



THE BANK OF NEW YORK MELLON

EXECUTION COPY

**COLLATERAL CUSTODY AND ADMINISTRATION AGREEMENT**

AGREEMENT, dated as of March 16, 2009 (this “**Agreement**”) between Federal Reserve Bank of New York (“**Secured Party**”) and The Bank of New York Mellon, as collateral custodian (in such capacity, “**Custodian**”) and collateral administrator (in, such capacity, “**Administrator**”).

**W I T N E S S E T H :**

WHEREAS, Secured Party, Custodian, Administrator and the other parties thereto have entered into the Master Loan and Security Agreement (the “**MLSA**”) pursuant to which certain parties (the “**Borrowers**”) have agreed to pledge to Secured Party the Collateral (as defined below) in order to secure the repayment of their Obligations; and

WHEREAS, Secured Party has requested that (x) Custodian hold the Collateral and (y) Custodian and Administrator perform certain other functions as more fully described herein and in the MLSA; and

WHEREAS, Custodian and Administrator have agreed to act on behalf of Secured Party in respect of the Collateral and to perform certain other services on behalf of Secured Party, subject to the terms of this Agreement and the MLSA;

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

**ARTICLE I  
DEFINITIONS**

Whenever used in this Agreement, the following words shall have the meanings set forth below:

“**BNYM Affiliate**” shall mean any office, branch or subsidiary of The Bank of New York Mellon Corporation.

“**Book-Entry System**” shall mean the Federal Reserve/Treasury book-entry system for receiving and delivering securities, its successors and nominees.

“**Business Day**” shall mean any day on which Custodian, Book-Entry System and relevant Depositories are open for business.

“**Collateral**” shall mean each item of property and all proceeds thereof held in the Collateral Accounts.

“**Collateral Accounts**” shall mean the accounts in the name of Secured Party established and maintained at Custodian (and as to which Secured Party is the entitlement holder) in which Collateral shall be deposited, or caused to be deposited, by Borrowers and pledged to Secured Party, and any sub-accounts thereunder.

“**Credit Agreement**” shall mean the agreement dated as of March 3, 2009 among TALF LLC, as borrower, Federal Reserve Bank of New York, as the controlling party, Federal Reserve Bank of New York, as the senior lender and the United States Department of the Treasury, as the subordinated lender.

“**Depository**” shall mean, for purposes of this Agreement only, the Federal Reserve Bank of New York for receiving and delivering securities maintained by The Fedwire Securities Service, The Depository Trust Company and any other clearing corporation within the meaning of Section 8-102 of the UCC, and their respective successors and nominees.

“**Written Instructions**” shall mean written communications received by Custodian by S.W.I.F.T., tested telex, email, letter, or other method or system specified by Custodian as available for use in connection with the services hereunder.

The terms “**Administrative Fee**”, “**Applicable Borrower**”, “**Applicable Primary Dealer**”, “**Loan Accrual Period**”, “**Collateral Surrender**”, “**Collateral Value**”, “**Determination Date**”, “**Development Company Participation Certificates**”, “**Eligible Collateral**”, “**Expected ABS Collateral**”, “**Floating Rate Loan**”, “**Haircut Amount**”, “**Haircut Percentage**”, “**Initial Loan Request**”, “**Lender**”, “**Loan**”, “**Loan Requests**”, “**Loan Closing Date**”, “**Loan Repayment Amount**”, “**Loan Subscription Date**”, “**Market Price**”, “**Market Value**”, “**Master TALF Collateral Account**”, “**New Acquisition Collateral**”, “**Obligations**”, “**Offering Materials**”, “**Person**”, “**Primary Dealer**”, “**Put Option Agreement**”, “**SBA Pool Certificates**”, “**TALF**”, “**TALF Standing Loan Facility Procedures**”, and “**TALF LLC**” are defined in the MLSA.

The terms “**entitlement holder**”, “**entitlement order**”, “**financial asset**”, “**investment property**”, “**proceeds**”, “**security**”, “**securities account**” and “**securities intermediary**” shall have the meanings set forth in Articles 8 and 9 of the UCC.

## ARTICLE II APPOINTMENT OF CUSTODIAN; COLLATERAL ACCOUNTS

1. Appointment; Identification of Collateral. Secured Party hereby appoints Custodian as custodian of all Collateral at any time delivered to Custodian in the United States for deposit in the Collateral Accounts during the term of this Agreement, and authorizes Custodian to hold Collateral in the Collateral Accounts in the name of Secured Party. No

financial asset in the Collateral Accounts will be registered in the name of other Person unless such financial asset has been further indorsed to Secured Party or in blank. Custodian hereby accepts such appointment and agrees to establish and maintain the Collateral Accounts and appropriate records identifying the Collateral in the Collateral Accounts as pledged to Secured Party. The parties hereto agree that the Collateral Accounts are and will remain securities accounts as defined in Section 8-501 of the UCC and Secured Party is an entitlement holder with respect to the Collateral Accounts.

2. Sub-Accounts. Within any or all of the Collateral Accounts, Custodian shall establish such sub-accounts as Custodian deems necessary to reflect the beneficial ownership by each Borrower (each, a “**Beneficial Owner**”) of any Collateral held therein.

3. Status of Custodian and “Financial Asset” Election. The parties hereto agree that Custodian is a securities intermediary, and intend that each item of property (whether investment property, financial asset, security, instrument, cash or other property) held in the Collateral Accounts shall be treated as a “financial asset” within the meaning of Sections 8-102(a)(9) and 8-103 of the UCC.

4. Use of Depositories. Secured Party hereby authorizes Custodian to utilize Depositories to the extent possible in connection with its performance hereunder. Collateral held by Custodian in or maintained by a Depository will be held subject to the regulations, rules, terms and conditions applicable to such Depository. Where Collateral is held in or maintained by a Depository, Custodian shall identify such Collateral on its records as pledged to Secured Party as a quantity of securities as part of a fungible bulk of securities held in Custodian’s account at such Depository. Collateral deposited in or maintained by a Depository will be represented in accounts which include only assets held by Custodian for its customers.

5. No Lien or Pledge by Custodian. Custodian agrees that the Collateral Accounts and Collateral in the Collateral Accounts shall not be subject to any security interest, lien or right of set-off by Custodian (except as set forth in Section 18.14 of the MLSA) or any third party claiming through Custodian. Custodian shall not pledge, encumber, hypothecate, transfer, dispose of, or otherwise grant any third party an interest in, Collateral, except to the extent set forth in the MLSA or as otherwise authorized by Secured Party.

6. Notice of Adverse Claims. Except for the claims and interests of Secured Party and each Beneficial Owner, Custodian does not know of any claim to, or interest in, the Collateral Accounts, any financial asset credited thereto or any security entitlement in respect thereof. Upon receipt at the address provided in Article VIII paragraph 2 of written notice of any lien, encumbrance or adverse claim against the Collateral Accounts or any portion of the Collateral carried therein, Custodian shall use reasonable efforts to notify Secured Party as promptly as practicable.

**ARTICLE III  
CUSTODY AND RELATED SERVICES**

1. General. With respect to all Collateral held in the Collateral Accounts, Custodian shall:

(a) Receive into the Collateral Accounts all income and other payments, and advise Administrator as promptly as practicable of any such amounts due but not paid;

(b) Present for payment and receive the amount paid upon all securities which may mature and advise Administrator as promptly as practicable of any such amounts due but not paid;

(c) Execute, as custodian, any certificates of ownership, affidavits, declarations or other certificates under any tax laws now or hereafter in effect in connection with the collection of bond and note coupons; and

(d) Hold directly, or through the Book-Entry System or a Depository, all rights and similar securities issued with respect to any securities credited to the Collateral Accounts hereunder.

2. Voting; Discretionary Corporate Actions.

(a) With respect to all Collateral held in the Collateral Accounts, Custodian shall forward to the Applicable Primary Dealer all information or documents that it may receive from an issuer of securities which, in the opinion of Custodian, are intended for the beneficial owner of such securities, including notices with respect to any rights the applicable beneficial holder may have with respect to discretionary corporate actions and the date or dates such rights must be exercised.

(b) In order for Custodian to act with respect to any such discretionary actions, it must receive the Applicable Primary Dealer's Written Instructions at Custodian's offices, addressed as Custodian may from time to time request, not later than noon (New York time) at least two (2) Business Days prior to the last scheduled date to act with respect to such securities (or such earlier date or time as Custodian may notify the Applicable Primary Dealer). Absent Custodian's timely receipt of such Written Instructions, Custodian shall not be liable for failure to take any action relating to or to exercise any rights conferred by such securities.

(c) During the continuation of any Collateral Enforcement Event (i) the provisions of the foregoing Sections 2(a) and 2(b) are subject to Section 14.1(d) of the MLSA and (ii) Custodian shall forward to Secured Party all information or documents referenced in the foregoing Sections 2(a) and 2(b).

(d) Custodian shall promptly advise Secured Party and the Applicable Primary Dealer upon its notification of the partial redemption, partial payment or other action affecting less than all securities of the relevant class. If Custodian or a Depository holds any such securities in

which Secured Party has an interest as part of a fungible mass, Custodian or such Depository may select the securities to participate in such partial redemption, partial payment or other action in any non-discriminatory manner that it customarily uses to make such selection.

3. Transfers. The Collateral Accounts shall be operated (x) in accordance with the terms of this Agreement and the MLSA and (y) otherwise in accordance with the Written Instructions of Secured Party. All transfers of Collateral into or out of the Collateral Accounts (other than the settlement of the delivery of Collateral in connection with the making of a Loan on a Loan Closing Date) shall be made free of payment. Custodian shall not permit any withdrawal of any Collateral from the Collateral Accounts unless (x) such withdrawal is required to be made pursuant to the MLSA or (y) it has received Written Instructions from Secured Party permitting such withdrawal.

4. TALF Program Activities. Without limiting the foregoing or any other provision of this Agreement, Custodian agrees to accept its appointment as, and shall act as, "Custodian" under the MLSA with respect to TALF. In connection therewith, Custodian shall, among other things:

(a) screen all assets expected to be delivered as Collateral for Loans to be made under the MLSA and provide reports to Lender relating thereto, as more fully described in Article V;

(b) not later than four hours after the later of (i) the time specified by Secured Party (such time to be posted to the TALF Website in advance of such Loan Subscription Date) by which each Primary Dealer must submit the Initial Loan Requests in accordance with the MLSA on each Loan Subscription Date and (ii) the time Initial Loan Requests and Loan Requests are actually received by Custodian, reconcile the Loan Requests with the Initial Loan Requests and provide Secured Party with a detailed electronic file of all Loans requested, all asset-backed securities intended to be included as Expected ABS Collateral and all accompanying Offering Materials, to be made by Secured Party on the next scheduled Loan Closing Date;

(c) determine whether or not the conditions precedent to the making of each Loan set forth in Sections 3.7(b)-(h) of the MLSA have been satisfied and communicate each such determination to Lender, it being understood and agreed that, in connection with any such determination, Custodian shall have confirmed, on the basis of its independent review (provided that in determining Eligible Collateral, such determination shall be made as set forth in Article V(a)), that such conditions precedent have been satisfied; *provided* that Custodian may obtain directions from Secured Party from time to time to facilitate such review. Custodian's review criteria and methodology relating thereto shall be agreed between Custodian and Secured Party from time to time. Notwithstanding anything to the contrary set forth herein or in the TALF Standing Loan Facility Procedures, Custodian's confirmation of whether or not any Collateral constitutes "Eligible Collateral" shall be made without regard to the requirement that, with respect to any Borrower, Eligible Collateral not include any assets backed by underlying credit exposures that were originated or securitized by such Borrower or any of its Affiliates;

(d) settle deliveries of Collateral on each Loan Closing Date against payment therefor, and hold same in the Collateral Accounts;

(e) in the event Lender does not make a Loan or accept Collateral as Eligible Collateral, and Lender has already made the aggregate principal amount of such Loan available in the Master TALF Collateral Account, Custodian shall invest such amount of behalf of Lender as directed by Written Instruction of Lender and return such amount (including any earnings thereon) to Lender not later than 5:00 p.m. on the next Business Day;

(f) on each Loan Closing Date, deliver to Secured Party the total amount of Administrative Fees received (and not returned to the applicable Primary Dealer pursuant to Section 3.12 of the MLSA) in the Master TALF Collateral Account;

(g) keep accurate books and records of all Collateral pledged under the MLSA and all proceeds thereof on (x) both an aggregate and individual Borrower basis (y) by individual Loan and (z) by Primary Dealer;

(h) apply amounts received in the Collateral Accounts in respect of interest on and principal of Collateral, and prepayments of Loans, in accordance with Sections 4 and 5 (and all subsection within such Sections 4 and 5) of the MLSA;

(i) if requested by Secured Party, file UCC financing statements with respect to the Collateral and take such other actions as Secured Party shall from time to time reasonably request with respect to the perfection of Secured Party's security interest in the Collateral;

(j) transfer Collateral from the Collateral Accounts in accordance with Sections 8.1, 8.2 and 13.3 of the MLSA;

(k) in connection with Secured Party's exercise of remedies pursuant to Sections 14.1 through 14.7 of the MLSA, act in accordance with all Written Instructions with respect to Collateral that it shall receive from Secured Party;

(l) determine the Purchase Consideration, Market Price and Market Value with respect to each Purchased Asset (each of the foregoing capitalized terms as defined in the Put Option Agreement); and

(m) provide such other services as are contemplated by the MLSA or are reasonably incidental thereto to, and such other services in connection with TALF as the parties hereto shall from time to time agree.

#### **ARTICLE IV ADMINISTRATIVE SERVICES**

Custodian also agrees to accept its appointment as, and shall act as, "Administrator" under the MLSA with respect to TALF. In such capacity and without limiting the foregoing or any other provision of this Agreement, Administrator shall, among other things:



(a) keep accurate books and records, on both an aggregate and individual Borrower basis (as well as by Primary Dealer), of each Loan made pursuant to the MLSA, including (i) the Borrower and principal amount thereof, (ii) accrued interest thereon and all payments made in respect thereof, (iii) all payments and prepayments of principal thereof and (iv) the Loan Repayment Amount with respect thereto, all as contemplated by the MLSA;

(b) determine the interest rate to be applicable to each Floating Rate Loan as of the beginning of each Loan Accrual Period, in accordance with the MLSA;

(c) promptly notify the Applicable Primary Dealer and Secured Party of any amounts received on securities which have matured and of any such amounts due but not paid;

(d) promptly notify Lender and the Applicable Primary Dealer of the release of any Collateral pursuant to Section 8.0 of the MLSA or pursuant to a Collateral Surrender;

(e) provide monthly reports to each Primary Dealer containing information with respect to the Loans, Loan Repayment Amounts and Collateral of each Applicable Borrower, in customary form and substance;

(f) provide monthly reports to each Primary Dealer setting forth the amounts to be distributed to such Primary Dealer in respect of principal of, and interest on, all Collateral of such Primary Dealer's Applicable Borrowers, in accordance with Sections 4.0 and 5.0 of the MLSA;

(g) in connection with Article VI paragraph 11, determine pricing of Collateral monthly;

(h) at the request of Secured Party, book the corresponding reserve and value of the Senior Loan Commitment (as defined in the Credit Agreement) and the option to sell Collateral Assets together with Related Recourse Rights (as defined in the Put Option Agreement) in accordance with the Put Option Agreement and the valuation model and formula provided by the Secured Party and as agreed upon by the parties;

(i) provide daily accounting reports, including trial balance, supporting schedules and accounting summary information to Secured Party not later than 8:00 a.m. on the next Business Day; in addition to the foregoing, on every Wednesday, provide the accounting summary information for that day (with detail for each line item included therein) to facilitate reporting of the Federal Reserve Statistical Release H.4.1., to Secured Party not later than 5:00 p.m. on such day;

(j) maintain daily accounting records and provide such other reports with respect to the Loans, Loan Repayment Amounts and Collateral as Secured Party shall reasonably request, as well as reports sufficient for Secured Party's accounting purposes with respect to the Administrative Fee and the Monthly Fee (as defined in the Put Option Agreement); and

(k) provide such other services as are contemplated by the MLSA and the Put Option Agreement or are reasonably incidental thereto to, and such other services in connection with TALF as the parties hereto shall from time to time agree.

## **ARTICLE V TALF COLLATERAL SCREENING AND REPORTING**

Custodian agrees to screen the eligibility of all assets to be delivered as Collateral for Loans pursuant to TALF, in accordance with procedures to be agreed upon from time to time by Secured Party and Custodian and in connection with the foregoing, Custodian shall:

(a) review the Offering Materials for securities intended to be included as Collateral, and such other information that has been and shall be agreed by Secured Party and Custodian, required for the purpose of determining whether any Collateral is Eligible Collateral, it being understood that Custodian shall not be entitled to rely solely on a certification by an issuer of asset-backed securities (or a sponsor of an asset-backed securities offering) as to the eligibility of such securities for inclusion as Collateral; *provided that* Custodian may rely on statements included in the Offering Materials to the extent such reliance is reasonable;

(b) review the certifications delivered to by the U.S. Small Business Administration (the “SBA”) relating to Development Company Participation Certificates and SBA Pool Certificates to confirm that such securities intended to be included as Collateral are identified by the SBA as Eligible Collateral;

(c) determine the Collateral Value and Market Value of each asset-backed security included (or intended to be included) in the Collateral, and, as applicable, adjust the weighted average life of the asset-backed securities based on a formula provided by Secured Party and apply such adjusted weighted average life to determine the Haircut Percentage and Haircut Amount;

(d) monitor the ratings assigned to Collateral by the nationally recognized statistical rating organizations, and promptly notify Secured Party of any changes to such ratings (including any difference between the expected rating and the actual rating of any New Acquisition Collateral);

(e) provide a report to Secured Party regarding the eligibility of any proposed Collateral and the Collateral Value attributable thereto; and

(f) such other services that the parties may reasonably agree to.

Secured Party (i) shall promptly notify Custodian of any changes to the TALF Standing Loan Facility Procedures, including but not limited to changes to the Eligibility Criteria specified therein and (ii) shall, upon request, consult with Custodian with respect to any of the matters described in this Article V as to which Custodian has reasonable grounds for uncertainty.



In connection with its activities pursuant to this Article V, Custodian shall not be liable for any Losses (as defined below) incurred by or asserted against Secured Party, except those Losses arising out of its negligence, fraud, bad faith or willful misconduct.

## **ARTICLE VI GENERAL TERMS AND CONDITIONS**

1. Standard of Care; Indemnification. (a) Except as otherwise expressly provided herein, and provided that the following shall not be construed to relieve Custodian and Administrator from its obligations to act in accordance with Written Instructions, neither Custodian nor Administrator shall be liable for any costs, expenses, damages, liabilities or claims including accountant's and attorneys' fees (collectively, "**Losses**") incurred by or asserted against Secured Party arising out of or in connection with the performance by Custodian and Administrator of their obligations under this Agreement or the MLSA, except those Losses arising out of their negligence, fraud, bad faith or willful misconduct. Neither Custodian nor Administrator shall have any obligation to Secured Party hereunder or in connection with the performance of their obligations under the MLSA for Losses which are sustained or incurred by reason of any action or inaction by the Book-Entry System or any Depository or issuer of securities. In no event shall Custodian or Administrator be liable for any special, indirect or consequential damages, or lost profits or loss of business, arising in connection with this Agreement.

(b) Secured Party agrees to indemnify Custodian and Administrator and hold each of them harmless from and against any and all Losses sustained or incurred by or asserted against either of them by reason of or as a result of any action or inaction, or arising out of their performance hereunder or under the MLSA (it being understood that any obligation of the Custodian and Administrator to provide pricing information under the Put Option Agreement is hereby covered pursuant to this paragraph), including reasonable fees and expenses of counsel incurred by either of them in a successful defense of claims by Secured Party; *provided* that the foregoing indemnity shall not apply (i) to any Losses arising out of the negligence, fraud, bad faith or willful misconduct of Custodian or Administrator, as applicable, (ii) to the extent Secured Party is harmed by Custodian's or Administrator's failure to provide reasonably prompt notice to Secured Party of any claim for which indemnification is sought, or (iii) if Custodian or Administrator make any admission of liability or incur any significant expense after receiving written notice of a claim, or agree to any settlement without the prior written consent of Secured Party, which consent shall not be unreasonably withheld. Secured Party may, in its sole discretion, and at its expense, control the defense of the claim including, without limitation, designating counsel for any indemnified party to control all negotiations, litigation, arbitration, settlements, compromises and appeals of any claim; *provided* that (i) Secured Party may not agree to any settlement involving any indemnified party that contains any element other than the payment of money and complete indemnification of such party without the prior written consent of the affected person and (ii) Secured Party shall engage and pay the reasonable expenses of separate counsel for the indemnified party to the extent that the interests of such party are in

conflict with those of Secured Party. This indemnity shall be a continuing obligation of Secured Party, its successors and assigns, notwithstanding the termination of this Agreement or the MLSA. Without limiting the foregoing, Custodian and Administrator shall be indemnified by Secured Party (to the extent set forth in the preceding sentence) with respect to any action taken in response to any Written Instruction actually received by either of them and reasonably believed to have been duly authorized and delivered by Secured Party. Custodian and Administrator shall be entitled to rely on any representations, statements or information it receives from the parties hereto or their designee, legal counsel and independent accountants in connection with this Agreement (collectively, "**Statements**") and shall not be liable hereunder if Custodian or Administrator relies on Statements provided that such reliance is reasonable.

(d) To the extent permitted by applicable law, no party shall assert, and each hereby waives, and no party shall have any indemnity obligation with respect to, any claim against any other party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, or the transactions contemplated hereby.

2. No Obligation Regarding Quality of Collateral. Without limiting the generality of the foregoing, neither Custodian nor Administrator shall be under any obligation to inquire into, and shall not be liable for, any losses incurred by Secured Party or any other person as a result of the receipt or acceptance of fraudulent, forged or invalid Collateral which otherwise is not freely transferable or deliverable without encumbrance in any relevant market.

3. Advice of Counsel. Custodian and Administrator may, with respect to questions of law relating specifically to the Collateral Accounts, 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.

4. No Collection Obligations. Neither Custodian nor Administrator shall be under any obligation to take action to collect any amount payable on Collateral in default, or if payment is refused after due demand and presentment.

5. Fees and Expenses. Secured Party agrees to pay the fees to Custodian and Administrator on Schedule 1. Custodian and Administrator acknowledge that the fees on Schedule 1 are the only fees payable.

6. Effectiveness of Written Instructions; Reliance. Custodian shall be entitled to rely upon any Written Instructions actually received by it and reasonably believed by Custodian to be duly authorized and delivered.

7. Recording of Telephone Conversations. The parties hereto acknowledge that telephone conversations made in connection with this Agreement may be recorded.

8. Inspection. Upon reasonable notice, Custodian and Administrator agree to afford Secured Party reasonable access during normal business hours to make examinations of the

Records (as defined below) and to cause its personnel to assist in any such examinations of such records and allow copies of such records to be made. Such examinations will be conducted in a manner which does not unreasonably interfere with the normal operations or employee relations of Custodian or Custodian. Custodian and Administrator shall, at Secured Party's request, supply Secured Party with a tabulation of securities held by Custodian in connection with this Agreement and the MLSA and shall, when requested to do so by Secured Party, include certificate numbers in such tabulations. In addition, at the request of Secured Party, Custodian will meet with one or more of Secured Party's directors or designated staff at a mutually agreeable time to discuss matters that fall within the scope of this engagement.

Except as otherwise directed by Secured Party or Administrator, for the term of this Agreement, Custodian shall keep and retain and make easily accessible all information, materials and records (collectively, "**Records**") in whatever format which it has or which comes into its possession in connection with the transaction and the services provided under this Agreement, in each case to the extent consistent with Custodian's internal records and maintenance and records retention policy; *provided* that prior to any destruction of any Records by Custodian in accordance with such policy, Custodian shall notify Secured Party and Administrator and provide Secured Party and Administrator with an opportunity to take possession of such Records from Custodian. Upon the termination of this Agreement or its services hereunder, Custodian and Secured Party shall, in good faith, agree on the timing and mechanism for transferring all Records to Secured Party. In transferring such Records, Custodian shall provide a certificate of an officer certifying as to whether (a) it has kept and retained the Records in accordance with the requirements set forth herein and (b) the Records being transferred represent all of the Records that have not been previously delivered or destroyed in compliance with this paragraph. Notwithstanding the foregoing, Custodian may make and retain copies of Records to satisfy existing internal audit, compliance or record retention requirements; *provided* that the certificate of the officer includes information as to the copies of Records that it is retaining.

9. Confidentiality. Custodian and Administrator agree to keep confidential all non-public information provided to it by the Secured Party or any other Person pursuant to or in connection with this Agreement or the MLSA; *provided* that nothing herein shall prevent Custodian or Administrator from disclosing any such information: (i) to its employees, directors, agents, attorneys, accountants and other professional advisors or those of any of its affiliates who have a need to know such information (collectively, their "**Representatives**"), (ii) in response to any order, subpoena or other form of legal process issued by any court, administrative, legislative, regulatory or governmental body, or by the Special Inspector General of the Troubled Asset Relief Program to the extent such order, subpoena or other legal process is authorized by the Emergency Economic Stabilization Act of 2008 (Pub. L. 110-343, enacted October 1, 2008) ("**EESA**") or by other applicable law, or by any other person purporting to have authority to subpoena or otherwise request such information, or as otherwise required by law, (iii) that has already been publicly disclosed other than by Custodian or Administrator or any of their Representatives in violation of this paragraph or if agreed to by Secured Party in its sole discretion, (iv) that the United States Department of the Treasury determines is required to be disclosed under EESA, or (v) if necessary to enforce their rights and remedies under this Agreement or the MLSA; *provided, further* that pursuant to clauses (ii) and (iv) above, prior to any disclosure of such information, Custodian or Administrator shall notify Secured Party,

unless legally prohibited from doing so, of any proposed disclosure as far in advance of such disclosure as practicable so that Secured Party may seek a protective order or other appropriate remedy, and, upon Secured Party's written request, Custodian or Administrator shall take all reasonable actions to ensure that any information disclosed shall be accorded confidential treatment. Each of Custodian and Administrator further agrees that it shall be responsible for compliance by each of its Representatives and that their Representatives will be bound by the terms of this paragraph.

10. Force Majeure. Custodian and Administrator shall be responsible for maintaining and preserving their operations, facilities and systems (including their computer and communication systems) in a manner consistent with commercial and supervisory standards prevalent in its industry. Custodian and Administrator agree that they shall enter into and shall maintain in effect, at all times during the term of this Agreement, with appropriate parties one or more agreements making reasonable provision for (i) periodic back-up of computer files and data with respect to any accounts held by it and (ii) emergency use of electronic data processing equipment to provide services under this Agreement. So long as Custodian and Administrator shall have complied with the foregoing maintenance or preservation requirements and provided that any delay or failure to take such action as may be required under this Agreement could not be prevented by the exercise of reasonable diligence by Custodian or Administrator, neither Custodian nor Administrator shall be liable for any delay or failure to take any action as may be required under this Agreement to the extent that any such delay or failure is 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 service; accidents; labor disputes; acts of civil or military authority or governmental actions; it being understood that Custodian or Administrator, as applicable, shall use its best efforts to resume performance as soon as practicable under the circumstances. Custodian and Administrator shall provide Secured Party with written notice of failure or delay to take action as may be required under this Agreement.

11. Pricing; Services. Custodian and Administrator shall determine Market Price of asset-backed securities monthly. Custodian and Administrator may rely on data supplied by third parties ("**Third Party Data**"), such as pricing data and indicative data. Third Party Data supplied hereunder are obtained from sources that Custodian and Administrator believe to be reliable but are provided without any independent investigation by Custodian or Administrator. Custodian and Administrator do not represent or warrant that the Third Party Data are correct, complete or current. CUSTODIAN AND ITS SUPPLIERS ARE NOT RESPONSIBLE FOR ANY RESULTS OBTAINED FROM THE USE OF OR RELIANCE UPON THIRD PARTY DATA.

12. Use of BNY Affiliates and Sub-Vendors. Custodian and Administrator may enter into subcontracts, agreements and understandings with any BNYM Affiliate, whenever and on such terms and conditions as it deems necessary or appropriate to perform its services hereunder. No such subcontract, agreement or understanding shall discharge Custodian or Administrator from its obligations hereunder. With Secured Party's prior written consent, Custodian and Administrator may enter into subcontracts and agreements with sub-vendors to perform its

services under paragraphs (a) through (j) of Article IV and paragraphs (a) through (e) of Article V; provided that no such subcontract or agreement shall discharge Custodian or Administrator from its obligations hereunder.

13. No Implied Duties. Neither Custodian nor Administrator shall have any duties or responsibilities whatsoever except such duties and responsibilities as are specifically set forth in this Agreement and in the MLSA, and no covenant or obligation shall be implied against either of them in connection with this Agreement. Neither Custodian nor Administrator has entered into, and until the termination of this Agreement will not enter into, any agreement with any person (other than Secured Party) relating to the Collateral Accounts and/or any financial asset held thereto pursuant to which it has agreed, or will agree, to comply with the entitlement orders of such person.

14. Custodian and Administrator Not Required to Use Own Funds. Each of Custodian and Administrator shall not be required to risk or expend its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it.

## **ARTICLE VII REPRESENTATIONS AND WARRANTIES**

1. Secured Party, Custodian and Administrator Representations and Warranties. Secured Party, Custodian and Administrator each represents and warrants, which representations and warranties shall be deemed to be repeated on each day on which a Loan is outstanding, that:

(a) 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 Agreement and to perform all of the duties and obligations to be performed by it hereunder;

(b) This Agreement is 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

(c) The Person executing this Agreement on its behalf has been duly and properly authorized to do so.

2. Further Custodian Representations and Warranties. Custodian further represents and warrants, which representations and warranties shall be deemed to be repeated on each day on which a Loan is outstanding, that:

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

- (b) It maintains securities accounts at a Book-Entry System and a Depository.

**ARTICLE VIII  
MISCELLANEOUS**

1. Termination. This Agreement shall terminate upon not less than ninety (90) days prior written notice of termination from Secured Party, Custodian or Administrator to the other parties; *provided* that no termination of this Agreement by Custodian or Administrator shall be effective until Secured Party shall have appointed a successor Custodian or Administrator; *provided further*, that if Secured Party shall fail to appoint a successor Custodian or Administrator within ninety (90) days after notice of termination from Custodian or Administrator, then Custodian or Administrator may petition any court of competent jurisdiction for the appointment of a successor Custodian or Administrator; *provided further* that Secured Party may at any time (i) substitute another bank or trust company for Custodian or Administrator by giving notice as described above to Custodian or Administrator, or (ii) immediately terminate this Agreement in the event of the appointment of a conservator or receiver for Custodian or Administrator or upon the happening of a like event at the direction of an appropriate regulatory agency or court of competent jurisdiction.

2. Notices. (a) Any notice or other instrument in writing, authorized or required by this Agreement to be given to Custodian or Administrator, shall be sufficiently given if addressed to Custodian and received by it at its offices at QSR Administration, 101 Barclay Street, 4E, New York, NY 10286, or at such other place as Custodian may from time to time designate in writing.

(b) Any notice or other instrument in writing, authorized or required by this Agreement to be given to Secured Party shall be sufficiently given if addressed to Secured Party and received by it at its offices at the address provided below, or at such other place as Secured Party may from time to time designate in writing.

Federal Reserve Bank of New York  
TALF Program Officer  
33 Liberty Street New York, New York 10045  
Attention: §  
Telephone:  
Email:

3. Cumulative Rights; No Waiver. Each and every right granted to any party hereunder or under any other document delivered hereunder or in connection herewith, or allowed it by law or equity, shall be cumulative and may be exercised from time to time. No failure on the part of any party to exercise, and no delay in exercising, any right will operate as a waiver thereof, nor will any single or partial exercise by any party of any right preclude any other future exercise thereof or the exercise of any other right.



4. Severability; Amendments; Assignment. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected thereby. This Agreement may not be amended or modified in any manner except by a written agreement executed by the parties hereto. This Agreement shall extend to and shall be binding upon the parties hereto, and their respective successors and assigns; *provided* that this Agreement shall not be assignable by any party without the prior written consent of the other parties.

5. Governing Law; Jurisdiction; Jury Trial Waiver; Waiver of Immunity. (a) This Agreement shall be construed in accordance with the laws of the State of New York. In connections with its activities hereunder (including as a securities intermediary), the State of New York shall be deemed to be Custodian's jurisdiction for purposes of the UCC (including, without limitation, Section 8-110 thereof).

(b) Each party hereby irrevocably and unconditionally:

(i) submits for itself and its property in any legal action or proceeding relating to this Agreement, or for recognition and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of the courts of the United States for the Southern District of New York, and appellate courts thereof; *provided* that notwithstanding the foregoing, if there is no basis for federal jurisdiction in respect of any such legal action or proceeding or recognition and enforcement action, then each party submits for itself and its property in any such legal action or proceeding or recognition and enforcement action to the exclusive jurisdiction of the courts of the State of New York located in the Borough of Manhattan in New York City, and appellate courts thereof;

(ii) consents that any such action or proceeding may be brought only in such courts and waives, to the maximum extent not prohibited by law, any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(iii) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid return receipt requested, to Secured Party, Custodian or Administrator, as the case may, at its address in each case as set forth in Article VIII or at such other address of which the parties hereto shall have been notified pursuant thereto;

(iv) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law;

(v) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in another jurisdiction by suit on the judgment or in any other matter provided by law;

(vi) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding any special, indirect, exemplary, punitive or consequential damages of any kind whatsoever (including for lost profits); and

(vii) waives trial by jury in any legal action, proceeding, suit, counterclaim or cross claim arising in connection with or out of, or otherwise relating to this Agreement, the MLSA, the Collateral, or any transaction or agreement related thereto.

6. No Third Party Beneficiaries. In performing hereunder, Custodian and Administrator are acting solely on behalf of Secured Party, and no contractual or service relationship shall be deemed to be established hereby between either of them and any other person.

7. Headings. Section headings are included in this Agreement for convenience only and shall have no substantive effect on its interpretation.

8. Counterparts. This Agreement 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.

9. USA PATRIOT ACT. Secured Party hereby acknowledges that Custodian and Administrator are subject to federal laws, including the Customer Identification Program (CIP) requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which Custodian must obtain, verify and record information that allows Custodian to identify Secured Party. Accordingly, prior to the establishment of the Collateral Accounts hereunder Custodian and Administrator will ask Secured Party to provide certain information including, but not limited to, Secured Party's name, physical address, tax identification number and other information that will help them to identify and verify Secured Party's identity such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information. Secured Party agrees that Custodian cannot open the Collateral Accounts hereunder unless and until Custodian verifies Secured Party's identity in accordance with its CIP.

10. Internal Controls. Custodian shall provide its relevant SAS-70 reports to Secured Party on an annual basis, along with quarterly attestations that pertinent controls remain in place, and such Sarbanes-Oxley sub-certifications as are customarily provided by Custodian to its other customers similarly situated.

*[signature pages follow]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers, thereunto duly authorized, as of the day and year first above written.

FEDERAL RESERVE BANK OF NEW YORK,  
as Secured Party 

THE BANK OF NEW YORK MELLON,  
as Custodian

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

THE BANK OF NEW YORK MELLON, as  
Administrator

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

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers, thereunto duly authorized, as of the day and year first above written.

FEDERAL RESERVE BANK OF NEW YORK,  
as Secured Party

THE BANK OF NEW YORK MELLON,  
as Custodian

THE BANK OF NEW YORK MELLON, as  
Administrator



**THE BANK OF NEW YORK MELLON**

**Pricing for Custodial and Administrative Services**

**Transaction Acceptance Fee**

**Transaction Set-up**

**\$waived**

*This encompasses the following services:*

- *Review, negotiation, and execution of governing agreements and supporting documentation*
- *Establishment of custody accounts, technology platform and system permissions.*

**Ongoing Fees**

**For administrative and custodial services described in this Collateral Custody and Administration Agreement and the MLSA, the product sum of:**

<b>\$0 – 20,000,000,000</b>	<b>0.850 bpts</b>
<b>\$20,000,000,001 - \$40,000,000,000</b>	<b>0.350 bpts</b>
<b>\$40,000,000,001 - \$80,000,000,000</b>	<b>0.125 bpts</b>
<b>\$80,000,000,001 and up</b>	<b>0.100 bpts</b>

**Note: a monthly minimum of \$35,000 will be required;**

*This fee is payable monthly in arrears and is based on the outstanding aggregate unpaid principal balance of the Collateral as defined in the MLSA and covers all duties anticipated in the governing Collateral Custody and Administration Agreement and the MLSA.*