

**UNITED STATES TRUSTEE PROGRAM
UNIFORM DEPOSITORY AGREEMENT FORM
FOR DEBTOR IN POSSESSION ACCOUNTS**

DEPOSITORY AGREEMENT

_____ (“Depository”) enters into this Depository Agreement (“Agreement”) with the United States Trustee for Region 5 (“UST”), regarding the deposit and collateralization of Bankruptcy Funds (as that term is defined below) at Depository.

RECITALS

WHEREAS, Depository maintains, or desires to maintain, deposits of funds which are money of bankruptcy estates (“Bankruptcy Funds”) in cases administered under the provisions of title 11, United States Code (“Bankruptcy Code”) under the jurisdiction of the United States Bankruptcy Court for the Eastern, Middle or Western and/or Northern or Southern District(s) of Louisiana and Mississippi; and

WHEREAS, pursuant to 28 U.S.C. § 586(a)(3), UST supervises the administration of cases filed under chapter 11 of the Bankruptcy Code, and thereby oversees Bankruptcy Funds maintained in deposit accounts at financial institutions (“Bankruptcy Accounts”);

AGREEMENT

NOW THEREFORE, in consideration of the deposit of Bankruptcy Funds with Depository and the mutual covenants and agreements contained herein, and intending to be legally bound, Depository and UST agree as follows:

1. Depository represents and warrants its deposits are insured by the Federal Deposit Insurance Corporation (FDIC).
2. At all times during which this agreement is in effect, whenever Bankruptcy Funds exceed the FDIC insurance limits, Depository will obtain a surety bond, or pledge collateral in accordance with the Addendum to this agreement.
3. In order to determine compliance with this Agreement, Depository shall furnish to UST at the address shown in paragraph 11 a quarterly or monthly report (“Bankruptcy Account Report”) of Bankruptcy Accounts, by judicial district, identifying each account, including but not limited to checking accounts, savings accounts, certificates of deposit, money market accounts, and collateral accounts; the account name and number; the bankruptcy case number; the end of month or end of quarter ledger balance; and the amount in excess of the FDIC insurance limit. The Bankruptcy Account Report shall include a summary of (1) the total amount of the end of month or quarter ledger balance of Bankruptcy Funds on deposit, (2) a calculation of the ATBC (as defined in the Addendum); and (3) the market value of any required Pledged Securities (as defined in the Addendum) on deposit at the Federal Reserve Board or the amount of any required Surety Bond coverage. The Bankruptcy Account Reports are required even though Depository may not carry any active accounts into which Bankruptcy Funds have been deposited. All open deposit accounts must be listed, even if the

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account balance is zero. The Bankruptcy Account Reports shall be submitted to UST within 15 calendar days following the end of each calendar month or quarter.

4. Upon presentation of a release signed by the depositor of Bankruptcy Funds, Depository agrees to provide to the UST any and all information pertaining to that depositor's Bankruptcy Accounts. Said information includes, but is not limited to, copies of statements, deposit slips, checks and account agreements for all Bankruptcy Accounts maintained at Depository.
5. Depository agrees and acknowledges that its failure to comply with any of the terms and provisions of this Agreement, may result in the withdrawal of Bankruptcy Funds on deposit with Depository and termination of this Agreement after three days notice to the Depository.
6. In the event Depository fails to pay Bankruptcy Funds which are on deposit in accordance with the terms of the agreement with the depositor after two days notice of UST's intention to invoke this paragraph; or in the event of insolvency of the Depository; or if a receiver, conservator, liquidator, or any other officer is appointed for the purpose of terminating the business of Depository; or should Depository fail or suspend active operations, all Bankruptcy Funds on deposit with Depository shall become due and payable immediately, and UST shall have the right to seek recourse against the Surety Bond or unilaterally demand turnover and take actual or constructive possession of all Pledged Securities, as applicable, and without notice to the Depository. All Surety Bonds, Pledged Securities, and the proceeds thereof which come into the possession of UST shall be paid to depositors or held by the UST in trust for depositors, and any amounts which are in excess of the amount needed to satisfy Depository's obligations to depositors shall be returned to Depository or its successor in interest, after deducting any fees and costs necessary to enforce this Agreement and damages or deficiencies caused by default under this Agreement.
7. Depository agrees to designate an officer or employee who shall be available during regular business hours and can be contacted by UST, Trustee, or Debtor in Possession. Depository agrees to notify the account owner and UST in writing any time the designation changes.
8. This Agreement shall be binding upon Depository and UST and their respective successors and assigns.
9. Depository represents and warrants either (i) that the execution and delivery of this Agreement by the undersigned representative of Depository has been approved and authorized by the board of directors of Depository in a corporate resolution adopted by the board, as evidenced by the minutes of said board which are and will continue to be maintained as an official record of Depository in compliance with 12 U.S.C. § 1823(e), or (ii) that the execution and delivery of this Agreement by the undersigned representative of Depository has been ratified and reaffirmed by the board of directors of the Depository in a corporate resolution adopted by the board at a duly called meeting of said board of directors, all as reflected in the minutes of said board which are and will continue to be maintained as

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an official record of Depository in compliance with 12 U.S.C. § 1823(e).

- 10. This Agreement may be terminated by either party upon thirty days' written notice of cancellation to the other party.
- 11. All notices, requests and other communications to any party hereunder shall be in writing, and may be delivered by hand delivery, registered or certified mail, return receipt requested, or by express mail service of the U.S. Postal Service, or other equivalent private overnight or expedited delivery. Any such notice, request or other communication shall be deemed given and received (i) at the time it is delivered, if delivered by hand delivery; (ii) three days following the date of mailing, if delivered by mail; and (iii) upon receipt, if delivered by overnight or expedited delivery. For purposes of this Agreement, the address of the parties to this Agreement shall be:

UST: 400 Poydras Street, Suite 2110, New Orleans, Louisiana 70130.

Depository:

Any party may, by proper written notice to the other party, change the address to which notices shall be sent to it.

- 12. This Agreement, including the Addendum, constitutes the entire agreement between the parties and supersedes all prior written or oral agreements or understandings between them with respect to the matters addressed herein. Time shall be of the essence in this Agreement with respect to the Depository's obligations hereunder. To the extent any term or provision of this Agreement conflicts with any provision of any other agreement, signature card, account contract, applicable account rules and regulations between a Debtor in Possession and Depository, then the term or provision of this Agreement shall control. This Agreement is for the benefit of Depository, UST, and depositors of Bankruptcy Funds, and no others.

The parties, by their respective authorized representatives, execute and deliver this Agreement to be effective on the date that the last party to this Agreement signs it.

I, _____, the duly authorized officer of the Depository named herein, do hereby affirm that I have read the requirements stated above and in the Addendum and further certify that Depository has agreed to those requirements.

For the Depository:

For the United States Trustee, Region 5

By _____
(Signature)

By _____
(Signature)

Name
and Title _____
(Printed)

Name
and Title _____
(Printed)

Dated:

Dated:

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ADDENDUM

In addition to all other terms and conditions of this Agreement, the following provisions apply if Depository is required by this agreement to obtain a surety bond or pledge collateral for Bankruptcy Funds, or if the Depository has obtained a bond or pledged collateral:

- a. At all times during which this Agreement is in effect, Depository shall maintain collateral, unless an order of the United States Bankruptcy Court provides otherwise, in an amount no less than 115%, the aggregate Bankruptcy Funds on deposit in each Bankruptcy Account which exceeds the FDIC insurance limit (“Amount to Be Collateralized” or “ATBC”) by (i) Surety Bond, in a form acceptable to and from a company approved by the UST in accordance with 11 U.S.C. § 345(b)(1), or (ii) deposit of securities in accordance with 11 U.S.C. § 345(b)(2).
- b. Depository shall deposit and maintain with the Federal Reserve Bank (“FRB”) securities of the kind listed on the Bureau of Public Debt web site under “Acceptable Collateral for 31 C.F.R. Part 225 (Circular 154),” <http://www.publicdebt.treas.gov/gsr/gsrttl.htm#31cfr225>, (“Securities”) in accordance with 31 U.S.C. § 9303, 31 C.F.R. § 225, and 31 C.F.R. § 380. The Securities shall be deposited to the Security Account for UST with the FRB (all such Securities, including any additions thereto and any replacements or substitutions thereof so deposited, are collectively referred to as “Pledged Securities”). The FRB is authorized to act as custodian and accept for deposit Pledged Securities in accordance with this Agreement. For purposes of determining the value of Pledged Securities under this Agreement, the market value (“Value”) shall be used.
- c. Under 31 C.F.R. § 225, UST, as the responsible government “agency” under the regulation, shall determine from time to time the ATBC. UST shall inform the National Customer Service Area (NCSA) of the Federal Reserve Bank of St. Louis (SL-FRB) or any successor of the SL-FRB, of the appropriate ATBC as determined by UST from time to time in accordance with the terms of this Agreement. Depository acknowledges and agrees that it is obligated to pledge additional securities as necessary to maintain the required percentage of collateralization to ATBC as provided in subparagraph a. above and will pledge the additional securities within two business days following notice of such need by NCSA.
- d. Depository hereby grants to UST a security interest in, and pledges and assigns to UST, the Pledged Securities, including any additions to and replacements or substitutions of such Pledged Securities, as collateral for the repayment to depositors of any and all Bankruptcy Funds on deposit with Depository. The Pledged Securities shall be held in safekeeping by the FRB for the benefit of the UST and can be released only with UST authorization.
- e. Depository warrants that it is the legal and actual owner, free and clear of all liens and claims, of all Pledged Securities.

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- f. When Bankruptcy Funds on deposit are less than the Value of Pledged Securities, UST shall provide within two business days, upon written request of Depository, the NCSA of the SL-FRB or any successor of the SL-FRB, the new ATBC as determined by the UST in accordance with the terms of this Agreement. After UST provides updated information regarding the ATBC to NCSA, Depository may obtain the release from the SL-FRB of the Pledged Securities in excess of the ATBC.
- g. Depository may substitute Securities, acceptable under subparagraph b. above, of which it is the legal and actual owner, free and clear of all liens and claims, for all or any part of the Pledged Securities and acknowledges that all substituted Pledged Securities are subject to the security interest, pledge, and assignment to UST pursuant to this Agreement.
- h. If the Depository is notified that Bankruptcy Funds on deposit exceed the Value of Pledged Securities, Depository shall cure such deficiency within two business days thereof.
- i.. As long as the Depository performs its obligations under this Agreement, the interest earned on the Pledged Securities may be administered for the benefit of Depository in such a manner as Depository and the FRB may agree.
- j. In the event of circumstances described in paragraph 6, the UST or the UST's designated agent or representative, shall have full power to obtain turnover of the Pledged Securities, or any part thereof, and to redeem, sell, assign, or transfer the Pledged Securities, or any portion thereof, at any public or private sale or sales at his or her option without advertising such sale or sales after not less than three days notice to Depository. Said sale shall be free from any equity of redemption, the right to redeem and notice thereof being waived, and without prior appraisal.
- k. All Surety Bonds, Pledged Securities, and the proceeds thereof which come into the possession of UST shall be paid to depositors or held by the UST in trust for depositors, and any amounts which are in excess of the amount needed to satisfy Depository's obligations to depositors shall be returned to Depository or its successor in interest, after deducting any fees and costs, including attorney fees, necessary to enforce this agreement.
- l. This Agreement shall supersede any prior depository agreement between the parties, and the terms hereof shall apply to and be binding on all current Pledged Securities deposited under any prior agreement between the parties.