate trust office located in Everett, Massachusetts, as Depository (the “Depository”).

### **WITNESSETH:**

**WHEREAS**, the Authority has determined that it is desirable and in the best interests of the Authority to provide for the deposit of funds from time to time with the Depository, to be held on behalf of the Authority and to be invested solely in investments authorized from time to time by the Authority; and

**WHEREAS**, the Depository has determined that it is willing to enter into this Agreement and to carry out the duties set forth herein.

**NOW, THEREFORE**, in consideration of the covenants and agreements herein contained, and for other good, fair and valuable considerations and reasonably equivalent value, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the Depository and the Authority do agree as follows, intending to be legally bound:

### **Section 1. Establishment of Accounts; Direction to Transfer Funds**

As further described in the next succeeding paragraph, the Authority hereby authorizes the deposit of funds from time to time with the Depository which funds shall be held by the Depository pursuant to this Agreement. The Depository hereby agrees to accept said funds and agrees to maintain separate accounts (the “Accounts”) as listed on **Exhibit C** therefor in its capacity as Depository, acting as a custodian for the benefit of the Authority, pursuant to the terms of this Agreement. The Accounts established hereby shall remain the property of the Authority. Subaccounts may be established within the Accounts when deemed necessary or convenient by the Authority or the Depository. The Depository shall have custody of the Accounts, which shall be held on behalf of the Authority and kept separate from the other assets of the Depository, and the money on deposit in the Accounts shall be held, invested and disbursed as directed by the Authority pursuant to this Agreement.

The Authority hereby directs the Depository on each business day to transfer from the Authority's BNYMellon DDA # \_\_\_\_\_ all balances above \$200.00 to Account No. \_\_\_\_\_ Fund (i.e., an account listed on **Exhibit C** hereto). Such transferred balances shall be invested, transferred and disbursed by the Depository in accordance with the directions of the Authority given pursuant to the provisions of this Agreement.

## **Section 2. Investments**

(a) The Depository agrees to invest and reinvest funds in the Accounts as directed by an authorized agent of the Authority. The Director of Treasury, the Assistant Treasurer, and any other officer of the Authority designated in writing to the Depository shall be authorized to give the Depository investment instructions.

(b) The Authority recognizes and agrees that the Depository will not provide supervision, recommendations or advice relating to either the investment of moneys held in the Accounts or the purchase, sale, retention or other disposition of any investment. The Authority shall be solely responsible for complying with the provisions of any law, rule or regulation concerning the investment of public funds. Earnings on investments shall be added to the Accounts. The Depository shall be under no obligation to invest moneys in the Accounts other than as directed by the Authority. Any loss or expense incurred as a result of an investment will be borne by the Accounts. In no event shall the Depository be liable for the selection of investments or for investment losses incurred thereon.

(c) The Depository is hereby authorized to trade with itself and any affiliated entity in the purchase and sale of securities for investment, and is authorized to execute purchases and sales of investments through the facilities of its own trading or capital markets operations or those of any affiliated entity. The Depository shall send statements to the Authority on a monthly basis reflecting activity in the Accounts for the preceding month. Although the Authority recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Authority hereby agrees that confirmations of investments are not required to be issued by the Depository for each month in which a monthly statement is rendered.

(d) The Authority acknowledges and agrees that the delivery of the funds held hereunder is subject to the sale and final settlement of investments. Proceeds of a sale of investments will be delivered on the business day on which the appropriate instructions are delivered to the Depository if received prior to the deadline for same day sale of such investments. If such instructions are received after the applicable deadline, proceeds will be delivered on the next succeeding business day.

## **Section 3. Disbursement of Accounts**

Moneys deposited in the Accounts shall be paid out from time to time by the Depository within two (2) business days after receipt by the Depository of a direction of the

Authority, properly completed and executed in substantially the form of **Exhibit A** attached hereto.

#### **Section 4. Concerning the Depositary**

Notwithstanding any provision contained herein to the contrary, the Depositary, including its officers, directors, employees and agents, shall:

(a) not be liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without negligence or willful misconduct;

(b) have no responsibility to inquire into or determine the genuineness, authenticity, or sufficiency of any securities, checks, or other documents or instruments submitted to it in connection with its duties hereunder;

(c) be entitled to deem the signatories of any documents or instruments submitted to it hereunder as being those purported to be authorized to sign such documents or instruments on behalf of the Authority, and shall be entitled to rely upon the genuineness of the signatures of such signatories without inquiry and without requiring substantiating evidence of any kind;

(d) have no responsibility or liability for any diminution in value of any assets held hereunder which may result from any investments or reinvestment made in accordance with any provision which may be contained herein;

(e) be entitled to compensation for its services hereunder as per **Exhibit B** attached hereto, which is made a part hereof, and for reimbursement of its reasonable out-of-pocket expenses including, but not by way of limitation, the fees and costs of attorneys or agents which it may find necessary to engage in performance of its duties hereunder, all to be paid by the Authority, and the Depositary shall have, and is hereby granted, a prior lien upon any property, cash, or assets of the Accounts, with respect to its unpaid fees and nonreimbursed expenses, superior to the interests of any other persons or entities;

(f) be entitled and is hereby granted the right to set off and deduct any unpaid fees and/or nonreimbursed expenses from amounts on deposit in the Accounts;

(g) be, and hereby is indemnified and saved harmless, to the extent permitted by law, by the Authority from all losses, liabilities, costs and expenses, including attorney fees and expenses, which may be incurred by it as a result of its acceptance of the Accounts or arising from the performance of its duties hereunder, unless such losses, liabilities, costs and expenses shall have been finally adjudicated to have resulted from the bad faith, negligence or willful misconduct of the Depositary, and such indemnification shall survive its resignation or removal, or the termination of this Agreement;

(h) be under no obligation to institute any suit or action or other proceeding under this Agreement or to enter any appearance in any suit, action or proceeding in which it may be a defendant or to take any steps in the enforcement of its rights and powers hereunder, nor shall be deemed to have failed to take any such action, unless and until it shall have been indemnified by the Authority to its satisfaction against any and all costs and expenses, outlays, counsel fees and expenses, and other disbursements, including its own reasonable fees, and if any judgment, decree or recovery be obtained by the Depositary, payment of all sums due it, as aforesaid, shall be a first charge against the amount of any such judgment, decree or recovery. No provision of this Agreement shall require the Depositary to risk or expend its own funds;

(i) have only those duties as are specifically provided herein and shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument or document between the other parties hereto, in connection herewith. This Agreement sets forth all matters pertinent to the Accounts, and no additional obligations of the Depositary shall be inferred from the terms of this Agreement or any other agreement. **IN NO EVENT SHALL THE DEPOSITARY BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (i) DAMAGES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES WHICH RESULT FROM THE DEPOSITARY'S FAILURE TO ACT IN ACCORDANCE WITH THE STANDARDS SET FORTH IN THIS AGREEMENT, OR (ii) SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF THE DEPOSITARY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES;**

(j) have the right, but not the obligation, to consult with counsel of choice and shall not be liable for action taken or omitted to be taken by Depositary either in accordance with the advice of such counsel or in accordance with any opinion of counsel to the Authority addressed and delivered to the Depositary;

(k) not have any liability or obligation with respect to any failure or delay in the performance of its obligations under this Agreement 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; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental actions; it being understood that the Depositary shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances; and

(l) have the right to perform any of its duties hereunder through agents, attorneys, custodians or nominees, and shall not be responsible for the misconduct or negligence of such agents, attorneys, custodians and nominees appointed by it with due care.

The Depository shall have the right to accept and act upon instructions, including funds transfer instructions (“Instructions”) given pursuant to this Agreement and delivered using Electronic Means; provided, however, that the Authority shall provide to the Depository an incumbency certificate listing officers with the authority to provide such Instructions (“Authorized Officers”) and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Authority whenever a person is to be added or deleted from the listing. If the Authority elects to give the Depository Instructions using Electronic Means and the Depository in its discretion elects to act upon such Instructions, the Depository’s understanding of such Instructions shall be deemed controlling. The Authority understands and agrees that the Depository cannot determine the identity of the actual sender of such Instructions and that the Depository shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Depository have been sent by such Authorized Officer. The Authority shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Depository and that the Authority and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Authority. The Depository shall not be liable for any losses, costs or expenses arising directly or indirectly from the Depository’s reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Authority agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Depository, including without limitation the risk of the Depository acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Depository and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Authority; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Depository immediately upon learning of any compromise or unauthorized use of the security procedures.

"Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Depository, or another method or system specified by the Depository as available for use in connection with its services hereunder.

Any banking association or corporation into which the Depository may be merged, converted or with which the Depository may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Depository shall be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of the Depository shall be transferred, shall succeed to all the Depository's rights, obligations and immunities hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**Section 5. Resignation or Removal of Depositary**

Each of the Authority and the Depositary may terminate this Agreement by giving thirty (30) days prior written notice to the other party. In such event, the duties of the Depositary shall terminate thirty (30) days after receipt of such notice (or as of such earlier date as may be mutually agreeable) and the Depositary shall then deliver the balance of the moneys or assets then in its possession to the Authority or as the Authority shall direct.

**Section 6. Notices**

Any notice, direction or request to be given in connection with any of the terms or provisions of this Agreement shall be in writing and be given in person, by facsimile transmission, courier delivery service or by mail, and shall become effective (a) on delivery if given in person, (b) on the date of delivery if sent by facsimile or by courier delivery service, or (c) four (4) business days after being deposited in the mails, with proper postage for first-class registered or certified mail, prepaid.

Until notified in writing by the appropriate party of a change to a different address, notices shall be addressed as follows:

- (i) if to the Authority:

Massachusetts Port Authority  
One Harborside Drive, Suite 200S  
East Boston, MA 02128  
Attention: Director of Treasury  
Fax Number:

- (ii) if to the Depositary:

The Bank of New York Mellon Trust Company, N.A.  
135 Santilli Highway  
Everett, Massachusetts 02149

Attention: Corporate Trust Division, Public Finance Group  
Fax Number:

**Section 7. Governing Law, Counterparts**

This Agreement shall be construed in accordance with the laws of The Commonwealth of Massachusetts. It may be executed in several counterparts, each one of which shall constitute an original and all collectively shall constitute but one instrument.

**Section 8. Amendment, Modification or Waiver**

This Agreement may be amended or modified and any term of this Agreement may be waived if such amendment, modification or waiver is in writing and signed by all parties.

**Section 9. Assignments of Interests**

No assignment of the interest of either of the parties hereto shall be binding in the absence of the written consent of the other party, provided, however, that the Depositary may assign its interest under the circumstances set forth in the last paragraph of Section 4 hereof without such written consent.

**Section 10. Waiver of Trial by Jury**

Each party hereto hereby agrees not to elect a trial by jury of any issue triable of right by jury, and waives any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to this Agreement, or any claim, counterclaim or other action arising in connection herewith. This waiver of right to trial by jury is given knowingly and voluntarily by each party, and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue.



**IN WITNESS WHEREOF**, the parties have been duly executed this Depositary Agreement as of the date first above written.

**Massachusetts Port Authority**

By 

Name: John P. Prankevicius

Title: Director of Administration &  
Finance/Secretary- Treasurer

**The Bank of New York Mellon Trust  
Company, N.A.,  
as Depositary**

By 

Name: MARIE HATTINGER

Title: VICE PRESIDENT

# **EXHIBIT A**

## **Disbursement Direction**

# **EXHIBIT B**

## Fee Schedule

EXHIBIT C

ACCT #:

ACCT #: