



# State of North Carolina

OFFICE OF THE COMMISSIONER OF BANKS

## AGREEMENT TO DEPOSIT SECURITIES IN LIEU OF A SURETY BOND

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, a licensee under the North Carolina Money Transmitters Act (herein the "Licensee"), the North Carolina Office of the Commissioner of Banks (herein the "Commissioner"), and \_\_\_\_\_ (herein the "Custodian").

WHEREAS the Licensee has applied for a license to engage in business as a money transmitter under the North Carolina Money Transmitters Act, Article 16B of Chapter 53 of the North Carolina General Statutes, Session Law 2016-81 (herein the "Act"); and

WHEREAS, in lieu of providing a surety bond, Licensee may deposit with the Commissioner, or with any bank in North Carolina, designated by the licensee and approved by the Commissioner, an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the surety bond or portion thereof, the following:

- Unencumbered cash;
- Unencumbered interest-bearing bonds;
- Unencumbered notes;
- Unencumbered debentures;
- Unencumbered obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States;
- Unencumbered obligations of this State or of any political subdivision of the State, or guaranteed by this State.

The securities or cash shall be deposited as stated above and held to secure the same obligations as would the surety bond.

WHEREAS the Licensee has elected to deposit cash and securities with the Custodian in lieu of providing a surety bond; and

WHEREAS the Custodian has agreed to be a repository for the cash and securities deposited by the Licensee, and to administer the same pursuant to the Act and this Agreement; and



2. The Licensee may, with written approval from the Commissioner, substitute different securities for those earlier deposited.

3. The Custodian shall hold and preserve all cash and securities deposited with it by the Licensee as a special deposit, free of any lien, charge, right of set-off, credit or other preference in connection with any claim of the Custodian against the Licensee. Pursuant to N.C. Gen. Stat. § 53-208.47(i), the cash and securities deposited with the Custodian shall constitute a trust fund for the exclusive benefit of any purchaser or holder of the Licensee's outstanding payment instruments, stored value obligations, and money transmissions, in the event of the bankruptcy of the Licensee.

4. The Licensee is entitled to receive all of the interest and dividends earned on the cash or securities deposited with the Custodian unless or until the Custodian receives written notice to the contrary from the Commissioner. The Custodian shall deliver the cash and securities deposited under this Agreement to the Licensee only upon written direction from the Commissioner.

5. The Custodian may terminate this Agreement only upon ninety days (90) written notice to the Commissioner and the Licensee. Upon termination, the Custodian shall deliver the cash and securities held on deposit to such person or persons as the Commissioner and Licensee may jointly direct.

6. The costs and expenses of the Custodian's performance under this Agreement shall be paid by the Licensee in such amounts as may be agreed to between the Custodian and the Licensee. Neither the Commissioner, nor the State of North Carolina, shall be required to pay for any expenses incurred or services rendered either by the Custodian or the Licensee hereunder.

7. Upon a determination by the Commissioner that the Licensee has breached its obligations under the Act with respect to the receipt, handling, transmission and payment of money or monetary value in connection with the sale or issuance of payment instruments, stored value obligations, or transmission of money, the Custodian shall, upon the written direction of the Commissioner, sell or otherwise dispose of any securities deposited hereunder and convert the same into cash and pay and deliver any securities in cash, or proceeds, to the Commissioner or such other person or persons as the Commissioner may direct.

8. Except as provided in Paragraph 7 above, the Custodian shall not deliver any cash or securities deposited hereunder to any person, entity, or authority not a party to this Agreement unless ordered to do so by a court of competent jurisdiction. The Custodian shall give prompt written notice to the Commissioner and the Licensee of any demand or claim relating to or made upon the cash and securities deposited under the terms of this Agreement made by any person, entity or authority not a party to this Agreement.

9. The Custodian shall make written reports to the Commissioner, at such times as the Commissioner may direct in writing, setting forth the types and values of the securities held under this Agreement, at the lower of principal amount or market value.

10. All approvals, notices, directions and reports shall be mailed or delivered to the appropriate party hereunder at the address which appears in this Agreement, or at such other address as the party may have provided in writing to the other parties.

11. This Agreement is governed by the laws of the State of North Carolina, and may not be modified except by writing executed by all parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

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

\_\_\_\_\_  
Licensee (print name)  
By: \_\_\_\_\_  
Signature  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

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

\_\_\_\_\_  
Custodian (print name)  
By: \_\_\_\_\_  
Signature  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

\_\_\_\_\_  
Commissioner of Banks or Designee (print name)  
By: \_\_\_\_\_  
Signature  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_