## SETTLEMENT AND MUTUAL RELEASE A GREEMENT

This Settlement and Mutual Release Agreement ("Agreement") is made and entered into as of May 14, 2013 ("Effective Date"), by and between The State Treasurer of the State of South Carolina (the "Treasurer"), the Attorney General of the State of South Carolina, (the "Attorney General"), and The Bank of New York Mellon Corporation and The Bank of New York Mellon (together, "BNYM"). From time to time in this Agrsement, the foregoing are each referred to herein individually as a "Party" and collectively as "Parties." This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the action captioned The State Treasurer of the State of South Carolina and the Attorney General of the State of South Carolina for the State of South Carolina v. The Bank of New Yorn Mipllon Corporation and The Bank of New York Mellon, fl/ka The Bank of New York, Case No, 2011-CP.40-00533 (the "Litigation") and the claims, counterclaims and affirmative defenses asserted therein, upon and subject to the terms and conditions hereof.

WHEREAS, the Treasurer and BNYM entered into that certain Securities Lending Agreement and Guaranty dated March 24, 2000, as amended from time to time ("SLA");

WHEREAS, on January 26, 2011, the Treasurer filed a complaint in the Court of Common Pleas for the Fifth Judicial Circuit in the State of South Carolina asserting claims against BNYM relating to the SLA ("Complaint");

WHEREAS, the Complaint was subsequently amended to add the Attorney General of the State of South Carolina as a party Plaintiff;

WHEREAS, the claims in the Complaint concerned BNYM's actions relating to funds in the Treasurer's Collateral Reinvestment Accounts;

WHIRREAS, BNYM has denied any and all allegations and liability asseried in the Complaint and tue Litigation and has denied any breach of the SLA or breach of any of its duties under the securities lending program;

WHEREAS, the Treasurer and the Attorney General on the one hand and BNYMi on the other believe that each may have claims, cross claims, counterclaims, and defenses against each other arising out of and relating to the Litigation;

WHEREA 3 , on Decernber 15,2011, the Treasurer's office had issued a solicitation for a Master Custody Bank and Securities Lending Services for the benefit of the Treasurer's Office, the South Carolina Retirement System Investment Commission and the South Carolina Public Employee Benefit Adminisiration;

WHEREAS, prior to entering settlement negotiations, the evaluation committee evaluating the responses to the Solicitation for a Master Custody Bank and Securities Lending Services had determined that the Bank of New York. Mellon was the highest ranked responsive offeror who had responded to the Treasurer's Solicitation dated December 15 ,
2011;

WHEREAS, the Bank of New York Mellon and other offerors had previously updated their proposals and submitted "Best and Final Offers". on pricing pursuant to that solicitation and the Evaluation Committee had determined, after receipt of the "Best and Final Offers" that the Bank of New York Mellon's wroposal would be most advantageous to the State;

WHEREAS, Treasurer's Office determined that inclucing and seeking additional fee credits and reductions, as well as other consideration to supplement those proposed by the Bank of New York Mellon might afford the State the ability to contract with the Bank of New York Mellon for the desired services in accord with the Sclicitation and Froposal and by doing so The Treasurer's Office might achieve a more advantagecus outcome for the State in the pending litigation and in the Procurement;

WHEREAS, the Parties engaged in good faith negotiations in an effort to rasolve the litigation between the parties in light of the Treasurer's desire to contract with the highest ranked proposer and to also resolve the pending litigation between the Treasurer and Attorney General on the one hand and the Bank of New Yorl Mellon on the other;

WHEREAS, to avoid the expense and uncertainty arising from further litigation, and the State's desire to contract with the highest ranked responsive offeror, the Farties now desire fully and finally to settle, resolve and terminate any and all past, prosent and future disputes between the Parties, relating to or arising out of the SLA and the Litigation;

WHEREAS, the settlement benefits, inciuding payments made, future credits, discounts and training provide substantial value to South Carolina considerably in excess of the cash payments made; and,

WHEREAS, in the Litigation, the Aitomey General is a party plaintiff representing the interests of the State of South Carolina, including its governmental subdivisions, and enters into this settlement as Chief Legal Officer of the State.

NOW THEREFORE, in consideration of the mutual promises contrined herein and for other valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## 1. Consideration.

1.1. As scon as reasonably possible following the Effective Date, the Treasurer shall, for a period of not less than ten (10) years, engage BNYM to provide the Treasurer and the State of South Carolina with custodial services as set forth under BNYM's proposal submitted to the Treasurer on or about January 2012 (and as later updated through the date of this agreement) in response to the Treasurer's Request For Proposel for custodial services; provided, hoysver, if, in connection with such custodial services, the assets under custody in South Carolina's HedgeMark Dedicated Managed Accounts ("HeigeMark") are equal to or greater than $\$ 3$ billion, then the Treasurer shall be entitled to an annual credit equal to twenty percent (20\%) of BNYM's annual custodial fees. The proposed annual custodial fees for sorvices to the Treasures's Office, Retirement System

Investment Commission and Public Employee Benefit Authority to which this credit shall apply total approximately Two Million Six Hundred Thousand dollars per annum and are detailed in the attached Exhibit B.
1.2. As soon as reasonably possible following the Effective Date, the Treasurer shall, for a period of not less than ten (10) years, engage BNYM to provide the Treasurer and the State of South Carolina with securities lending services under the terms set forth in BNYM's proposal submitted to the Treasurer in response to the Treasurer's Request For Proposal for securities lending services; provided, however, in connection with such securities lending services, revenue shall be split $90 \%$ to South Carolina and $10 \%$ to BNYM upon such engagement. The Parties agree and acknowledge that the Treasurer and the Retirement System Investment Commission, as appropriate, may establish guidelines on the reinvestment of cash collateral that are mandatory pursuant to the Solicitation and Proposal and that the Retirement System Investment Commission may independently determine the scope, extent and investment guidelines of its participation in Securities Lending, if at all.
1.3. In connection with the foregoing engagements, the Treasurer shall, for a period of not less than ten (10) years, contract with HedgeMark Platform Services at a discounted rate equal to eighty percent ( $80 \%$ ) of the fees as shown on the attached Schedule A. The Treasurer intends to consolidate as many assets as possible on the BNYM custodial platform and the HedgeMark platform. BNYM agrees to facilitate meetings between BNYM, HedgeMark and representatives of the Retirement System Investnent Commission to brief them on the HedgeMark platform and the berefits that it will provide to the Commission and to the State.
1.4. BNYM shall, for a period of not less than ten (10) years, provide the Treasurer with a credit of $\$ 150,000$ per year to be used for the training of staff and employees of the offices of the State Treasurer, Retirement System Investment Commission and Public Employee Benefit Authority or their respective successors. The Treasurer's office shall coordinate the training provided under the credit. This credit shall be useable to supplement training provided by BNYM to all of its custody and platform clients and not in lieu of training provided under the contract for new product offerings and regular products and services.
1.5. Within ten (10) busiiness days after the Effective Date but in no event prior to the satisfaction by the Treasurer of the requirements set forth in Paragraph 3.1, BNYM shall cause an aggregate amount of $\$ 25$ million to be credited to the Treasures's cash collateral held in the BNYM custodial accounts of the State Treasurer and the South Carolina Retirement System Investment Commission in zmounts in the following amounts:

To the Collatersl Keinvestment Account of the State Treasurer's office:
Four Million Nine Hundred Sixty Tiousand Six Hundred Twenty Four and 10/100 Dollars ( $\$ 4,960,624.10$ )

To the Collateral Reinvestment Account of the South Carolina Retirement System Investment Commission:

Twenty Million Thirty Nine Thousand Three Hundred Seveniy Five and 90/100 Dollars (\$20,039,375.90)
1.6 Within ten (10) business days after the Effective Date but in no event prior to the satisfection by the Treasurer of the requirements set forth in Pragraph 3.1, BNYM shall wire the sum of $\$ 9$ million to Counsel's accounts in the amounts set forth below:
a. Montgomery Willard, LLC

Amount: Two Million Six Thousand Seven Hundred Twenty-Five Dollars ( $\mathbf{\$} 2,006,725.00$ )
b. Willoughby 免 Hoefer, P.A.

Amount: Six Million Nine Hundred Ninety-Three Thousand Two Hundred Seventy-Five Dollars (\$6,993,275.00)

This negotiated payment shall fully and finally satisfy all claims of Plaintiffs' counsel for payment of fees and costs from the Farties and/or their affiliates.
2. Mutual Release and Covenant Not To Sue.
2.1. Upon execution of this Agreement, the Treasurer and Attomey General, on behalf of themselves and on behalf of the State of South Carolina, and by and for each of their past, present, and future parents, subsidiaries, affiliates, predecessors, successors, assigns, fiduciaries, employee benefit plans, trustees, officers, directors, employees, agents, representatives, attomeys, and all other persons acting (or who at the peatinent time were acting) for then (collectively, the "South Carolina Paries"), does hereby forever release, discharge, and covenant not to sue BNYM and each of their respective past, present, and future parents, subsidiaries, affiliates, predecessors (including without limitation, The Baikk of New York Miellon and the Bank of New York), successors, assigns, officers, directors, employees, agents, representatives, attomeys, and all other persons acting (or who at the pertinent time were acting) for them ("BNYM Parties") from any and all actions, causes of action, suits at law or in equity, complaints, proceedings, claims, counterclaims, cross-claims, obligations, demands, dues, debts, damages, liabilities, liens, costs, and expenses (including, without limitation, attomeys' fees), whether asserted or unesserted, whether known or unknown, whether due or to become due, and of any kind or nature, in law, equity, or otherwise, which the South Carolina Parties have or may have had against such entities based on any events or circumstances arising or occurring on or prior to the Effective Date, arising directly or indirectly out of, relating to, or in any other way involving in any manner whatsoever, the SLA, Complaint or the Litigation, and all claims arising under federal, state, or local laws relating thereto, provided, however,
notwithstanding anything to the contrary set forth herein, that this release shall not extend to any obligation assumed under this Agreement by any Party hereto.
2.2. Upon execution of this Agreement, BNYivi Paries, do hereby release and forever discharge the South Carolina Parties, from any and all actions, causes of action, suits at law or in equity, complaints, proceedings, claims, counterclaims, crossclaims, obligations, demands, dues, debts, damages, liabilities, liens, costs, and expenses (including, without limitation, attorneys' fees), whether asserted or unasserted, whether known or unknown, whether due or to become due, and of any kind or nature, in law, equity, or otherwise, arising directly or indirectly out of, relating to, or in any other way involving in any manner whatsoever, the SLA, Complaint or the Litigation, and all claims arising under federal, state, or local laws relating thereio, provided, however, uotwithstanding anything to the contrary set forth herein, that this release shall not extend to any obligation assumed under this Agreement by any Paity hereto.
2.3. In connection with the waiver and release of claims set forth in this Agreement, each Party acknowledges that it is aware that it may discover facts in addition to or different from those that it may now know or believe to be true with respect to the subject matter hareof. Nonetheless, it is the intention of each Party to hereby fully, finally, and forever, settle and release all of the claims as set forth in Paragraphs 2.1 and 2.2 herein and that, in furtherance of such intention, the waiver and releases given herein will be and remain full and complete releases notwithstanding the discovery or existence of any such additional or different facts.
2.4. Other than the Litigation, none of the Parties (including any of the South Carolina Parties or the BNYM Parties) have, individually or collectively, filed, and agree not to initiate or cause to be initiated on their behalf, any complaint, charge, claim or proceeding against the Party before any local, state or federal agency, court or other body relating to, or in any other way involving in any manner whatsoever, the SLA (each, individually, a "Proceeding"), and agrees not to participate voluntarily in any Proceeding. The Parties waive any right they may have to benefit in any manner from any relief (whether monetary or otherwise) arising out of any Proceeding.

## 3. Dismissal Of The Litigation.

3.1. Within five (5) business days of the Effective Date, the Parties will execute and submit for approval by the Court a Consent Order dismissing the case with prejudice to all parties claims and counterclaims or file Stipulations of Dismissal in the Litigation, providing for the dismissal of all claims and counterclaims asserted therein, with prejudice, with each Party to bear its own attomeys" fees and costs.
3.2. Upon execution of this Agreement, and except as to rights and obligations set forth under this Agreement, the Parties agree not to pursue, and hereby waive their rights to, any appeal arising out of or relating to the Litigation.

## 4. Representations and Warranties.

4.1. Each Party represents, warrants, and agrees that it has the full right and authority to enter into this Agreement and that the person executing this Agreement on its behalf has the full right and authority to commit and to bind fully such Perty.
4.2. Each Party represents and warrants (a) that it has read and understands this Agreement, (b) that it has investigated the facts pertinent to this Agreement as it deumed necessary, (c) that it has bsen represented by legel counsel of its own choice in the negotiation and drafing of this Agreement and has executed this Agreement with the advice arid consent of such counsel, (d) that no other Party, nor any agent or attorney of any other Paxty, has made any promise, representation, or warranty whatsoever, express, implied, or statutory, not contained herein concerning the subject matter hereof to induce it to execute this Agreement, and (e) that it has not executed this Agreement in reliance on any promise, representation, or warranty not contained herein.

## 5. Public Statements.

5.1. Each of the Parties agree that, from and after the Effective Date, neither it, nor its attorneys, shall, except as psrmitted by Pazagraph 5.2 or otherwise required by law or regulation, (a) divulge to any person or entity the terms and conditions of this Agreement and/or the negotiations relating thereto, or (b) except as approved in accordance with Paragraph 5.3, mike any public statemeats concenaing, or otherwise publicize, the claims that are the subject matter hereof or have any discussions of such matters with any person or entity.
5.2. In the event that a Party receives a request to disclose this Agreement pursuant to the South Carolina Freedom of Information Act, such Party shall, as soon as reasonably practicable, but in any event before making such disclosure, provide written notification to the other Party that a request for such disclosure has been made.
5.3. Any public statements by either Party concerning, or that otherwise publicize, the litigation, claims, settlament or the subject matter of this Agreement or the Litigation shall be first submitted in writing to the other Party to be approved, in good faith, by such Party. However, the Treasurer may respond to gृuestions from and give verbal reports on the mafter rand its resclution to the Retiranent System Investment Coramission; the Budget and Controi Board; the State Legislature and other officinl administrative ard legislative bodies withoui prior notice to BNYMi.

## 6. Miscellaneous Provisions.

6.1. Effect of Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not sinuilar, nos shall such waiver constitute a continuing waiver.
6.2. Integration. This Agreement, including the exhibits appended hereto, constitutes the complete and entire understanding and agreement between the Treasurer and BNYM and supersedes any previous communications, representations, or agreements, oral or written, related to the subject matter of this Agreement, including without limitation the Binding Settlement Term Sheet between the Paries dated March 14, 2013.
6.3. Modifications. No modification, amendment, or waiver of any of the provisions contained in this Agreement, nor any future representation, promise, or condition in connection with the subject matter of this Agreement, shall be binding upon any Party unless made in writing and signed by the Parties. A waiver of any term or condition of this Agreement will not be deemed to be, and may not be construed as, a waiver of any other term or condition thereof. All amendments or modifications of this Agreement shall be binding upon the Parties despite any lack of additional consideration so long as the same shall be in writing and executed by the Parties hereto in accordance with the other terms of this Agreement regarding modifications.
6.4. No Assignment or Transfer of Claims. Each Party expressly warrants and represents that no portion of any claim that is the subject of the release provisions of this Agreement, has been, or will be, assigned or transferred by that Party to any person or corporation in any manner whatsocver, including by way of subrogation, operation of law or otherwise.
6.5. Consiruction. This Agreement shall be construed without regard to the Party or Parties responsible for its preparation and shall be deemed as prepared jointly by the Parties hereto. In resolving any ambiguity or uncertainty existing herein, the Paries agree that no consideration or weight shall be given to the identity of the Party drafting this document.
6.6. Severability. The Parties agree and acknowledge that if any provision of this Agreement is determined by a final judgment of a court of competent jurisdiction to be illegal or unenforceable, such determination shall not affect the balance of this Agreement, which shali remain in full force and effect and such invalid provision shall be deemed severable.
6.7. Notices. All notices required hereunder shall be in writing and shall be given first via email to the addresses noted below and then by personal delivery (which includes hand delivery or use of a reputable overnight delivery or mail service that provides evidence of receipt by the applicable Party to whom it is given) to the address set forth below, or at such other address as each Party hereto may direct by notice given in accordance with the terms and conditions of this paragraph. All
notices shall be deemed effective five (5) business days following personal delivery in accordance with this paragraph:

The Treasurer:
The Treasurer of the State of South Carolina
Atta: William J. Condon, Jr., General Counsel
1200 Senate Street, Wade Hampton Office Building, Columbia, SC 29201
E-mail address: Bill.Condon@sto.sc.gov
With a copy to:
The Attorney General of the State of South Carolina
Atn: John W. Miciutosh, Chief Depuiy Atiorney General
P.O. Box 11549

Columbia, SC 29211
E-mzil address: AGJWMCINTO@scag.gov
BNYM:
J. Kevin McCarthy

Executive Vice President and Deputy General Counsel
Global Head of Litigation and Regulatory Enforcement
BNYM
One Wall Street, $11^{\text {th }}$ Floor
New York, NY 10286
(212) 635-1193
kevin.mccarthy@bnymellon.com
6.8. All Terms Contractual. Each of the Parties hereto acknowledges and agrees that the terms of this Agreement are contractual and not merely recitals and are the result of negotiations between Parties of equal bargaining positions. All recitals are incorporated by zeference into this Agreement.
6.9. Successors and Assigns. This Agreement shall inure to the benefit of, and shall be binding upon, each Party's respective successors, assigns, affiliates, subsidiaries, parent companies, predecessors, divisions, operating companies, officers, directors, agents, employees, representatives, shareholders, investors, accountants, and attonneys, individually and in the capncity indicated.
6.10. Fees and Costs. Each Party shall bear its own attorneys' fees, expenses, and costs incurred in connection with the negotiation, drafting, sand performance of this Agreement.
6.11. Headings. Section and paragrapin headings are for convenience only and shall not be considered for any purpose in construing this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.


ATTORNEY GENERAL OF THR STATE OF SOUTH CAROLINA.

By:
Signature Redacted
Name: Alan M. Wilson
Title: Attorney General
Date: $424-13$

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

STATE IREASURER OTTHE STATE OF SOUTH CAROLINA

## By:

Name: Curtis M. Lofits, Jr.
Title: Treasurer
Date:

ATTORNEY GENERAL OF THE SIA'TE OF SOUTH CAROLINA

By:
Name: Alan Mi. Wilson
Title: Attorney General Date:




## EXHIBIT B

## CONTRACT SERVICES FOR

## State of South Carolina Retirement Syistems

## June Proposal

Doinestic Custody a Accouraing
\$260,000

- Core Bewioss including, but not limited to: safekeeping of assets, trade settement, income collection, cash processing, accounting, monthly raporting, manager raconcliations, corporate actions, proxy nofification, class action processing, regulatory reporing
- On-line Reporting (Workbench)
- Data !nteriace with $3^{\text {rd }}$ Pariy Providers (elready establizhed feeds)


## Global Custody \& Accounting

- Above fee for Dernestic Custody \& Accouning inciudes: up to $\$ 200$ million in active developea global markets \& the firat 1,000 developen globel markets transactions
- See attached tiers for any global assets. \& transactons over the above paramaters
$3^{\text {rd }}$ Pariy FX Transactions transaction
\$10
Daily Valuation
per
- Provides an audited NAV calculation on a dally basis

Private Investmant Support
$\$ 125,000$

- Frivate i base product
- Pivate i Advanced Analytics
- Private informani
- Private IO
- Dait Management
- Capital Call Management
- Document Mianagement
- Reconciliation Suppor

Performance \& Risk Anaiyitcs
$\$ 200,000$

- Monthly Returns to Sector Level
- Non-Lagged Parformanca
- Monthly Analytics
- Monthly Look-thru Analytics
- Dally Analytics
- Manager Return Reconcillations
- BNYMi Universe \& Charts
- Portiolio Lovel Attribution
- Totel Funci Atribution
- Daily Complianco
tucs
$\$ 16,000$
- TUCS can also be substituied for BiNY Mellon Universe \& Charis within the flat PRFRA tee

Daily Performance
$\$ 75,000$

Monthly Investor Analytics

- Onse pian - each aưditional plan $=\$ 10,000$
- Accese to Investor Analytics' fully interactive website
- Integratlon with BNY Mellon in ordier to aggregate positions into the IA Risk. Service
- Calculation of VaR arid other risk statistical analysis on a single plan, its portfolios and wo different reporting hierarchies
- Portiotio level correlations
- Liability modeling feature
- Custam markét model creadion tool
- Market strass and portiolio stress tools
- Historical raports

Dally investor Analytics \$230,000

- One plan - each additional plan $=\$ 15,000$
- Same access (except on a dally basis) as stated in the Monthiy Investor Anelytics Servics
$3^{\text {rt }}$ Party Lending
Out of Pocket Fees (stamp duty \& re-registation)
\$75,000 per iender
through
Data Interface with $3^{\text {nd }}$ Pary Providers (now feeds) passthrough
pass-

Indepencent Derivatives Valuation
\$50,000 (flat)

- Monthly independent yaluation for OTC derivatives utilizing third party vendors

ProxyEdge
\$2,500

- ProxyEdge Standard - ability to suppress all papar ballots, yoie across an enitre security as opposed to account by account, maintain SEC compliance

Exiended investment Tiransparency
$\$ 50,000$

- Normalize \& store diata
- Reporílng capabilities
- Once the produci is out of beta iesting mode and in production, the fee will increase to \$150,000

Eagle (Assets Under Management not in excess of $\$ 35$ bilion)

- Invesiment Data Hulb $\$ 380,000$
- Accounsing $\because$ \$250,000

TOTALS
\$2,077,500

## EXHIBIT B PART 2

## State of South Carolina Treasurer's Office Generai Account and LGIP

## June Proposal

Domestic Custody \& Accounting
\$125,000

- Core Services including, but not limited to: safekeeping of assets, tracle seülement, inconts collection, eash processing, acopuning, monthly reporting, manager reconcilletions, corporate actions, proxy notifisadion, class action processing, regulatory reporing
- On-line Repoiting (Workianch)
- Data Interface with $3^{\text {rd }}$ Pariy Providiers (aheady establishsd feeds)

Perfomance \& Risk Aintiytics
\$25,000

- Montưly Returne to Sector Level
- Mionthly Analytics
- Mionthly Look-thru Analytics
- Daily Anatyics
- Menager Refurt Reconciliations
- BNYM Univeree \& Charts
- Portolio Level Atirbution
- Total Fund Atribution
- Daily Complitance

Montrily Investor Analytics

- One plan - each additional plan $=\$ 10,000$
- Accass to Investor Analytics' fully interactive website
- Integration with BNY Mellon in order to aggregate posifions inio the IA Risk Sarvice
- Calculation of VaR and other risk statistical analysis on a single plan, its portfolios and two different reporting hierarchiss
- Portfolio leval correlations
- Liability modieling feature
- Custom market model creation tool
- Market stress and porifollo siress toois
- Historical reports

Coliateral Management System
\$250,000

| Transfer Agency Sarvicas* | $\$ 75,000$ | $\$ 75,000$ |
| :--- | ---: | ---: |
| TOTAL.s | $\$ 495,000$ |  |

