

## **AGREEMENT FOR BANKING SERVICES**

**THIS AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_ 2015, is by and between the City of Fort Lauderdale, a Florida municipality, (“City”), whose address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301-1016, and Wells Fargo Bank, N.A., a national banking association, (“Contractor” or “Company”), whose address and phone number are 200 S Biscayne Blvd, 14th Floor, Miami, FL 33131-2310, Phone: 305-789-4824, Fax: 305-789-4944, Email: lance.aylsworth@wellsfargo.com.

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the City and the Contractor covenant and agree as follows:

### **WITNESSETH:**

#### **I. DOCUMENTS**

The following documents (collectively “Contract Documents”) are hereby incorporated into and made part of this Agreement (Form P-0001):

- (1) Request for Proposal No. 745-11437, Banking Services, including any and all addenda, prepared by the City of Fort Lauderdale, (“RFP” or “Exhibit A”).
- (2) The Contractor’s response to the RFP, dated July 15, 2014, (“Exhibit B”).
- (3) The Contractor’s Commercial Account Agreement and Service Descriptions as revised (“Exhibit C”).

All Contract Documents may also be collectively referred to as the “Documents.” In the event of any conflict between or among the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. First, this Agreement (Form P-0001) dated \_\_\_\_\_, 2015, and any attachments.
- B. Second, Exhibit C
- C. Third, Exhibit B
- D. Fourth, Exhibit A

#### **II. SCOPE**

The Contractor shall perform the Work under the general direction of the City as set forth in the Contract Documents.

Unless otherwise specified herein, the Contractor shall perform all Work identified in this Agreement. The parties agree that the scope of services is a description of Contractor’s obligations and responsibilities, and is deemed to include preliminary considerations and

prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.

Contractor acknowledges and agrees that the City's Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

By signing this Agreement, the Contractor represents that it thoroughly reviewed the documents incorporated into this Agreement by reference and that it accepts the description of the Work and the conditions under which the Work is to be performed.

### **III. TERM OF AGREEMENT**

The initial contract period shall commence on October 1, 2015, and shall end on September 30, 2018. In the event the term of this Agreement extends beyond the end of any fiscal year of City, to wit, September 30th, the continuation of this Agreement beyond the end of such fiscal year shall be subject to both the appropriation and the availability of funds.

### **IV. COMPENSATION**

The Contractor agrees to provide the services and/or materials as specified in the Contract Documents at the cost specified in Exhibit B.

### **V. METHOD OF BILLING AND PAYMENT**

Contractor will apply City's Earnings Allowance to Contractor fees and expenses hereunder on a quarterly basis via Account Analysis. Contractor will invoice City for any amount by which Contractor's fees and expenses exceed City's accrued Earnings Allowance.

City shall pay Contractor within forty-five (45) days of receipt of Contractor's proper invoice, as provided in the Florida Local Government Prompt Payment Act. Bank may debit City's Master account for any properly invoiced amount that is not paid within such forty-five (45) day period.

### **VI. GENERAL CONDITIONS**

#### **A. Indemnification**

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval (not to be unreasonably withheld), and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities (collectively, "Losses"), including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any negligent act or omission or willful misconduct by the Contractor or by any officer, employee, agent, invitee, subcontractor, or sublicensee of the Contractor, except to the extent such Losses resulted directly or indirectly from the negligent act or omission or willful misconduct of City or its personnel. The provisions and obligations of this section shall

survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager, any sums due Contractor under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City. In no event will Contractor be liable for any indirect, special, consequential or punitive damages, whether or not the likelihood of such damages was known to Contractor, and regardless of the form of the claim or action or the legal theory on which it is based.

## **B. Intellectual Property**

Contractor will defend or settle, at its own expense, any claim or suit against City alleging that any such item furnished by Contractor infringes any patent, trademark, copyright, or trade secret. Contractor also will pay all damages and costs that by final judgment may be assessed against City due to such infringement and all attorney fees and litigation expenses reasonably incurred by City to defend against such a claim or suit. If any product(s) or service(s) furnished by Contractor become, or in Contractor's opinion are likely to become, the subject of a claim of infringement, Contractor will, at its option: (1) procure for City the right to continue using the applicable product or service; (2) replace the product(s) or service(s) with non-infringing product(s) or service(s) substantially complying with specifications; or (3) modify the product(s) or service(s) so it becomes non-infringing and performs in a substantially similar manner to the original product(s) or service(s); provided however, that Contractor is notified promptly in writing, and is given all necessary information and the authority required for the defense and settlement of any such suit or proceeding. In no event will Contractor be responsible for any settlement made by City without Contractor's written permission. Contractor shall have no liability for infringement based on (i) any unauthorized alteration or modification of the product(s) or service(s) by any party other than Contractor, (ii) use of the product(s) or service(s) in any manner other than as permitted under this agreement, (iii) use of the product(s) or service(s) in combination with any equipment or software not authorized by Contractor or reasonably intended for use with the product(s) or service(s), or (iv) Contractor's compliance with specific information or instructions provided to Contractor by City. In no event shall Contractor be liable for any indirect, special, incidental, punitive or consequential damages.

## **C. Termination for Cause**

The aggrieved party may terminate this Agreement for cause if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. The City Manager may also terminate this Agreement upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health or safety. The parties agree that if the City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to perform the Work to the City's satisfaction; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

**D. Termination for Convenience**

The City reserves the right, in its best interest as determined by the City, to cancel this contract for convenience by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. Contractor reserves the right, in its best interest as determined by Contractor, to cancel this contract for convenience by giving written notice to City at least ninety (90) days prior to the effective date of such cancellation. In the event this Agreement is terminated for convenience, Contractor shall be paid for any services performed to the City's satisfaction pursuant to the Agreement through the termination date specified in the written notice of termination. Contractor acknowledges and agrees that he/she/it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by Contractor, for City's right to terminate this Agreement for convenience.

**E. Cancellation for Unappropriated Funds**

The City reserves the right, in its best interest as determined by the City, to cancel this contract for unappropriated funds or unavailability of funds by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

**F. Insurance**

The Contractor shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the contract period. The following minimum insurance coverage is required. The commercial general liability insurance policy shall include the City of Fort Lauderdale, a Florida municipality, as an "additional insured."

The City of Fort Lauderdale shall be given notice 10 days prior to cancellation or modification of any required insurance that results in noncompliance with this Agreement. In the event that the insurer is unable to accommodate compliance with this notice requirement, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing and addressed to the Procurement Services Division.

The Contractor's insurance must be provided by an A.M. Best's "A-" rated or better financially sound insurance company authorized to issue insurance policies in the State of Florida, subject to review by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by the contractor that excludes coverage for work contemplated in this solicitation shall be deemed unacceptable, and shall be considered breach of

contract.

### **Workers' Compensation and Employers' Liability Insurance**

Coverage to apply for all employees at statutory limits in compliance with applicable state and federal laws.

Employer's Liability limits for not less than \$100,000 each accident; \$500,000 disease policy limit; and \$100,000 disease each employee must be included.

The Contractor, and its insurance carrier, waives all subrogation rights against the City of Fort Lauderdale, a political subdivision of the State of Florida, its officials, employees and volunteers for all losses or damages which occur during the contract and for any events occurring during the contract period, whether the suit is brought during the contract period or not. The City requires all policies to be endorsed with WC00 03 13 Waiver of our Right to Recover from Others or equivalent.

Any firm performing work on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute. For additional information contact the Department of Financial Services, Workers' Compensation Division at (850) 413-1601 or on the web at [www.fldfs.com](http://www.fldfs.com).

### **Commercial General Liability Insurance**

Coverage must be afforded under a policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury; Property Damage; and Personal and Advertising Injury
- \$1,000,000 each Operations
- Policy occurrence and \$2,000,000 aggregate for Products and Completed must include coverage for Contractual Liability and Independent Contractors
- City of Fort Lauderdale, a political subdivision of the State of Florida its officials, employees and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage in respects to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, or volunteers.

### **Automobile Liability Insurance**

Coverage must be afforded including coverage for all Owned vehicles, Hired, and Non-Owned vehicles for Bodily Injury and Property Damage of not less than \$500,000 combined single limit each accident.

In the event the Contractor does not own vehicles, the Contractor shall maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

**Professional Liability (Errors & Omissions) – “IF REQUIRED IN BID SPECS”**

Coverage must be afforded under a policy with limits not less than \$1,000,000 each claim and \$2,000,000 aggregate.

**G. Environmental, Health and Safety**

Contractor shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the Work. Contractor shall comply, and shall secure compliance by its employees, agents, and subcontractors, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of Contractor. Contractor shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the Work. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any industry or Contractor’s health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Work.

**H. Standard of Care**

Contractor represents that he/she/it is qualified to perform the Work, that Contractor and his/her/its subcontractors possess current, valid state and/or local licenses to perform the Work, and that their services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other qualified contractors under similar circumstances.

**I. Rights in Documents and Work**

Any and all reports and account statements provided or created in connection with this Agreement are and shall remain the property of City; and Contractor disclaims any copyright in such materials. In the event of and upon termination of this Agreement, any account statements prepared by Contractor shall become the property of City and shall be delivered by Contractor to the City’s Contract Administrator within seven (7) days following written request. Wells Fargo will retain all ownership and related rights in its intellectual property (including, but not limited to, systems, software and hardware, regardless of location or date of development) used or developed in connection with the products or services provided hereunder, now and hereafter.

**J. Audit Right and Retention of Records**

Subject to Contractor’s privacy policies, City shall have the right to audit the books, records, and accounts of Contractor and Contractor’s subcontractors that are related to this Agreement. Contractor shall keep, and Contractor shall cause Contractor’s subcontractors to keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of Contractor and Contractor’s subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do

so, Contractor or Contractor's subcontractor, as applicable, shall make same available at no cost to City in written form.

Contractor and Contractor's subcontractors shall preserve and make available, at reasonable times for examination and audit by City in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a minimum period of seven (7) years following the date of creation. If any audit of which Contractor has received express notice has been initiated and audit findings have not been resolved at the end of the retention period, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by a court of competent jurisdiction to be applicable to Contractor and Contractor's subcontractors' records, Contractor and Contractor's subcontractors shall comply with all requirements thereof; however, Contractor and Contractor's subcontractors shall violate no confidentiality or non-disclosure requirement of either federal or state law except to the extent required by binding order of any such court. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract.

**K. Public Entity Crime Act**

Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

**L. Independent Contractor**

Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of the Contractor. In providing such services, neither Contractor nor Contractor's agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

**M. Inspection and Non-Waiver**

Subject to Contractor's privacy policies, Contractor shall permit the representatives of CITY to inspect and observe the Work at all times.

The failure of either party to insist upon strict performance of any other terms of this Agreement or to exercise any rights conferred by this Agreement shall not be construed as a waiver of such party's right to assert or rely on any such terms or rights on any future occasion or as a waiver of any other terms or rights.

**N. Assignment and Performance**

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, Contractor shall not subcontract any portion of the work required by this Agreement, except as provided in the Schedule of Subcontractor Participation. However, notwithstanding the foregoing or any other provision of this Agreement, a contractual or other arrangement between the Contractor and another person or entity relating to the outsourcing of services or functions that are not specific to those provided to City under this Agreement ((for example, services which the Contractor makes available to applicable customers (including the City) generally) will not be deemed a "subcontract", "transfer" or "assignment" for any purpose under this Agreement, and the person or entity that is a party to such an arrangement with the Contractor will not be deemed a "subcontractor", "transferee" or "assignee" of the Contractor for any purpose under this Agreement. City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Contractor of this Agreement or any right or interest herein without City's written consent.

Contractor represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Contractor shall perform Contractor's duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Contractor's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

In the event Contractor engages any subcontractor or other third party in the performance of this Agreement, Contractor shall ensure that all of Contractor's subcontractors and/or third parties perform in accordance with the terms and conditions of this Agreement. Contractor shall be fully responsible for all of Contractor's subcontractors' and/or third parties' performance, and liable for any of Contractor's subcontractors' non-performance and all of Contractor's subcontractors' and/or third parties' acts and omissions. Contractor shall defend at Contractor's expense, counsel being subject to City's approval (not to be unreasonably withheld), and indemnify and hold City and City's officers, employees, and agents harmless from and against any claim, lawsuit, third party



action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of Contractor's subcontractors or third parties for payment for work performed for City by any of such subcontractors or third parties, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any negligent act or omission or willful misconduct by any of Contractor's subcontractors or third parties or by any of Contractor's subcontractors' or third parties' officers, agents, or employees, except to the extent such claim, lawsuit, third party action, fine, penalty settlement or judgment resulted directly or indirectly from the negligent act or omission or willful misconduct of City or its personnel. Contractor's use of subcontractors specifically in connection with this Agreement shall be subject to City's prior written approval, which approval City may revoke for cause upon reasonable advance notice to Contractor.

**O. Conflicts**

Neither Contractor nor any of Contractor's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's performance of its duties under this Agreement.

Contractor further agrees that none of Contractor's officers or employees engaged in the performance of this Agreement shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

**P. Schedule and Delays**

Time is of the essence in this Agreement. By signing, Contractor affirms that it believes the schedule to be reasonable; provided, however, the parties acknowledge that the schedule might be modified as the City directs.

**Q. Materiality and Waiver of Breach**

City and Contractor agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

Either party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a

provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**R. Compliance With Laws**

Contractor shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing Contractor's duties, responsibilities, and obligations pursuant to this Agreement.

**S. Severance**

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the provisions not having been found by a court of competent jurisdiction to be invalid or unenforceable shall continue to be effective.

**T. Limitation of Liability**

Neither party to this Agreement will be liable to the other party for any indirect, special, consequential or punitive damages, whether or not the likelihood of such damages was known to such party, and regardless of the form of the claim or action or the legal theory on which it is based. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes.

**U. Jurisdiction, Venue, Waiver, Waiver of Jury Trial**

This Agreement shall be interpreted and construed in accordance with and governed by applicable United States federal laws and the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the Seventeenth Judicial Circuit in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

In the event Contractor is a corporation organized under the laws of any province of Canada or is a Canadian federal corporation, the City may enforce in the United States of America or in Canada or in both countries a judgment entered against the Contractor. The Contractor waives any and all defenses to the City's enforcement in Canada of a judgment entered by a court in the United States of America.

**V. Amendments**

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Mayor-Commissioner and/or City Manager, as determined by City Charter and Ordinances, and Contractor or others delegated authority to or otherwise authorized to execute same on their behalf.

#### **W. Prior Agreements**

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

#### **X. Payable Interest**

Except as required and provided for by the Florida Local Government Prompt Payment Act, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

#### **Y. Representation of Authority**

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

#### **AA. Uncontrollable Circumstances ("Force Majeure")**

The City and Contractor will be excused from the performance of their respective obligations under this agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

- A. The non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;
- B. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- C. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and
- E. The non-performing party uses its best efforts to remedy its inability to perform. Notwithstanding the above, performance shall not be excused under this Section for a

period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

**BB. Scrutinized Companies**

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2015), as may be amended or revised. The City may terminate this Contract at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2015), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2015), as may be amended or revised.

**CC. Public Records**

Contractor shall:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2015), as may be amended or revised, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of the contractor upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

IN WITNESS WHEREOF, the City and the Contractor execute this Contract as follows:

ATTEST:

CITY OF FORT LAUDERDALE

\_\_\_\_\_  
Jeffrey A. Modarelli, City Clerk

By: \_\_\_\_\_  
John P. "Jack" Seiler, Mayor

By: \_\_\_\_\_  
Lee R. Feldman, City Manager

Approved as to form:

\_\_\_\_\_  
City Attorney

ATTEST:

CONTRACTOR

\_\_\_\_\_  
Print Name:  
Title:

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

(CORPORATE SEAL)

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_ as \_\_\_\_\_ (title) for Wells Fargo Bank, N.A., a national banking association.

(SEAL)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known \_\_\_\_ OR Produced Identification \_\_\_\_  
Type of Identification Produced \_\_\_\_\_

# Commercial Account Agreement

*Effective March 1, 2013; Revised for City of Fort  
Lauderdale August 2015*

## **I. Terms Applicable to All Commercial Deposit Accounts**

### **Introduction**

In this Commercial Account Agreement (“Agreement”), “Company” refers to the owner or accountholder of a Wells Fargo bank commercial deposit account (“Account”). “Bank” refers to the Wells Fargo bank at which Company’s Account is maintained. This Agreement includes the following disclosures applicable to Bank’s commercial deposit accounts and related services (each, a “Service”), that Bank has separately provided to Company: (i) the schedule of Bank’s fees and other account-related information (the “fee and information schedule”), (ii) the collection schedule, (iii) the funds availability policy, (iv) the privacy policy, (v) the rate sheets for interest-bearing accounts, each as modified by Bank from time to time, and (vi) any additional disclosures regarding Company’s Account that Bank may provide to Company. Company is responsible for ensuring that each Authorized Signer is familiar with this Agreement. Unless Company has instructed Bank in writing to the contrary, Bank may consider communications about Company’s Account from an Authorized Signer on Company’s Account as communications from Company. Company agrees to notify Bank immediately in writing if any Authorized Signer’s authority has been terminated. This Agreement replaces all prior agreements with Bank regarding Company’s Account other than agreements regarding security interests in, or services utilizing, the Account. By signing the attached Agreement for Banking Services, Company will be deemed to have agreed to this Agreement. Company should retain a copy of this Agreement (and any information that Bank provides Company regarding changes to this Agreement) for as long as Company maintains its Account with Bank.

### **Defined Terms**

In this Agreement, certain words have a special meaning and are therefore defined. Certain terms and their definitions are found in this Section, and others are found in the text of this Agreement.

#### **Affiliate.**

An “Affiliate” is a bank that is, directly or indirectly, a wholly or substantially owned subsidiary of Wells Fargo & Company.

#### **Authorized Signer.**

An “Authorized Signer” is a person who has Company’s actual or apparent authority to transact business on Company’s Account(s), whether or not such person has signed the signature card or other documentation for

Company's Account(s). Bank may continue to recognize an Authorized Signer's authority until Bank has received and had a reasonable time to act upon Company's written modification or revocation of it.

**Business Day.**

A "Business Day" is every day except Saturdays, Sundays and federal holidays.

**Collected Balance.**

The "Collected Balance" is the Ledger Balance in Company's Account less Deposit Float.

**Commercial Deposit Account.**

A "Commercial Deposit Account" is any deposit account, other than one of Bank's business deposit accounts, that is not held or maintained primarily for personal, family or household purposes. Examples of commercial deposit accounts include an account owned by an individual acting as a sole proprietor, a partnership, a limited partnership, a limited liability partnership, a limited liability company, a corporation, a joint venture, a non-profit corporation, an employee benefit plan or a governmental unit including an Indian tribal entity.

**Deposit Float.**

"Deposit Float" is the total dollar amount of Items deposited in Company's Account for which, based on the collection schedule used by Bank or the applicable Affiliate for this type of account, Company's Account has not yet been credited for purposes of calculating the Collected Balance.

**Deposited Item.**

A "Deposited Item" is an Item (including a non-U.S. Item) that Bank cashes or collects for Company or accepts for deposit to Company's Account.

**Investable Balance.**

The "Investable Balance" is the Collected Balance in Company's Account less (i) the portion of such Collected Balance that Bank is required by law to hold in reserve at a Federal Reserve Bank and (ii) other adjustments.

**Item.**

An "Item" includes a check, substitute check, purported substitute check, electronic item, draft, demand draft, preauthorized draft, remotely created check, remotely created item, remotely created consumer item, image replacement document or other order or instruction for the payment, transfer, or withdrawal of funds (including a withdrawal slip), automatic



transfer, and electronic transaction (including a wire transfer, an ACH transfer and a Consumer ACH Debit Entry), any written document created or authorized in Company's name that would be a check or draft but for the fact that it has not been signed, and a cash-in ticket or a deposit adjustment or a photocopy or an image of any of the foregoing.

**Ledger Balance.**

The "Ledger Balance" is the balance in Company's Account after all debits and credits for the Business Day are posted.

**Overdraft.**

An "Overdraft" is any event that results in a negative balance in Company's Account.

**Paper Item.**

A "Paper Item" is an Item that is in paper form.

**Service.**

A "Service" is any service Bank provides to Company including without limitation any Treasury Management Service.

**Statements and Other Account-Related Information**

Mailing Statements and Other Account-Related Information to Company.

Except as expressly provided otherwise in this Agreement, Bank will mail (or otherwise make available to Company) statements for Company's Account and notices and other information regarding Company's Account or any Service (collectively, "Account-Related Information") to the postal or electronic address reflected in Bank's records for Company's Account. Any statement or Account-Related Information that is mailed to the Company will be deemed to have been sent to Company on the first Business Day following the date on it. A statement or other Account-Related Information that is held for Company to pick up will be deemed to be delivered to Company at the time that Bank makes it available for pick up.

**Company's Obligation to Review Statements and Other Account-Related Information and to Notify Bank of Errors.**

Company agrees to promptly and carefully examine each statement for Company's Account and any other Account-Related Information and any paid Items that are returned with (or described in) the statement and any other Account-Related Information and to promptly notify Bank of, and reimburse Bank for, any erroneous credit to Company's Account. Within thirty (30) days after Bank mails or otherwise makes the statement or other

Account-Related Information available to Company, Company will notify Bank of any claim for credit or refund due, for example, to an erroneous or unauthorized debit, a missing signature, an unauthorized signature, or an alteration (each, an “unauthorized transaction”). Within six (6) months after Bank mails or otherwise makes the statement or other Account-Related Information available to Company, Company will notify Bank of any claim for credit or refund resulting from a forged, unauthorized, or missing endorsement. Such notification is to be made by (i) calling the telephone number listed on the statement for Company’s Account or in the other Account-Related Information for such purpose and (ii) submitting a written report to Bank as soon as possible, but, in any event, within the timeframes specified above. If Company fails to notify Bank within the timeframes specified above, the balance shown on the statement for Company’s Account or other Account-Related Information will be conclusively presumed to be correct, and Company will be deemed to have released Bank from all liability for the Items charged to Company’s Account and for all other transactions covered by the statement or other Account-Related Information. In addition, if Company fails to notify Bank of an unauthorized transaction on Company’s Account within thirty (30) days after Bank mails or otherwise makes the statement for Company’s Account or other Account-Related Information describing the unauthorized transaction available to Company, Bank will not be liable to Company for any unauthorized transactions on Company’s Account by the same person that could have been prevented if Company had complied with Company’s obligations under this subsection. If Company notifies Bank of any claim for credit or refund later than required by this subsection, Bank may assert, at Company’s request and on Company’s behalf, any claim against a third party that Bank determines in Bank’s sole discretion is permitted under the laws governing this Agreement or applicable rule.

**Address Changes for Statements for Company’s Account and Other Account-Related Information.**

Company may instruct Bank to change the address to which Bank mails (or the means by which Bank otherwise makes available) statements for Company’s Account and other Account-Related Information at any time. Bank shall act on any such instruction made on Company’s behalf within a reasonable time after Bank receives such instruction. Unless Company instructs Bank otherwise, Bank may in its sole discretion change the address only for the Account(s) Company specifies or for all or some of Company’s other Accounts with Bank. Bank may change Company’s

address of record if Bank receives an address change notice from the U.S. Postal Service that the address in Bank's records no longer corresponds to Company's address.

#### **Notices and Other Mail.**

Any notice Company sends Bank will not be effective until Bank actually receives it and has a reasonable opportunity to act on it. If there is more than one Authorized Signer on Company's Account, Bank may send statements and other Account-Related Information to any one of them (unless Company has otherwise instructed Bank in writing). Any notice Bank sends Company will be effective when mailed or otherwise made available to Company.

#### **Contacting Company Regarding Servicing and/or Collections.**

In order for Bank to service the Account or to collect any amounts Company owes to Bank, Bank may from time to time make calls and/or send text messages to Company at any telephone number(s) associated with Company's Account, including wireless telephone numbers that could result in charges to Company. The manner in which these calls or text messages are made to Company may include without limitation prerecorded/artificial voice messages and/or an automatic telephone dialing system. In addition, in order for Bank to service the Account or to collect any amounts Company owes to Bank, Bank may send e-mails to Company at any e-mail address Company provides to Bank.

#### **Electronic Communications.**

If Company provides Bank with an electronic address to which Bank may send electronic communications, Company agrees that Bank may send to Company by electronic communication any information that the laws governing this Agreement require be sent to Company in writing, provided such electronic communication does not violate the laws governing this Agreement. "Electronic communication" means a message transmitted electronically in a format that allows visual text or images to be displayed on equipment such as a personal computer monitor.

#### **Fraud Prevention**

##### **Protection Against Unauthorized Items.**

Company acknowledges that there is a growing risk of losses resulting from unauthorized Items. Bank offers Services that provide effective means for controlling the risk from unauthorized Items. These Services include:

- Positive Pay, Positive Pay with Payee Validation, or Reverse Positive Pay (each offered by Bank in conjunction with Bank's Account Reconciliation Plan Service);
- ACH Fraud Filter; and
- Payment Authorization Service.

In addition, Bank may recommend Company use certain fraud prevention practices to reduce Company's exposure to online fraud. Each of these practices is an industry "best practice".

An example of a best practice is dual custody, which requires a payment or user modification initiated by one user to be approved by a second user on a different computer or mobile device before it takes effect.

Company will be treated as having assumed the risk of any loss that could have been prevented by its use of any fraud prevention Service or best practice Bank has recommended to Company, if Company:

- Declines to enroll in the fraud prevention Service(s);
- Enrolls in the fraud prevention Service but fails to use it in accordance with the Service Documentation applicable to it; or
- Fails to adopt and follow a best practice.

#### **Lost or Stolen Paper Items; Unauthorized Items.**

If any of Company's unissued Paper Items has been lost or stolen, or if Company learns that unauthorized Items are being issued on Company's Account, Company agrees to notify Bank at once. To the extent that Company's failure to so notify Bank hampers Bank's ability

to prevent loss, Bank will be relieved of any liability for such Items. Upon receipt of any such notice, Bank may at its sole discretion and without any liability to Company take one or more of the following actions: (i) close Company's Account and open a new account for Company; (ii) dishonor any Paper Item Company or an Authorized Signer has indicated may have been lost or stolen (unless Company or an Authorized Signer subsequently has instructed Bank to honor such an Item); or (iii) pay any Paper Item presented for payment on Company's Account, provided Company has instructed Bank to pay such Paper Item and given Bank the number of that Paper Item. If Bank opens a new account for Company and Company has authorized a third party to automatically make regular deposits to or withdrawals from Company's Account (such as wire or ACH transfers), Bank shall have no liability to Company if Company does not receive any

regularly scheduled deposit or if a regularly scheduled payment is not made for Company due to Company's failure to notify that third party in a timely fashion of the number of Company's new Account.

### **Preventing Misuse of Company's Account.**

Company agrees to take reasonable steps to ensure the integrity of Company's internal procedures with respect to Company's Account and Items drawn on Company's Account or deposited to it. To help prevent embezzlement and protect Company's business assets, Bank recommends Company:

- Assign responsibilities for Company's Account to multiple individuals. Those who reconcile statements for Company's Account should be different from those who issue Items drawn on Company's Account.
- Reconcile statements for Company's Account as received and notify Bank immediately of any problem.
- Contact Bank immediately if Company does not receive the statement for Company's Account when Company would normally expect to.
- Watch for Paper Items cashed out of sequence or made out to cash. These are classic red flags for embezzlement.
- Secure Company's supply of Paper Items at all times. Stolen Paper Items are a common method of embezzlement.
- Periodically reassign accounting duties such as reconciling Company's Account or making a deposit.
- Review transaction activity on Company's Account for unexpected fluctuations. For example, compare the percentage of cash deposits to total deposit size. Most businesses will maintain a constant average. A large fluctuation might indicate embezzlement.
- Destroy any Paper Item that Company does not intend to use.
- Use tamper-resistant Paper Items at all times.
- Notify Bank immediately when an Authorized Signer's authority ends so that his/her name can be removed from all signature cards and Online Banking access, and any Cards that Bank has issued to him/her can be cancelled.
- Do not sign blank Paper Items.
- Obtain insurance coverage for these risks.

## **Claim of Unauthorized Transactions; Bank's Rights and Liability**

### **Investigation by Bank; Company's Agreement to Cooperate.**

Bank shall investigate any transaction Company has reported to Bank as unauthorized (a "Claim of Unauthorized Transaction"). Company agrees to (i) submit Company's Claim of Unauthorized Transaction in writing to Bank by completing or obtaining a declaration under penalty of perjury describing Company's Claim of Unauthorized Transaction (in an affidavit form approved by Bank, if so requested); (ii) file a police report, if a potential crime is involved; (iii) complete and return to Bank any documents requested of Company; and (iv) in all reasonable respects cooperate fully at Company's expense with Bank in Bank's investigation of Company's Claim of Unauthorized Transaction.

### **Standard of Care.**

Bank will meet its standard of care for Company's Account by exercising ordinary care in the transaction at issue. When Bank takes an Item for processing by automated means, "ordinary care" does not require Bank to examine the Item. In all other cases, "ordinary care" requires only that Bank follow standards that do not vary unreasonably from the general standards followed by similarly situated banks. Bank's policies and procedures are general internal guidelines for Bank's use and do not establish a higher standard of care for Bank than is otherwise established by the laws governing this Agreement. A mere clerical error or an honest mistake will not be considered a failure of Bank to perform any of its obligations. If Bank waives any of its rights as to Company or Company's Account on one or more occasions, it will not be considered a waiver of Bank's rights on any other occasion.

### **Limitation of Liability.**

Whether in connection with Company's Account or a Service, in no event will either party to this Agreement or its respective directors, officers, employees, or agents be liable to the other party for any special, consequential, indirect or punitive damages, whether any claim is based on contract or tort or whether the likelihood of such damages was known to either party. The foregoing limitation of liability will not apply where expressly prohibited by the laws governing this Agreement. Bank will not have any liability to Company if there are insufficient available funds in Company's Account to pay Company's Items due to actions taken by (i) Bank in accordance with this Agreement or (ii) any third party.

**Adverse Claims.**

If any person or entity makes a claim against funds in Company's Account and Bank in good faith determines that such claim is colorable, or if Bank believes that a legitimate conflict exists between or among the Authorized Signers on Company's Account or that there is a legitimate dispute over matters such as the right to funds in Company's Account or the authority to withdraw funds from Company's Account, Bank may, without any liability to Company, take one or more of the following actions: (i) continue to rely on Bank's records to determine the right to funds in Company's Account or the identity of the Authorized Signer(s) for Company's Account; (ii) freeze all or a part of the funds in Company's Account until the dispute is resolved to Bank's reasonable satisfaction; or (iii) pay the funds into a court of competent jurisdiction.

**Legal Process.**

Bank may accept and act on any legal process it believes is valid, whether served in person, by mail or by electronic notification, at any location of Bank. "Legal process" includes a levy, garnishment or attachment, tax levy or withholding order, injunction, restraining order, subpoena, search warrant, government agency request for information, forfeiture, seizure or other legal process relating to Company's Account. Any such legal process is subject to Bank's right of setoff. Bank will not notify Company of a grand jury subpoena affecting Company or Company's Account if such notice is prohibited by the grand jury subpoena.

**"Freezing" Company's Account.**

As part of Bank's loss prevention program, when Bank suspects that irregular, unauthorized, or unlawful activities may be occurring in connection with Company's Account, Bank may "freeze" (or place a hold on) the balance in Company's Account (and in other Account(s) Company maintains with Bank) pending an investigation of such suspected activities. If Bank freezes Company's Account, Bank will give any notice required by the laws governing this Agreement.

**Force Majeure.**

Neither party to this Agreement shall be deemed to be in default of any of its obligations under this Agreement if its performance is delayed, hindered



or becomes impossible because of any act of God or of any public enemy, hostilities, war (declared or undeclared), guerilla or terrorist activities, act of sabotage, blockade, earthquake, flood, landslide, avalanche, earth tremor, ground movement, hurricane, storm, explosion, fire, labor disturbance, riot, insurrection, strike, sickness, accident, civil commotion, epidemic, act of government or its agencies or officers, power interruption or transmission failure or any other cause beyond the control of either party.

#### **Company's Insurance Coverage.**

Many businesses carry special insurance for employee fraud/embezzlement. If Company does, Bank reserves the right to require Company to file a claim with its insurance company before making any claim against Bank. In such event, Bank will consider Company's claim only after Bank has reviewed Company's insurance company's decision, and Bank's liability to Company, if any, will be reduced by the amount Company's insurance company pays Company.

#### **Substitute Checks**

A federal law, known as the "Check Clearing for the 21st Century Act" or "Check 21," took effect on October 28, 2004. This law provides for an instrument called a "substitute check." A substitute check contains an accurate copy of the front and back of the original draft and bears the legend: "This is a legal copy of your check. You can use it the same way you would use the original check." As noted in the legend, a substitute check is the same as the original draft for all purposes, including proving that Company made a payment. Any Paper Item Company issues or deposits that is returned to Company may be returned in the form of a substitute check. Even if Company has cancelled Items returned with the statements for Company's Account, Bank may in its sole discretion withhold substitute checks therefrom. Company agrees Company will not transfer a substitute check to Bank, by deposit or otherwise, if Bank would be the first financial institution to take the substitute check, unless Bank has expressly agreed in writing to take it.

#### **Deposits to Company's Account**

##### **General.**

Unless otherwise agreed in writing, Bank may, without inquiry, accept a deposit to Company's Account at any time, from any person or entity, made in any manner including without limitation a deposit based on an image of an Item. Bank may also refuse to accept all or any part of any deposit. Bank may use time and place of receipt, method of delivery, and status of set up to determine when Company's deposit is received. Bank may require that Company deposit an Item made payable to Company to Company's Account, instead of permitting Company to cash the Item. Bank is not



responsible for a deposit until a Bank employee has received and verified it. The receipt received at the time of deposit is not evidence a deposit has been verified. Bank may reverse or otherwise adjust any credit Bank determines it has erroneously made to Company's Account at any time without prior notice to Company.

#### **Collection Items.**

Bank may, in its sole discretion and with notice to Company, handle a Paper Item as a collection Item, instead of as a deposit. This means Bank sends the Item to the issuer's bank for payment and credits Company's Account for the Item when Bank receives payment for the Item. If the Item is returned unpaid, Bank will return the Item to Company.

#### **Endorsements.**

This subsection applies if an endorsement is necessary for the transfer or negotiation of an Item. Company authorizes Bank to supply Company's endorsement on any Item Bank takes for collection, payment or deposit to Company's Account. Company also authorizes Bank to collect any unendorsed Item that is made payable to Company without first supplying Company's endorsement, provided the Item was deposited to Company's Account. Bank may refuse to pay any Item or accept any Item for deposit or collection unless Bank is able to verify to its satisfaction that all of the necessary endorsements are present on the Item. For example, Bank may require that all endorser be present at the time that an Item is presented to Bank for payment or accepted for deposit or collection.

#### **Material Appearing on the Back of Paper Items; Legends on Paper Items.**

Company is responsible for losses incurred by any person that cashes or accepts Company's Paper Items for deposit, if: (i) the loss is due to a delay in the return of the Item; and (ii) the delay is caused by material appearing on the back of the Item when it was issued or transferred by Company. This material may include, but is not limited to, carbon bands, blacked out areas, and printed or written text or numbers. Company is responsible for all losses, claims, damages or expenses that result from a restrictive legend or notation on Company's Paper Items.

#### **Breach of Warranties.**

If Company breaches any warranty Company makes under the laws governing this Agreement or rule with respect to any Item, Company shall not be released or otherwise discharged from any liability for such breach so long as Bank notifies Company of the breach within 120 days after Bank learns of the breach. If Bank fails to notify Company within this 120-day

period, Company shall be released from liability and discharged only to the extent Bank's failure to notify Company within such time period caused a loss to Company.

**When Deposits are Credited to Company's Account.**

All over-the-counter deposits or ATM deposits to Company's Account which are received before Bank's established cut-off time on any Business Day will be credited (and will be considered deposited) to Company's Account as of the close of business that day, and will be reflected in that day's Ledger Balance for Company's Account. All other deposits will be processed in accordance with the written agreements governing such deposits or, if there is no written agreement, banking practice. All deposits received after Bank's established cut-off time on a Business Day or at any time on a day which is not a Business Day will be credited (and will be considered deposited) to Company's Account at the end of the next Business Day. Deposits placed in one of Bank's "night depositories" before the established deadline on any Business Day will be credited to Company's Account at the close of business on that same day. All other deposits placed in the "night depository" will be credited to Company's Account at the end of the next Business Day.

**Company's Use of Funds.**

Company's use of funds deposited to Company's Account will be governed by Bank's separately disclosed collection schedule and, if Company's Account is a checking account, funds availability policy. Bank's collection schedule describes when deposits of Items that satisfy certain criteria will be considered collected. A fee may be charged in connection with any use of uncollected funds permitted by Bank. The then-current rate will appear on the statement for Company's Account. Bank's funds availability policy describes when funds deposited to Company's checking Account will be available to be used for all purposes. Bank may change its collection schedule and funds availability policy from time to time upon notice to Company.

**Deposits at Affiliates.**

Company may make deposits to Company's Account(s) at an Affiliate, provided the Affiliate agrees. If Company makes a deposit to Company's Account at an Affiliate, that Affiliate's collection schedule and funds availability policy will determine when the funds deposited to Company's Account will be considered collected and available.

**Deposits of Non-U.S. Items.**

Bank may refuse to accept for deposit or collection an Item that is payable in currency other than U.S. dollars or an Item that is not drawn on a financial

institution chartered in the United States (each, a “non-U.S. Item”). If Bank accepts a non-U.S. Item for deposit to Company’s Account or collection, Company accepts all risk associated with foreign currency fluctuation (exchange rate risk) and any late return of the non-U.S. Item. Company agrees Bank may use Bank’s current buying and selling rate, as applicable, when processing a non-U.S. Item and may invoice Company for any loss Bank incurs as a result of processing such an Item for Company. Bank reserves the right to place longer holds on non-U.S. Items than the timeframes specified in Bank’s funds availability policy for Deposited Items.

**Acts and Omissions of Other Financial Institutions.**

Bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person, or for the loss or destruction of a Deposited Item or of a notice of nonpayment relating to the insolvency, neglect, misconduct, mistake, or default of another bank or person. If a Deposited Item is lost or misrouted during the collection process: (i) Bank shall have no responsibility to Company for the actions or inactions of any collecting bank; (ii) Bank may charge Company’s Account for the amount of the Deposited Item (and reverse any interest that may have accrued to Company’s Account in connection with the Deposited Item); and (iii) Company agrees to cooperate with Bank in recreating the Deposited Item.

**Deposited Items Returned.**

Bank has the right to charge back to or otherwise debit Company’s corresponding Account for any Deposited Item that is returned (and to reverse or recover any associated interest that may have accrued), even if Company has made withdrawals against it; provided, however, that if such corresponding Account has been closed or contains insufficient funds, then Bank may debit Company’s Master Account or a sub-Account established thereunder or, with notice to Company and its consent, another Account of Company. This right of charge back or debit is not affected by the expiration of any applicable midnight deadline, provided Bank does not have actual knowledge that such deadline has expired or, having such knowledge, (i) Bank concludes that the Deposited Item has been returned in accordance with the laws governing this Agreement or a rule (including a clearing house rule); or (ii) Bank has received a breach of warranty claim in connection with the Deposited Item.

Bank has the right to pursue collection of such Deposited Item, even to the extent of allowing the payor bank to hold the Deposited Item beyond the midnight deadline in an attempt to recover payment. Bank may redeposit a returned Deposited Item and re-present it for payment by any means (including electronic means), unless Bank has received instructions from

Company not to redeposit such Deposited Item. Bank will have no liability for taking or failing to take any action to recover payment of a returned Deposited Item.

If one of Company's Deposited Items is returned with a claim that there is a breach of warranty (for example, that it bears a forged endorsement or is altered in any way), Bank may debit Company's Account for the amount of the Item (plus any associated fees) and pay the amount to the person or entity making the claim. Bank is under no duty to question the truth of the facts that are being asserted, to assess the timeliness of the claim, or to assert any defense. Bank need not give Company any prior notification of its actions with respect to the claim. Company agrees to immediately repay any Overdraft caused by the return of a Deposited Item.

#### **Direct Deposits Returned by Bank.**

If, in connection with a direct deposit plan funds are deposited to Company's Account and later returned to the originator, Bank may deduct the amount from that Account, without prior notice and at any time (or, if that Account has been closed or contains insufficient funds, Bank may deduct the amount from Company's Master Account or a sub-Account established thereunder or, with notice to Company and its consent, another Account of Company), except as prohibited by the laws governing this Agreement. Bank may also use any other legal remedy to recover the amount.

#### **Reconstructing Lost or Destroyed Deposited Items.**

If a Deposited Item is lost or destroyed during processing or collection (either at Bank or at another point in the payments system), Company agrees to cooperate fully with Bank to reconstruct the Deposited Item by promptly: (i) providing Bank with a copy of the front and back of the Deposited Item from Company's or the issuer's records; (ii) asking the issuer to place a stop payment on it (at Bank's expense) and issue a replacement Item to Company (if the Deposited Item has not been paid); or (iii) reviewing Company's records and other information and conducting any additional research as may be reasonable to determine the issuer's identity (if Company does not know the identity of the issuer of the Deposited Item). If Company fails to cooperate with Bank, Bank may, at any time and without advance notice to Company, reverse or otherwise adjust any credit made to Company's Account for a lost or destroyed Deposited Item.

#### **Withdrawals from Company's Account**

##### **Determining Company's Account's Balance; Debiting Company's Account.**

In determining the balance in Company's Account that is available to pay Items, Bank may reduce the available balance by the amount of any hold

that Bank has placed on Company's Account under this Agreement. Additionally, Bank may place a hold on Company's Account if Bank receives an electronic notice that an Item will be presented for payment or collection against Company's Account (a "Notice of Presentment"). The hold may remain in effect from the time the Notice of Presentment is received until the Item is presented or notice is received that the Item will not be presented, whichever first occurs. Bank may conclusively rely on the information it receives in an electronic presentment or notification when determining the available balance in Company's Account, and Bank will not have any liability for refusing to honor any of Company's Items because of insufficient funds, even if the electronic presentment or notification incorrectly describes the Item, including its amount. Bank may debit Company's Account on the day an Item is presented by any means, including without limitation electronically, or at an earlier time based on notification received by Bank that an Item drawn on Company's Account will be presented for payment or collection. A determination of the balance in Company's Account for purposes of making a decision to dishonor an Item for insufficiency or unavailability of funds may be made at any time between the presentment of the Item (or earlier upon receipt of any Notice of Presentment) and the time of return of the Item. No more than one such determination need be made.

#### **Order of Posting; Categories of Items**

Bank posts transactions during its nightly processing each Business Day. Generally, Bank first posts deposits or incoming transfers received before the deposit cutoff time that day. Bank then posts withdrawals (such as ATM, debit card or check transactions) that have been received for payment from Company's Account. Bank pays some categories (or types) of transactions, such as debit card transactions, before other types of transactions, such as checks.

The order in which Bank posts Items to Company's Account will depend upon a number of factors. For example, in connection with the process of posting Items, Bank has the right to (i) establish different categories of Items, (ii) establish a posting order for each category of Item(s), and (iii) establish different posting orders for Items within each category. Except to the extent limited by federal regulatory and judicial authorities, Bank has the right to change any of the factors described in (i), (ii) and (iii) above at any time without notice to Company.

Establishing categories of Items. Bank groups Items into categories it establishes. For example, Bank may group debit card transactions into one category, and group checks into another category. Bank may include more than one type of Item in a single category.

Establishing a posting order for each category of Items. Bank pays some categories (or types) of transactions, such as debit card transactions, before other types of transactions, such as checks.

Establishing a posting order of Items within a single category. If there are multiple transactions within a category, the order in which the transactions are posted will vary depending on the type of transaction.

For example, Bank will pay the most common types of transactions in the following order:

- ATM, debit card, account transfers, teller cashed checks and teller cash withdrawals – transactions will be sorted by the date the transaction was conducted. For a debit card transaction, if a merchant does not seek pre-authorization from the Bank at the time of the transaction, Bank will use the date the transaction is received for payment from Company's account. If there are multiple transactions on a date, those transactions will be sorted by time (where that information is available to Bank's posting systems); the remaining transactions on that date will be sorted and paid from lowest to highest dollar amount.
- Checks and automatic payments (also known as ACH).

#### **All states except Nevada**

If there are multiple transactions, the transactions will be sorted and paid from highest to lowest dollar amount.

#### **Nevada only**

If there are multiple transactions, the transactions will be sorted in sequential order if the Item has a serial number. Items without a serial number will be paid from highest to lowest dollar amount.

#### **Relation between posting order and overdrafts/returned items**

On any given Business Day, if Bank receives more than one Item for payment and determines there are sufficient funds to pay one or more but not all of the Items, then the number of Items paid and the overdraft and returned Item fees assessed could be affected by the order that Bank chooses to post those Items. For example, if Bank posts Items in the order of highest to lowest dollar amount, the total number of overdraft and returned Item fees Company is charged could be larger than if Bank were to post the Items in a different order.

#### **Paper Items Presented Over-the-Counter for Payment by a Non-Customer.**

If a Paper Item drawn against Company's Account is presented over-the-counter for payment by a person who does not have a deposit account at Bank, Bank



may require identification acceptable to Bank and not prohibited by the laws governing this Agreement, including a fingerprint of the person presenting the Paper Item. Bank may dishonor the Paper Item if the person refuses to provide the identification Bank requests.

**Large Cash Withdrawals.**

If Company wants to cash a check (or make a cash withdrawal from Company's Account) for a very large amount (generally \$10,000 or more), Bank may require forty-eight (48) hours' advance notice so that it can order the cash from its vault. Bank may, but is not obligated to, require that Company provide adequate security when Company picks up the cash and may also require Company to pick up the cash at Bank's central vault or other location.

**Withdrawals at Affiliates.**

Company may make withdrawals from Company's Account at an Affiliate, provided the Affiliate agrees. If an Affiliate cashes an Item for Company, Bank may place a hold on Company's Account for a corresponding amount of funds. If the Item is later returned to the Affiliate for any reason, Bank may debit Company's corresponding Account (and, if the corresponding Account has been closed or contains insufficient funds, the Company's Master Account or a sub-Account established thereunder or, with notice to Company and its consent, another Account of Company) for the amount of the Item.

**Items Resulting From Company's Disclosure of Company's Account Number.**

If Company voluntarily discloses Company's Account number to another person orally, electronically, in writing, or by some other means for the purpose of authorizing that person to debit Company's Account, Bank may treat such disclosure as Company's authorization to that person to issue Items drawn on Company's Account.

**Missing Signatures; Alterations; Forgeries.**

Bank will have no responsibility for reviewing the number or combination of signatures on an Item drawn on Company's Account. This means that if Company has indicated that more than one signature is required in connection with an Item drawn on Company's Account,

Bank will have no liability to Company if a transaction is conducted on or through Company's Account contrary to the signature requirements Company has specified, provided at least one of the required signatures appears on the Item. Bank will have no liability to Company for failing to detect a forgery of the signature of an Authorized Signer or an alteration of one of Company's Items, if the forgery or alteration is such that a reasonable

person could not reasonably be expected to detect it.

### **Dates and Special Instructions on Paper Items.**

Bank may, without inquiry or liability, pay one of Company's Paper Items even though: (i) special instructions written on the Paper Item indicate that Bank should refuse payment (e.g., "Void after thirty (30) days," "Paid-In-Full," or "Void over \$100"); (ii) the Paper Item is staledated (e.g., it bears a date that is more than six (6) months in the past), even if Bank has knowledge of the date on the Paper Item; (iii) the Paper Item is post-dated (e.g., it bears a date in the future), unless an Authorized Signer has given Bank a notice of post-dating; or (iv) the Paper Item is not dated. In addition, Bank may pay in U.S. dollars the amount that has been MICR-encoded on Company's Paper Item, even though Company has purportedly drawn the Paper Item in a foreign currency.

### **Facsimile or Mechanical Signatures.**

If Company has elected to use a facsimile, other mechanical signature (including a stamp) to sign or endorse Paper Items or a Company logo or other mark in lieu of a signature, Bank may rely on that signature (or any signature that purports to be the facsimile, other mechanical signature of an Authorized Signer) or the Company logo or other mark as Company's authorized signature without regard to when or by whom or by what means or in what ink color such signature, Company logo or other mark may have been made or affixed to a Paper Item deposited to, drawn on or otherwise debited to Company's Account.

### **Consumer ACH Debit Entries.**

Under the ACH Operating Rules, certain types of ACH entries may only be presented on a consumer account. These entries (each, a "Consumer ACH Debit Entry") include without limitation Point of Purchase ("POP"), account receivable ("ARC"), destroyed check ("XCK") and returned check ("RCK") entries. Bank shall have no obligation to pay, and no liability for paying, any Consumer ACH Debit Entry on Company's Account.

## **Stop Payment Orders; Notices of Post-Dating**

### **General.**

"Stop payment order" refers to both an order to Bank not to pay a Paper Item and to a notice of post-dating. To be effective, a stop payment order must be received in a time and manner that gives Bank a reasonable opportunity to act on it before paying, accepting, certifying, cashing or otherwise becoming obligated to pay Company's Paper Item as provided in the Uniform Commercial Code. Each stop payment order is subject to Bank's verification that the Paper Item described in the order has not been paid. This



verification may occur subsequent to the time Bank accepts the stop payment order.

**Content of Stop Payment Order.**

Bank requires the exact (i) name of the payee, (ii) number of Company's Account on which Paper Item is drawn, (iii) Paper Item amount and (iv) the Paper Item number or a range of Paper Item numbers. Bank may, at its sole discretion, use only a portion of the required information in order to identify a Paper Item. Failure to provide correct and complete information may make it impossible for Bank to stop payment of a Paper Item. Company agrees that it shall be responsible for the propriety of the stop payment orders it places and the accuracy and completeness of information that it provides in connection therewith.

**Effective Period of Stop Payment Order; Renewal; Revocation.**

Bank need not honor a written stop payment order for more than six (6) months. For accounts that do not have Bank's STOP AUTO-RENEWAL Service, Company must renew a stop payment order if Company does not want the stop payment order to expire after six (6) months. Each renewal is treated as a new stop payment order. For accounts with Bank's STOP AUTO-RENEWAL Service, a stop payment order is subject to annual renewals for up to six (6) twelve-month periods, unless Company has otherwise notified Bank in writing. Bank may pay a Paper Item after a stop payment order has expired, even though the Paper Item is more than six (6) months old. An instruction to revoke a stop payment order must be received in a time and manner that gives Bank a reasonable opportunity to act on it.

**Liability to Holder in Due Course.**

Notwithstanding Bank's timely return of any Paper Item due to a valid stop payment order, Company may still be liable under the laws governing this Agreement for the amount of that Item.

**Paper Items Paid Over Valid Stop Payment Orders.**

If Bank pays a Paper Item over a valid stop payment order, Bank may require Company to provide Bank with an affidavit describing in detail Company's dispute with the payee. If Bank credits Company's Account after paying a post-dated Paper Item over a valid and timely notice of post-dating, Bank may charge Company's Account for the amount of the Paper Item as of the date of the Paper Item.

## **Overdrafts; Security Interest; Bank's Right to Setoff**

### **Overdrafts and Insufficient Funds.**

Bank may, at its option, pay or refuse to pay any Item if it would create an Overdraft on Company's Account, without regard to whether Bank may have previously established a pattern of honoring or dishonoring such an Item. Bank may take either of the following actions if Bank receives an Item drawn on Company's Account and there are insufficient available funds in Company's Account to cover the Item, without prior notice to Company:

- Pay the Item and create an Overdraft on Company's Account.
- Return the Item if the Item would create an Overdraft on Company's Account.

Company agrees to pay Bank's fee that may vary depending on the action Bank takes. Any Overdraft on Company's Account is immediately due and payable, unless Bank agrees otherwise in writing. The non-prevailing party in litigation agrees to reimburse the prevailing party for the attorneys' fees and court costs related to recovering the Overdraft (including Overdraft and associated fees). On a Business Day when Bank determines that there are sufficient funds in Company's Account to pay one or more but not all of the Items presented for payment on Company's Account, the order in which Bank posts such Items may affect the number of Items paid and the Overdraft and returned Item fees assessed. When Bank posts Items in the order of highest to lowest dollar amount, the Overdraft and returned Item fees may

be more than these fees would be if Bank were to post the Items in the order of lowest to highest dollar amount.

### **Bank's Right to Setoff.**

Company acknowledges Bank may setoff against Company's Master Account or a sub-Account established thereunder for any obligation Company owes Bank under the Agreement for Banking Services, dated on or about XXXX, 2015, and other Contract Documents related thereto (including this Agreement) in respect of: (i) any fees payable to Bank; and (ii) any Deposited Item that is returned or with respect to which Bank fails to receive final settlement. Bank may consider this Agreement as Company's consent to exercising its right of setoff should the laws governing this Agreement require Company's consent. The rights described in this subsection are in addition to and apart from any other rights that Company may have granted to Bank.

## **Bank Fees and Expenses**

### **General.**

Company agrees to pay Bank in accordance with the terms of the Agreement for Banking Services, dated on or about XXXX, 2015, and other Contract Documents related thereto.

### **Earnings Allowance.**

Each month, the average monthly Investable Balance in a commercial demand deposit account may earn an "Earnings Allowance" which, depending on the arrangement with Bank, may be applied against that month's fees for the account. An Earnings Allowance in excess of the total monthly fees cannot be credited to the account as interest and may not be carried forward to the following month. Earnings Allowances are calculated on a 365/366-day year basis using an "Earnings Allowance Rate," which is a variable rate established by Bank (and which may be as low as zero percent). Bank reserves the right to change this rate at any time without notice to Company. If the account is an interest-bearing account, the account is not eligible to earn an Earnings Allowance.

### **Recoupment Fee.**

The FDIC charges each insured bank a fee to cover its share of the cost of providing deposit insurance to depositors. The FDIC does not charge a bank's depositors for deposit insurance or require banks to pass the cost of deposit insurance on to their depositors. The FDIC does, however, permit a bank to recoup the cost of deposit insurance from its depositors, so long as the fee the bank charges its depositors does not reveal information that could be used to determine the bank's confidential supervisory ratings or mislead depositors by implying the FDIC is charging the fee. Bank assesses this Recoupment Fee to partially recover insurance premiums it pays to the FDIC for deposit insurance. The amount of the Recoupment Fee appears on the periodic statement or client analysis statement for Company's account and is based on the monthly average ledger balance Company maintains in its account. The Recoupment Fee is subject to change by Bank at any time without notice. For questions about the Recoupment Fee, Company may contact its relationship manager at Bank.

### **Bank's Use of Funds.**

Bank may benefit from having the use of funds in customers' non-interest bearing accounts. Bank may use these funds to reduce its borrowing from other sources such as the Fed Funds market or invest them in short-term investments such as its Federal Reserve Account. This benefit may be referred to as "spread". It is not possible to quantify the benefit to Bank that may be attributable to a particular customer's funds because funds from all

customers' non-interest bearing accounts are aggregated both for purposes of reducing Bank's borrowing costs and for investment and because Bank's use of funds may vary depending on a number of factors including interest rates, Federal Funds rates, credit risks and Bank's anticipated funding needs. Bank's use of funds as described in this paragraph has no effect or impact on Company's use of and access to funds in Company's account.

### **Checking Subaccounts**

For each checking account, Bank may establish on Company's behalf a master account and two subaccounts. All information that is made available to Company about Company's Account will be at the master account level. The subaccounts are comprised of a savings account and a transaction account. On the first day of each month, Bank will allocate funds between the two subaccounts as it deems appropriate. Items received by Bank that are drawn against Company's master account will be presented for payment against the transaction subaccount. Funds will be transferred from the savings subaccount to cover Items presented against the transaction subaccount as may be needed. On the sixth (6th) transfer from the savings subaccount during a statement period all of the funds on deposit in the savings subaccount will be transferred to the transaction subaccount. If Company's Account earns interest, the use of subaccounts will not affect the interest Company earns.

### **Miscellaneous**

#### **Acceptable Form of Paper Items; Document and Image Quality.**

Company agrees to comply with Bank's specifications for Paper Items, including without limitation paper stock, dimensions, and other generally applicable industry standards for Paper Items and to include on Company's Paper Items Bank's name and address as directed by Bank. Certain features (such as security features) of an originally issued Item or a Deposited Item may impair the image quality of a substitute check, purported substitute check or electronic Item created by Bank or any third party. Bank will not be liable for any claims, demands, judgments or expenses paid, suffered or incurred by Company arising directly or indirectly as a result of or in connection with (i) the untimely return of any Paper Item Company has issued as a result of, and any presentment-related problem resulting from, the failure of the Paper Item to conform in any respect to Bank's Paper Item specifications, including without limitation, failure to include Bank's full name and address on the Paper Item, and (ii) any claim based on the image quality of a substitute check, purported substitute check or electronic Item, whether created by Bank or any third party.

**Closing Company's Account.**

Either party may close Company's Account in accordance with the termination provisions of the Agreement for Banking Services, dated on or about XXXX, 2015. If Bank closes Company's Account, Bank may send the Collected Balance on deposit in Company's Account by ordinary mail to Company's most recent address shown on Bank's account records. Whether Company or Bank closes Company's Account, Company agrees to maintain on deposit in Company's Account sufficient funds (determined in Bank's sole discretion) to cover outstanding Items to be paid from Company's Account, charge-backs including without limitation returned Deposited Items and Bank's fees and expenses. This Agreement shall continue to govern Company's Account until Bank makes a final disbursement from it. In addition, Bank will not be liable for any loss or damage that may result from dishonoring any of Company's Items that are presented or otherwise received after Company's Account is closed. If Company's Account is an interest bearing account, the Account will cease earning interest from the date Company requests it be closed. If the Account balance does not reach zero within three (3) months from the date of Company's request, Bank may close the Account and send Company the balance as described above or return the Account to active status.

**Contract Language.**

English is the controlling language of the relationship between Company and Bank. Bank may translate its agreements, forms, disclosures and advertisements into another language for Company's convenience. However, if there is a discrepancy between Bank's English language materials and the materials in another language, the English language version is controlling, unless (i) Bank otherwise agrees with Company in writing; or (ii) the laws governing this Agreement specifically provide for a different result.

**Credit Reports.**

Company authorizes Bank to make any inquiries that Bank considers appropriate to determine if Bank should open and maintain an Account for Company. This may include ordering a credit (or other) report (e.g, information from any motor vehicle department or other state agency) on Company.

**Disclosure of Information.**

Generally, absent Company's consent, Bank will not disclose information about Company's Account, but may do so under the following circumstances: (i) to comply with the laws governing this Agreement; (ii) in connection with examinations by state and federal banking authorities; (iii) to comply with any legal process, including without limitation a subpoena,

search warrant or other order of a government agency or court; (iv) when Bank determines that disclosure is necessary or appropriate in order to complete a transaction; (v) to verify the existence and condition of Company's Account for a third party, such as a merchant or credit bureau; (vi) to provide information to Company's legal representative or successor; (vii) when reporting the involuntary closure of Company's Account; (viii) when Bank concludes that disclosure is necessary to protect Company, Company's Account, or the interests of Bank; (ix) to agents, independent contractors, and other representatives of Bank in connection with the servicing or processing of Company's Account or Account transactions, Account analysis or similar purposes; (x) to Bank's Affiliates and affiliated companies; or (xi) if Company gives Company's permission.

**Dormant and Unclaimed Accounts.**

Company's Account is dormant if, for one year for a checking account or three years for a Commercial savings or time account, there is no customer initiated activity (except where the laws governing this Agreement require otherwise). If Company's Account is dormant, Bank may hold all statements on Company's Account, but Bank's normal maintenance and other fees will continue to be assessed except where prohibited and ATM and Point-of-Sale ("POS") access may be blocked. If Company's Account remains dormant and is unclaimed by Company for the period required under the laws governing this Agreement, Bank is required by those laws to "escheat" the funds; that is, to deliver the funds in Company's Account to the state whose laws govern Company's Account. Bank may charge a fee to Company's Account for mailing an escheat notice. When the funds in Company's Account are delivered to the state, Company's Account is closed, and no interest accrues. To recover funds delivered to the state, Company must file a claim with the state.

**Entire Agreement; Headings; No Third Party Beneficiary.**

This Agreement constitutes the entire agreement between Company and Bank regarding the subjects addressed in it and supersedes prior oral or written representations, conditions, warranties, understandings, proposals or agreements regarding Company's Account. Headings do not constitute a part of this Agreement. No person or entity will be deemed to be a third party beneficiary under this Agreement.

**Laws Governing this Agreement.**

The laws governing this Agreement include the laws and regulations of the United States and, to the extent applicable, the laws of the State of Florida, without regard to conflicts of laws principles. Any lawsuits, claims or other proceedings relating in any way to Company's Account, any Service or this Agreement, shall be venued exclusively in the



courts of the Seventeenth Judicial Circuit in and for Broward County, Florida, without regard to conflict of laws principles, or in the event of federal jurisdiction, in the Southern District of Florida. Each provision of this Agreement stands alone. Any provision of this Agreement which is inconsistent with the laws governing this Agreement, either in its entirety or with respect to a particular type of transaction or Item, will be deemed modified and applied in a manner consistent with the laws governing this Agreement. Any provision of this Agreement which a court of competent jurisdiction determines to be unenforceable or invalid, either in its entirety or with respect to a particular type of transaction or Item, will not affect the enforceability or validity of the remaining provisions of this Agreement.

Notwithstanding the preceding paragraph, any funds transfer that is a "remittance transfer" as defined in Regulation E, Subpart B, as amended from time to time, will be governed by the laws of the state of New York, including New York's version of Article 4A of the Uniform Commercial Code, without regard to its conflict of laws principles.

#### **Modification of Agreement; Account Conversion.**

Bank and Company may agree from time to time to change this Agreement by adding new provisions or by modifying or deleting existing provisions. Each such addition, modification or deletion is referred to in this Agreement as a "modification." Bank may from time to time make modifications to this Agreement upon not less than 30 days (or such shorter period required by applicable law) prior written notice if such modification is in response to a change in applicable law or regulation or judicial or regulatory interpretation thereof. In addition, Bank may agree in writing to waive a provision of this Agreement including without limitation a fee (a "waiver"). Bank may, upon prior written notice to Company, revoke any waiver. Company's continued use of Company's Account or a related Service following the effective date of any modification or revocation of any waiver will show Company's consent to that modification or revocation of waiver.

#### **Monitoring and Recording Communications.**

Except as otherwise provided by Florida law, Bank may without liability monitor, record and retain telephone conversations, electronic messages, electronic records and other data transmissions between Company and Bank at any time without further notice to Company, unless further notice is otherwise required by the laws governing this Agreement.

#### **No Fiduciary Relationship.**

Bank's relationship with Company concerning Company's Account is that of debtor and creditor; no fiduciary, quasi-fiduciary or special relationship exists between Company and Bank.

**Reliance on Bank Records.**

Bank may rely solely on its records to determine the form of ownership of and the Authorized Signers on Company's Account.

**Reordering Checks.**

Company can reorder checks by mailing the reorder form enclosed in Company's current order of checks or by calling Bank at the telephone number shown on the statement for Company's Account. If Company or a third party prints its checks, Bank shall have no liability to Company if Bank is unable to process such checks by automated means.

**Restricted transactions.**

Company acknowledges and agrees that "restricted transactions," as defined in the Unlawful Internet Gambling Enforcement Act of 2006 and Regulation GG issued thereunder, are prohibited from being processed through Company's Account or any relationship between Company and Bank. In the event Bank identifies a suspected restricted transaction, Bank may block or otherwise prevent, or prohibit such transaction.

**Transferring an Interest in Company's Account.**

Company's Account may not be pledged, assigned or in any other manner transferred, whether in whole or in part, without Bank's written agreement.



## **II. Additional Terms Applicable to All Commercial Interest-Bearing, Savings and Time Accounts**

### **Interest-Bearing Accounts**

#### **Variable/Fixed-Rate Accounts.**

Company's interest-bearing Account may be either a variable-rate or fixed-rate account. Unless Bank has specified otherwise in writing, Company's Account will be a variable-rate account. That means Bank may in its sole discretion change the interest rate on Company's Account at any time. If Company's Account is a fixed-rate account and it is not a time account, Company will be paid the specified interest rate for at least thirty (30) days.

#### **Method Used to Calculate Earned Interest.**

Bank may use either the average daily balance or daily balance method to calculate interest. The average daily balance method applies a periodic rate to the average daily collected balance for the period. The average daily balance is calculated by adding principal for each day and dividing by the number of days in the period. The daily balance method applies a daily periodic rate to principal each day. Unless Bank has specified otherwise in writing, it will use the daily balance method to calculate interest. If Company's Account is a tiered-rate account, Bank may pay the same interest rate on more than one tier.

#### **Interest Accrual.**

If Company deposits a non-cash Item, such as a check, interest begins to accrue no later than the Business Day Bank receives credit for the deposit of that Item. This may not be the same day that Company deposits the non-cash Item to Company's Account.

#### **Compounding and Crediting.**

Interest will compound on a daily basis. For checking and savings accounts, interest will be credited on a monthly basis. For time accounts, Bank will notify Company separately as to the frequency with which interest will be credited to Company's Account.

#### **Target Balance Accounts.**

If Company maintains multiple accounts at Bank, Company may, with Bank's consent, designate in writing one such account as its "Principal Account" and one or more additional accounts as "Target Balance Accounts." For each Target Balance Account, Company will separately specify to Bank in writing the Ledger Balance or Collected Balance which Company wishes

to maintain in such account (the "Target Balance"). At the end of each Business Day, Bank will determine the applicable balance on deposit in each Target Balance Account. If the applicable balance in a Target Balance Account exceeds its Target Balance, Bank will transfer from the Target Balance Account to the Principal Account such funds as are necessary to bring the applicable balance to the Target Balance. If the applicable balance is less than the Target Balance, Bank will transfer from the Principal Account to the Target Balance Account such funds as are necessary to bring the applicable balance to the Target Balance. Bank may, but will not be required to, transfer funds if the transfer would create an Overdraft or exceed the Collected Balance then on deposit in the Principal Account.

#### **Interest Adjustments.**

An interest adjustment may be reflected on the statement for Company's Account for the month after it occurs rather than the month in which it occurs.

#### **Tax Identification Number Certification.**

Treasury regulations require Bank to obtain a Tax Identification Number ("TIN") certification for each account. To avoid backup withholding tax on accounts that earn interest or dividends, Company must submit Internal Revenue Service ("IRS") Form W-9 or the appropriate Form W-8 and supporting information and/or documentation to Bank. U.S. citizens or other U.S. persons, including resident alien individuals, must provide a Form W-9. If Company is a non-resident alien as defined by the IRS, Company must provide the appropriate Form W-8. Additional documentation may be required if Company is a foreign partnership, foreign government, or is claiming an exemption based on Effectively Connected Income. Until Bank has received the completed and signed Form(s) W-9 or W-8, or any other required forms, Bank will pay interest and comply with the backup withholding requirements of the IRS. If, at any time, Bank receives information that someone other than Company is using the same TIN that Company certified as its TIN on Form W-9, and Bank is not able to determine to its own satisfaction that the TIN has been assigned to Company, Bank may at its option and without notice (i) stop paying interest on Company's Account, (ii) continue paying interest but comply with the backup withholding requirements of the IRS *and/or*, (iii) take any other action which Bank believes is reasonable in the circumstances. If Company is an individual who owns its Account as a sole proprietor, upon that individual's death, Bank must be provided with the individual's estate's or successor's TIN or Bank may either refuse to pay interest earned on Company's Account since the date of the individual's death or withhold a portion of the interest that has been earned on Company's Account since the date of the individual's death.

## **Commercial Savings Accounts**

### **Bank's Right to Require Notice.**

Bank has the right to require seven (7) days' written notice before Company withdraws money from Company's savings Account.

### **Limitations on Transfers from Company's Savings Account.**

Preauthorized transfers, automatic transfers, online transfers, payments to other persons and transfers by telephone from Company's savings Account are limited to six (6) a month.

Preauthorized transfers include automatic bill payments, transfers to Company's other Accounts with Bank or automatic transfers to other persons that Company has authorized Bank to make. If Bank permits transfers from Company's savings Account by check, draft, point of sale POS purchases, check card or any similar order for withdrawal, no more than three (3) of the six (6) transfers may be made by such means in a calendar month or statement cycle. If Bank determines that Company is exceeding the limits described above on more than an occasional basis, Bank will, at its option, either close Company's savings Account, transfer the funds on deposit in Company's Account to another account that Company is eligible to maintain, or terminate Company's right to make transfers and write Items against Company's savings Account.

## **Commercial Time Accounts**

### **General.**

Commercial Time ("time") Accounts include deposits which are payable, either on a specified date or at the expiration of a specified time, no less than seven (7) calendar days after the date of deposit. Bank may refer to a time account as a "certificate of deposit" or a "CD," even though the time account is not represented by a certificate.

### **Certificated Time Accounts.**

If Company receives a certificate evidencing Company's time Account, Bank may require Company to present the certificate and any amendments to receive payment or transfer ownership.

### **Maturity Date.**

Company's time Account will mature at the end of the term stated on Company's receipt, disclosure or certificate, as applicable.

**Time Requirements.**

Company agrees to keep Company's funds on deposit until the maturity date. Company may make withdrawals from Company's time Account on the maturity date or within the grace period after that date. Bank will not agree in advance to allow withdrawal before maturity.

**Payment of Interest.**

If Company has elected a payment of interest other than a credit to Company's time Account, Bank may in its sole discretion terminate it in favor of crediting Company's time Account. Ordinarily, such discretion will be exercised when an interest payment mailed to Company's Account address has been returned undelivered or when an Account to which Company's interest payments were automatically credited has been closed, or if the interest payment amount is less than any minimum amount disclosed in the fee and information schedule.

**Additional Deposits.**

Other than during the grace period, Company may not make additional deposits to Company's time Account, unless Bank otherwise agrees in writing.

**Withdrawal of Interest Prior to Maturity.**

A withdrawal of interest prior to maturity will reduce earnings.

**Renewal Policies.**

If Company's time Account is automatically renewable, at maturity it will renew (i) for a like term; and (ii) at Bank's interest rate in effect on the maturity date for a new time deposit of the same term and amount, unless Bank has notified Company that it will not renew Company's Account. Company may withdraw Company's funds anytime during the grace period without a fee. If Company does, Bank will not pay interest for that period on the funds withdrawn. If Company's time Account is not automatically renewable and Company does not withdraw the funds on the maturity date, the funds will no longer earn interest after the maturity date and will be placed in a non-interest-bearing checking Account.

**III. Funds Transfers****General.**

Funds transfers to or from Company's Account will be governed by the rules of any funds transfer system through which the transfers are made, as amended from time to time, including, without limitation, the National

Automated Clearing House Association and any regional association (each, an “ACH”) and Clearing House Interbank Payments System (“CHIPS”). The following terms are in addition to, and not in place of, any other agreements between Company and Bank regarding funds transfers.

**Notice of Receipt of Funds.**

Unless Bank has otherwise agreed in writing, it will notify Company of funds electronically debited or credited to Company's Account through the statement for Company's Account covering the period in which the transaction occurred. Bank is under no obligation to provide Company with any additional notice or receipt.

**Reliance on Identification Numbers.**

If a transfer instruction describes the person to receive payment inconsistently by name and account number, payment may be made on the basis of the account number even if the account number identifies a person different from the named person. If a transfer instruction describes a participating financial institution inconsistently by name and identification number the identification number may be relied upon as the proper identification of the financial institution.

**Duty to Report Unauthorized and Erroneous Fund Transfers.**

Company agrees to exercise ordinary care to determine whether a fund transfer to or from Company's Account was either erroneous or not authorized and will notify Bank of the facts within a reasonable time not exceeding thirty (30) days after Bank sends or makes available to Company the statement for Company's Account on which the transfer appears or Company otherwise has notice of the transfer, whichever is earlier. Company will be precluded from asserting that Bank is not entitled to retain payment unless Company objects to payment within the thirty (30) day period.

**Erroneous Payment Orders.**

Bank has no obligation to detect errors in payment orders (for example, an erroneous instruction to pay a beneficiary not intended by Company or to pay an amount greater than the amount intended by Company, or an erroneous transmission of a duplicate payment order previously sent by Company). Should Bank detect an error on one or more occasions, it shall not be construed as obligating Bank to detect errors in any future payment order.

**Automated Clearing House (ACH) Transactions.**

The following terms apply to payments to or from Company's Account that are transmitted through an ACH:

- Company's rights as to payments to or from Company's Account will be governed by the laws that govern Company's Account.
- Credit given by a receiving bank to its customer for a payment from Company's Account is provisional until final settlement has been made or until payment is considered received under the laws that govern Company's Account.
- If final settlement or payment is not made or received, the receiving bank will be entitled to a refund from its customer and Company, as the originator of the payment will not be considered to have paid Company's customer.
- If a payment is made to Company's Account and Bank does not receive final settlement or payment is not received under the laws governing this Agreement, Company will not be considered to have received payment, and Bank will be entitled to reimbursement from Company for that payment.
- Company hereby authorizes any Originating Depository Financial Institution (ODFI) to initiate, pursuant to ACH Operating Rules, ACH debit entries to Company's Account for electronic presentment or re-presentment of Items written or authorized by Company.

#### **IV. Selected Services**

##### **Stagecoach Deposit® – ATM Deposit Only Card Service.**

Company may elect to utilize Bank's Stagecoach Deposit® – ATM Deposit Only Card Service by completing and returning to Bank the setup form for the Service. This Service allows Company to make deposits to Company's Account using a Stagecoach Deposit® – ATM Deposit Only card ("Deposit Card") and a designated Wells Fargo® ATM ("ATM"). Company will make such deposits according to the instructions Bank provides and will gain access to the ATM using the Deposit Card and a Personal Identification Number ("PIN"), the risk of misuse of both of which Company assumes. Bank will provisionally credit each deposit to Company's Account based on the amount Company keys into the ATM. Company's ATM deposits are subject to the standard cut-off time established for the ATM into which the deposit was made and Bank's funds availability policy applicable to Company's Account. If the dollar amount of Company's deposit as determined by Bank differs from Company's total (as shown on Company's ATM receipt), Bank will send Company a statement showing the amount of this difference. Company agrees Bank's count of the dollar amount of Company's deposit will be conclusive and binding on Company. Company



will have full responsibility for each deposit and its contents until the deposit has been completely and physically accepted into the ATM. If Company claims any portion of a deposit was lost or stolen while in Bank's custody, Company acknowledges Company has the burden of proving its claim. If Company orders supplies for the ATM Deposit Service through the ATM, Company authorizes Bank to initiate debits to Company's Account and credits to the accounts of third party vendors to cover the cost of such supplies provided to Company. Such transfers may be processed through an automated clearing house or any other means chosen by Bank and will be subject to the rules of the funds transfer system used by Bank. Company's authorization will remain in full force and effect until Bank has received written notification from Company of its termination in such time and manner as to afford Bank and any third-party vendor a reasonable opportunity to act on it.

**Stagecoach Deposit® – Post Verify Service.**

If Company elects to utilize Bank's Stagecoach Deposit® – Post Verify Service, Company will prepare, package and deliver Stagecoach deposits to Bank in accordance with Bank's instructions. Bank will provisionally credit Company's Account for the currency shown on the deposit ticket enclosed in Company's Stagecoach deposit bag as follows: (i) same day credit for deposits delivered to an office of Bank before that office's cut-off time on any Business Day or for deposits placed in night depository of Bank before 6:00 a.m. on any Business Day; or (ii) next Business Day credit for deposits delivered to an office of Bank on any Business Day on or after Bank's office's cut-off time or on any non-Business Day. All Stagecoach deposits are subject to Bank's acceptance and verification. Bank will verify the currency in Company's Stagecoach deposit bag either at a later time in Bank's office or when Company's Stagecoach deposit bag is delivered to Bank's cash vault. Checks will be verified when they are delivered to Bank's check processing center. Bank reserves the right to adjust (debit or credit) Company's Account if Bank determines that the amount shown on Company's deposit ticket is incorrect. Because the frequency of armored courier transportation from Bank's offices to Bank's vaults varies from office to office, the time it takes to verify Company's Stagecoach deposit may vary, depending on the office to which Company's Stagecoach deposit bag is delivered. In most cases, adjustments will be made and notification will be sent within three (3) Business Days. Adjustments will be effective when they are processed.

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COM 1416 (Rev01/13)



# MASTER AGREEMENT FOR TREASURY MANAGEMENT SERVICES

The Service Documentation described below contains the terms under which Wells Fargo Bank, National Association ("Bank") provides treasury management services ("Services"). The Bank customer to which the Services will be provided ("Company") is identified in the Acceptance of Services ("Acceptance").

Bank and Company agree:

1. **Service Documentation.** The Service Documentation for each Service includes:
  - 1.1. The Agreement for Banking Services dated on or about XXXX, 2015 (the "Banking Services Agreement");
  - 1.2. The Service Description.
  - 1.2. The Acceptance.
  - 1.3. This Master Agreement for Treasury Management Services ("Master Agreement").
  - 1.4. The account agreement for the deposit account(s) (each, an "Account") that Company or Company's affiliate or subsidiary maintains at Bank or Bank's affiliate in connection with a Service.
  - 1.5. User Guides which include Terms of Use, software, software licenses, price schedules, specifications, instructions, and notices.
  - 1.6. The set-up form(s) for each Service.

The Service Documentation also applies to a Service that is provided by an affiliate of Bank and a Service that is used by an affiliate or a subsidiary of Company. "Bank" includes each such affiliate, and "Company" includes each such affiliate and subsidiary. If there is a conflict among the documents that make up the Service Documentation, the documents will govern in the order set forth above. Company acknowledges receiving a copy of the Service Documentation for each Service Bank provides to Company.

2. **Services.** Bank and Company will agree upon the Service(s) to be provided.
3. **Changes to Services.** Bank may change (or add to) the terms and fees in the Service Documentation at any time upon prior written notification to Company. If Company discontinues using the affected Service before the change becomes effective, it will not be bound by the change. If Company continues to use a Service after the change becomes effective, it will be bound by the change.
4. **Term and Termination.** Unless terminated sooner in accordance with the applicable Service Description, this Master Agreement and any Service will continue in effect until terminated by either party in accordance with the notice and, if applicable, cure provisions of the Banking Services Agreement. The termination of a Service will not affect Company's or Bank's rights

with respect to transactions occurring before termination. Bank will not be liable to Company for any losses or damages Company may incur as a result of any termination of any Service.

5. **Service Fees.** Company will pay Bank the fees described in the Banking Services Agreement and related Contract Documents (as defined therein).
6. **Confidential Information.** Unless otherwise provided in the Service Documentation, all User Guides and software constitute Bank's or its vendor's confidential information ("Confidential Information") only to the extent they are trade secrets or otherwise exempt from disclosure under Florida law, and Company will not acquire any ownership interest in or rights to Confidential Information as a result of Company's use of any Service. Company will (a) only to the extent it is a trade secret or otherwise exempt from disclosure under Florida law, maintain the confidentiality of the Confidential Information; (b) only to the extent it is a trade secret or otherwise exempt from disclosure under Florida law, not disclose (or permit its employees or agents to disclose), copy, transfer, sublicense or otherwise make any of it available to any person or entity, other than Company's employees who have a need to use the Confidential Information in connection with the applicable Service; and (c) not decompile, reverse engineer, disassemble, modify, or create derivative works of any Confidential Information. Company will notify Bank immediately if it knows or suspects that there has been any disclosure, possession, or use inconsistent with this Paragraph (each, an "Unauthorized Use") of any Confidential Information.
7. **Liability.**
  - 7.1. Bank will perform each Service in accordance with reasonable commercial standards applicable to Bank's business; laws, regulations and operating circulars governing the activities of Bank; applicable funds transfer system(s) and clearinghouse rules; and the Service Documentation.
  - 7.2. Bank is under no obligation to honor, in whole or in part, any entry, file, batch release, transfer instruction, payment order, transaction or instruction that (a) exceeds the available balance in the Account, unless otherwise provided in the Service Documentation; b) is not in accordance with the Service Documentation or Bank's applicable policies, procedures or practices as made available to Company; c) Bank has reason to believe may not have been duly authorized, should not be honored for its or Company's protection, or involves funds subject to a hold, dispute, restriction or legal process; or d) would possibly result in Bank violating any applicable rule or regulation of any federal or state regulatory authority including without limitation any Federal Reserve guidelines such as the limitations on Bank's intra-day net funds position.
  - 7.3. All uses of Services through Company's ID codes, passwords, token cards, PINs, or passcodes (each, a "Code") will be deemed to be authorized by and binding on Company. Company's failure to protect Codes may allow an unauthorized party to (a) use the Services, (b) access Company's electronic communications and financial data, and (c) send or receive information and communications to Bank. Except to the extent directly resulting from Bank's negligence in failing to protect the Codes from unauthorized access, Company assumes the entire risk of unauthorized use of Codes and unencrypted electronic transmissions.
  - 7.4. Neither Bank nor any software vendor makes any express or implied representations or warranties with respect to the Services or any software used in connection with the Services including without limitation any warranty as to the merchantability or fitness for a particular purpose, other than those expressly set forth in the Service Documentation.

- 7.5.** Company will promptly furnish written proof of loss to Bank and notify Bank if it becomes aware of any third party claim related to a Service. Company will cooperate reasonably (and at its own expense) with Bank in recovering a loss. If Company is reimbursed by or on behalf of Bank, Bank or its designee will be subrogated to all rights of Company for the amount reimbursed.
- 7.6.** Any claim, action or proceeding against Bank for losses or damages arising from a Service, including Bank's honoring or dishonoring a check covered by a Service, must be brought within the time provided by Florida law.
- 7.7.** Bank will have no liability for failure to perform or delay in performing a Service if the failure or delay is due to circumstances beyond Bank's reasonable control. If Bank determines that any funds transfer or communications network, Internet service provider, or other system(s) it has selected to provide a Service is unavailable, inaccessible or otherwise unsuitable for use by Bank or Company, Bank may, upon notice to Company, suspend or discontinue the affected Service.
- 7.8.** [Reserved.]
- 7.9.** Bank will only be liable to Company for Company's direct monetary losses due to Bank's negligence or intentional misconduct. Except in the case of Bank's gross negligence or intentional misconduct, Bank's liability to Company will be limited to an amount not to exceed ten (10) times Bank fees incurred during the calendar month immediately preceding the calendar month in which such loss or damages were incurred (or, if no Bank fees were incurred in such month, Bank fees incurred in the month in which the losses or damages were incurred). Except as expressly provided otherwise in the Service Documentation, neither party to this Master Agreement will be liable to the other party for any special, consequential, incidental (including without limitation court costs and attorneys' fees), indirect, or punitive losses or damages, whether any claim is based on contract or tort, or whether the likelihood of such losses or damages was known to the other party and regardless of the form of the claim or action.

## **8. Miscellaneous.**

- 8.1.** The Service Documentation will be governed by substantive federal laws, regulations and rules and, to the extent such laws, regulations and rules are not applicable, those of the State of Florida, without regard to conflicts of laws principles. Any portion of the Service Documentation which is inconsistent with applicable laws, regulations or rules will be deemed modified and applied in a manner consistent therewith, and Bank will incur no liability to Company as a result of the inconsistency or modification and application. If any portion of the Service Documentation is deemed unenforceable by a court of competent jurisdiction, it will not affect the enforceability of the remaining Service Documentation.
- 8.2.** The Service Documentation is the entire agreement between Bank and Company and supersedes all prior representations, conditions, warranties, understandings, proposals or agreements regarding a Service. No course of dealing or waiver of any right by either party on one occasion will constitute a modification of the Service Documentation or be a waiver of that right on a subsequent occasion.
- 8.3.** Company will provide Bank reasonably promptly upon Bank's request any existing financial statements or other information pertaining to Company's financial condition or any previously unprepared financial statements which Bank may require Company to

prepare and/or to be audited or reviewed by independent certified public accountants acceptable to Bank.

- 8.4.** Company warrants it will not use any Service in a manner which violates any federal or state law including without limitation any sanction or control administered by the Office of Foreign Assets Control or Bureau of Export Administration.
- 8.5.** If Company employs an agent in connection with its use of any Service, Company represents and warrants to Bank that (a) Company's governing body has duly authorized the agent and (b) Company will exercise appropriate controls to ensure each agent so authorized does not exceed the authority so granted to it.
- 8.6.** Either party may provide notice to the other party by mail, personal delivery, or electronic transmission. Bank will use the most recent address for Company in Bank's records. Company will use the address where Company's relationship manager or other manager is located and address any notice to the attention of such manager. Any notice will be effective when actually received. Bank will be entitled to rely on any notice from Company that it believes in good faith was authorized by an authorized representative of Company and, except as expressly stated in the Service Documentation, will have no obligation to verify the signature (including an electronic signature). Each party will have a reasonable time after receipt of any notice to act on it.
- 8.7.** Sections 1, 4, 5, 6, 7, and 8 will survive termination of this Master Agreement.

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# COMMERCIAL DEPOSITORY SERVICE DESCRIPTION



- 1. Introduction.** The legal agreement governing the Wells Fargo Bank, N.A. ("Bank") Commercial Depository Service Description ("Service") includes (a) the Agreement for Banking Services dated on or about XXXXX, 2015 ("Banking Services Agreement"); (b) this Service Description, (c) Bank's Master Agreement for Treasury Management Services ("Master Agreement"), (d) the account agreement applicable to the deposit account at Bank or Bank's affiliate Company uses in connection with the Service (each, an "Account"), and (e) the signature card for the Account ("Signature Card"). These agreements may be referred to collectively as the "Service Documentation". Bank (or a legal predecessor to Bank) has provided the applicable account agreement ("Account Agreement") separately to Company. If there is a conflict among the documents comprising the Service Documentation, they will govern in the order they are set forth in the first sentence of this section. "Company" is the customer of Bank identified in the Signature Card. Company's use of the Service(s) confirms Company's receipt of and agreement to be bound by the Service Documentation.
- 2. Description of Service.** With the Service, Company may (a) order currency and coin (collectively, "cash") from Bank's cash vault and Bank will make such cash available to an armored car service acting as Company's agent ("Agent") at Bank's cash vault, and (b) deliver currency, coin, checks and other negotiable instruments to Bank's cash vault or night depository locations for processing.
- 3. Cash Orders from Bank's Cash Vault.**

  - 3.1. Cash Requests.** Company may request in writing, telephonically by operator-assisted call or by touch tone/automated response, or electronically via transmission, facsimile, or Bank's *Commercial Electronic Office*® (CEO®) portal (each a "Cash Request") that Bank make available to Company's Agent at Bank's cash vault, in an amount designated in the Cash Request, shipments of cash (each a "Cash Shipment") in bags or other containers ("Cash Bags"). Bank is authorized to act upon any Cash Request Bank receives in accordance with this Service Description, and which Bank believes in good faith to have been made by an authorized representative of Company.
  - 3.2. Making Cash Available to Company's Agent.** Bank is authorized to make Cash Shipments available to any person whom Bank in good faith believes to be Company's Agent. Bank will have no further responsibility, and Company assumes all risk of loss for cash made available to any such person. Bank will make Cash Shipments available only at the locations, on days, and during the hours published by Bank from time to time. Bank reserves the right temporarily to suspend the Service at any time without notice.
  - 3.3. Company's Authorized Representatives.** Company will promptly certify to Bank the identity of: (a) the person with whom Bank is authorized to communicate regarding authorization codes or other security procedures; (b) Company's Agent authorized to accept delivery of cash; and (c) where applicable, the persons who are authorized users of the Service. Company will give prior written notice to Bank of any change in the person(s) or Agent so authorized by Company. Bank will be fully protected in relying on

each such notification and on the obligation of Company to promptly notify Bank of any change in the person(s) or Agent so authorized by Company.

**3.4. Security Procedures.** For requests made in writing or by facsimile, operator-assisted telephone call or transmission, a Customer ID assigned by Bank is required. For CEO requests, a User ID assigned by Bank is required. For touch-tone/automatic response telephone requests, an Access Code is required which can be assigned either by Bank or by Company. Operator limits may also be required. It is Company's responsibility to put into place internal procedures, consistent with Florida law, that will minimize the risk of an unauthorized person gaining access to the Customer ID, User ID(s) and Access Code(s). Such internal procedures include without limitation requiring users to maintain such number(s) and code(s) in strict confidence. Each party will notify the other party immediately in the event a breach of security of Company's ID number(s) and/or code(s) or any of Company's Accounts is suspected.

**3.5. Debit of Account.** On the Business Day that Bank makes available any Cash Shipment to Company's Agent, Bank is authorized to debit Company's designated Account for the aggregate amount of the shipment. Company will maintain collected balances in the designated Account sufficient at all time to cover fully any debit. Bank has no obligation to release a requested Cash Shipment or any portion thereof to Company's Agent unless there are sufficient collected funds in the Account to fully cover the amount of the Shipment at the time the Shipment is to be made available to Company's Agent. If Company fails to specify an Account to Bank, Bank may debit any account which Company maintains with Bank for the amount of a requested Cash Shipment.

**3.6. Packing Slip; Differences in Shipment Amount.** Each Cash Shipment will be accompanied by a packing slip. The packing slip will disclose the aggregate amount of the Cash Shipment, the overall number of containers included in the Cash Shipment, and the number of containers delivered to Company's Agent for transmittal to Company. With respect to any Cash Shipment made available to Company's Agent, Company will notify Bank immediately in writing of any difference between the amount specified on the packing slip for that Shipment and the amount, as counted by Company, of the Shipment. In the event that the difference cannot be resolved, Bank's count of the amount of the disputed Shipment will be conclusive and binding on Company.

**4. Delivery and Processing of Deposit Shipments at Bank's Cash Vault.** The following procedures will govern Company's delivery of currency, coin, checks, and other negotiable instruments to Bank's cash vault locations (each a "Deposit Shipment"), and Bank's processing of such Deposit Shipments:

**4.1. Use of Agent to Deliver Shipments.** Company will deliver Deposit Shipments in deposit bags or other containers ("Deposit Bags") to one of Bank's cash vaults via an armored car service acting as Company's agent ("Agent"). Company is responsible for making all arrangements with its Agent for delivery of Deposit Shipments, and, as between Company and Bank, Company assumes all risk of loss while a Deposit Shipment is in the possession of the Agent. Bank may accept Deposit Shipments from any person Bank believes in good faith to be Company's Agent. The delivery of a Deposit Bag to Bank or Bank's receipt for it on a manifest will not be deemed proof of Bank's receipt of the contents listed on the deposit slip contained in the Deposit Bag or Company's records. Bank will have no responsibility for any Deposit Bag or its contents delivered to one of Bank's cash vaults until the Deposit Bag is accepted by Bank in

accordance with its procedures and the contents of the Deposit Bag are counted by Bank.

**4.2. Delivery Procedures.** In delivering a Deposit Shipment to Bank's cash vault, Company agrees to comply (and to cause its Agent to comply) with the following procedures:

- Deliver Deposit Bags only at the locations, on the days, and during the hours published by Bank from time to time;
- Properly endorse all checks and other negotiable instruments included in a Deposit Shipment;
- Use only Bank-approved Deposit Bags that are properly secured;
- Specify the number of Deposit Bags belonging to Company which are included in the overall shipment delivered to Bank, as well as the contents of each Deposit Bag, on a delivery manifest, a copy of which Company's Agent will provide to Bank at the time of delivery;
- Obtain the signature of Bank's employee who accepts delivery on that portion of the delivery manifest which the Agent retains; and
- Retain a copy of the receipt or other document covering each Deposit Bag delivered by Company to its Agent for at least one year from the date of delivery to Company's Agent.

Company agrees that Deposit Bags will be used only for the deposit of currency, coin, checks, other negotiable instruments (collectively "items"), and will not be used in any unauthorized manner or for any unlawful purpose. As to any property other than items included in a Deposit Bag, Bank will not be deemed a bailee and will have no liability for any loss of or damage to such property which may occur.

**4.3. Cut-off Time; Deposit to Account.** If a Deposit Shipment is received at one of Bank's cash vaults on a Business Day before Bank's published "cut-off time" for that cash vault, the aggregate amount of the deposits in such Shipment will be credited on that Business Day to the Account with Bank specified on the deposit slip for that Shipment. If a Deposit Shipment is received at a cash vault on a Business Day after Bank's "cut-off time," the aggregate amount of the deposits in that Shipment will be credited to the Account on the next succeeding Business Day. Bank will not deposit any items received in any Deposit Shipment unless the account number of the Account into which the deposit is to be made is specified on the deposit slip for that Shipment.

**4.4. Processing of Deposit Shipments.** Company authorizes Bank to open each Deposit Bag, count the contents, credit the amount of items to the Depository Account indicated on the deposit slip contained in the Deposit Bag and process the deposit, all in accordance with Bank's customary procedures. All deposits are subject to verification, and Bank's count of the items will be conclusively deemed to be correct and complete for all purposes. No relationship of debtor and creditor will arise between Bank and Company until the count has been completed and the deposit credited to the Account. However, this does not relieve Bank of responsibility for safekeeping Company deposits upon receipt of such deposits. Company acknowledges that it has had an opportunity to have Bank's applicable count and verification procedures explained to its representative

and agrees that the same will be deemed commercially reasonable. Company understands that no photocopying or microfilming of items will be performed at any cash vault location.

**4.5. Adjustment Procedures.** If the aggregate amount of the items in any Deposit Shipment, as counted by Bank, is less than that reported on the deposit slip covering that Shipment, Bank will debit the Account specified on the deposit slip by such difference and report the difference to Company. If that Account has an insufficient collected and available balance to cover the debit, Bank will debit Company's master account or a sub-account established thereunder (or, with notice to Company and its consent, another account of Company) for the difference, and Company agrees to promptly reimburse Bank for the difference (or any portion thereof) for which there are insufficient available balances in such accounts with Bank. If the aggregate amount of the items in any Deposit Shipment, as counted by Bank, is more than that reported on the deposit slip covering the Shipment, Bank will credit the Account specified on the deposit slip for the difference and notify Company of the difference.

**5. Delivery and Processing of Deposit Shipments at Bank's Night Depository Locations.** The following procedures will govern Company's deliveries, if any, of currency, coin, checks, and other negotiable instruments (each a "Night Deposit") to Bank's night depository locations (each a "Night Deposit"), and Bank's processing of Night Deposits. Company does not currently expect to make Night Deposits.

**5.1. Night Depository Locations; Issuance of Keys.** Company may make Night Deposits to its deposit account(s) with Bank by placing the items to be deposited into disposable bags furnished by Bank (each a "Night Bag") and then placing the Night Bags in the night depository receptacle ("Night Depository") at one of Bank's branches/stores (each a "Store") listed on Bank's Night Depository Set-up Form. Each office of Company listed on the Night Depository Set-up Form will receive one key to the Night Depository at a designated Store. Company will designate in writing to Bank the individuals to receive the key for each of its offices; Bank may require such individuals to sign a receipt for the keys they receive.

**5.2. Contents of Night Bags; Deposit of Night Bags.** Company agrees that Night Bags will be used only for the deposit of currency, coin, checks or negotiable instruments properly endorsed by Company (collectively "items"), and will not be used in any unauthorized manner or for any unlawful purpose. As to any property other than items included in a Night Bag, Bank will not be deemed a bailee and will have no liability for any loss of or damage to such property which may occur. Each Night Bag must contain one or more deposit slips listing all the items contained in that Bag and their total dollar amount, and identifying the deposit Account of Company to which the dollar amount of the deposit is to be credited. After each Night Bag is placed in a Night Depository, the Night Depository must be securely locked. At the time each Night Bag is placed in a Night Depository the Bag must be securely closed and placed completely in the Night Depository.

**5.3. Processing of Night Deposits.** Bank may open each Night Bag and remove its contents without Company or any of its representatives being present. The contents of each Night Bag will be processed in accordance with Bank's standard procedures, and if placed in a Night Depository before Bank's established "cut-off time" on any Business Day, those items acceptable for deposit will be deposited into the Account as of the close of business on that same Business Day. The cut-off time for deposits made



through the night depository may be different from that for deposits made at the teller line. Night Deposits placed in a Night Depository after Bank's established "cut-off time" will be credited to the Account on the next succeeding Business Day. Company understands and agrees that the contents of a Night Bag will not be credited to the Account, nor will the relationship between Company and Bank be that of a debtor to a creditor with respect to any item in a Bag, until Bank has accepted the item for deposit into the Account after counting all the items in the Bag and calculating the total dollar amount of all such items.

**5.4. Counting and Adjustment Procedures.** If Company's records regarding the total dollar amount of the items in any Night Bag differ from Bank's calculation of the total dollar amount of the items in the Bag, Company has the burden of proving that its records show the correct amount in the Bag or Bank's total will be accepted as final. If there is a difference between Bank's total and Company's total for the amount of items in a Night Bag (as Company's total is shown on the deposit slip or slips in the Bag), Bank will send Company a statement indicating the amount of the difference. In the event that the difference cannot be resolved, Bank's count of the dollar amount will be conclusive and binding on Company.

**5.5. Claims of Lost or Stolen Items.** Company will have the burden of proving the amount of any item which it claims was lost or stolen while it was at a designated Store and that disappearance of the item occurred while it was at the designated Store. Company agrees to notify Bank immediately if Company determines that any Night Bag or any item in a Night Bag has been lost or stolen while at one of Bank's Stores. Company agrees that it will have total responsibility for each Night Bag and its contents until the Bag has dropped completely into a Night Depository.

**6. Special Instructions.** Company may submit to Bank in writing any special instructions it may have in connection with cash orders or deposits of items at Bank's cash vault or night depository locations. Bank may at its option accept or reject the instructions and so notify Company. Even if accepted, Bank may stop complying with the instructions upon prior notice to Company if, in Bank's opinion, continued compliance would increase Bank's costs or risks, interfere with its established or revised procedures, or diminish the efficiency of Bank's operations. Any loss attributable to increased risk resulting from a special instruction from Company will be borne solely by Company.

**7. Further Assurances.** Company agrees to do such further reasonable acts Bank may consider reasonably necessary or desirable to implement and carry out the intent of this Service Description, including providing information Bank requests regarding any Deposit Shipment, including information necessary to file a Currency Transaction Report under the regulations implementing the Currency and Foreign Transactions Reporting Act of 1970, as amended from time to time, and to determine the source of any cash or items in a Deposit Shipment.

**8. Representations and Warranties regarding Deposit Shipments.** To be eligible to make Deposit Shipments at a cash vault or Night Depository, Company hereby represents and warrants to Bank at the time of the delivery of each Deposit Shipment that:

**8.1 Deposits for Own Account.** Company makes Deposit Shipments for its sole account and does not directly or indirectly make any Deposit Shipments on behalf of any other party; unless such party has been previously disclosed to Bank and approved in writing by Bank, in its sole discretion.

- 8.2 No Deposit Shipments from Outside the United States.** Company does not make Deposit Shipments from a source or sources known, or which upon reasonable inquiry would be known, to Company to be outside the United States. However, the foregoing does not prohibit Company from depositing customer payments (e.g. payments from utilities customers, etc.) originating from locations outside of the United States.
- 8.3. No Business as a Foreign Exchange House.** Company does not conduct any business, whether in whole or any part, as a foreign exchange house including, without limitation, as a Casa de Cambio.
- 9. Termination of Services.** Bank may terminate this Service with the notice provisions of the Banking Services Agreement.
- 10. Survival.** Sections 3.6, 4.4., 4.5., 5.4., 5.5., 7 and 10 will survive termination of the Service.

# ACH ORIGATION SERVICE DESCRIPTION

The Wells Fargo logo, consisting of the words "WELLS" and "FARGO" stacked vertically in a white, sans-serif font on a black rectangular background.

1. **Introduction.** This Service Description is part of the Service Documentation governing Wells Fargo Bank, N. A. ("Bank") ACH Origination service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is identified in the Acceptance.
2. **Description of Services.** The Service enables Company to originate automated clearing house ("ACH") credit and debit entries in accordance with the National Automated Clearing House Association Operating Rules and any applicable local ACH rules (collectively, the "ACH Rules"; see section 3). Company will maintain one or more deposit account(s) at Bank or Bank's affiliate (each, an "Account"), that Bank may use to process such Entries. An "Entry" is an ACH debit or credit entry issued in Company's name, and a "File" is the data file or batch release used to transmit one or more Entries to Bank. Section 6 of this Service Description describes (a) the means Bank offers to Company for transmitting Files to Bank (each, an "Initiation Method") and (b) the means Bank will use to verify Company's authorization of a File or a communication amending or canceling an Entry or File (each, a "Security Procedure"). When Bank acts with respect to an Entry as both the originating depository financial institution ("ODFI") and receiving depository financial institution ("RDFI"), as ODFI and RDFI are defined by the ACH Rules, the Entry is an "on-us Entry."
3. **ACH Rules.** Company (a) authorizes Bank to originate Entries on behalf of Company to Receivers' accounts; (b) agrees to be bound by the ACH Rules; and (c) agrees not to originate Entries that violate the laws of the United States. In addition, Company agrees Bank may audit Company's compliance with the Service Documentation and the ACH Rules.
4. **Preparation of Entries and Files; Processing Schedules.** Company will prepare each File in accordance with the ACH Rules and the guidelines Bank separately makes available to Company. Bank will process each File in accordance with Bank's then current processing schedule and any instructions regarding the date an Entry is to be settled that Company furnishes with the Entry provided (a) Bank receives the File by Bank's applicable cutoff time on a Business Day and (b) the ACH is open for business. Files will be deemed received by Bank when the transmission of the File to Bank is completed and authenticated in compliance with the Security Procedure. If Bank receives a File after Bank's applicable cutoff time or on a day when the ACH is not open for business, the File will be treated as having been received prior to Bank's applicable cutoff time on the next Business Day on which the ACH is open for business. A "Business Day" is every day except Saturday, Sunday and federal holidays.
5. **Inconsistency of Name and Number.** If an Entry describes a "Receiver" (as defined in the ACH Rules), both by name and identifying number, the RDFI may pay the Entry on the basis of the identifying number, even if the number identifies a person different from the named Receiver. If an Entry describes the RDFI both by name and identifying number, Bank, a gateway operator or another financial institution handling the Entry may rely on the identifying number to identify the RDFI, even if the identifying number refers to an institution other than the named RDFI.
6. **Initiation Methods and Security Procedures.** This section lists the Initiation Methods and describes the Security Procedures Bank offers for ACH origination. Company's elections regarding Initiation Methods and Security Procedures are set forth in the Acceptance.

### 6.1. **Commercial Electronic Office® (CEO®) Initiation Method.**

The CEO® portal is Bank's electronic banking portal that is accessed via the Internet. The CEO® security procedures are log-on credentials specified by Bank including a company ID, user ID, password, token, and any other authentication or authorization process Bank requires from time to time. Bank's standard CEO® security procedures also include dual custody for select, high-risk ACH activities. With dual custody, an authenticated second user approves these activities. There is no additional charge for dual custody.

### 6.2. **Direct Origination Initiation Method.**

**Secure Application File Exchange Transmission ("SAFE-T").** This transmission platform offers a variety of transmission protocols including hypertext transfer protocol secured (https), FTP over SSL (FTP/S), secure FTP (S-FTP), and Applicability Statement 2 (AS2).

**IBM® Connect:Direct® with Secure Plus+.** Secure Plus+ is an add-on to Connect Direct to enhance security by means of Secure Socket Layer ("SSL") or Transport Layer Security ("TLS"). Connect Direct® is a registered trademark of Sterling Commerce, Inc. an IBM company.

### 6.3. **Payment Manager® Initiation Method.**

**Secure Application File Exchange Transmission ("SAFE-T").** This transmission platform offers a variety of transmission protocols including hypertext transfer protocol secured (https), FTP over SSL (FTP/S), secure FTP (S-FTP), and Applicability Statement 2 (AS2).

**Machine-to-Machine ("M2M").** This transmission method may use an XML message interface that is based on the Interactive Financial eXchange (IFX) message standard using SOAP structured messages; or it may use other formats and protocols such as JSON and REST. Data is communicated via the Internet using 128-bit encryption and Secure Socket Layers (SSL).

**IBM® Connect:Direct® with Secure Plus+.** Secure Plus+ is an add-on to Connect Direct to enhance security by means of Secure Socket Layer ("SSL") or Transport Layer Security ("TLS"). Connect Direct® is a registered trademark of Sterling Commerce, Inc. an IBM company.

**Value-Added Network ("VAN").** With this transmission method, a third party serves as an intermediary for transmitting data between Company and Bank. Procedures for transmitting Payment Orders may vary by VAN. Bank follows the procedures of the VAN selected by Company to authenticate each Payment Order transmitted to Bank through the VAN in Company's name.

**SWIFT® File Act.** SWIFT has established procedures for controlling access to SWIFT messaging services that may include access codes, message authentication codes, secure card readers, digital signatures, and Hardware Security Modules. In addition, SWIFT authenticates certain messages including without limitation Files based on SWIFT message type prior to accepting them for routing as SWIFT messages. This authentication may include confirming the sender and recipient of the message have exchanged bilateral keys ("BKE"), entered into a relationship management application ("RMA") agreement, or taken other steps to secure the transmission of SWIFT messages between them as SWIFT requires from time to time.

#### **6.4. Security Procedure Elected by Company's Third Party Service Provider.**

Company is utilizing a Third Party Service Provider ("TPSP") as defined in the ACH Rules to originate Entries and Files on Company's behalf. Bank will authenticate each File transmitted to Bank in Company's name in accordance with the security procedure the Company's TPSP has elected. Company will notify Bank of any change to Company's TPSP in a manner affording Bank a reasonable opportunity to act on the information.

#### **6.5. Non-Standard Security Procedure.**

If Company has refused to utilize any of the security procedures described above, then the Security Procedure Company will use is described on Attachment B to the Acceptance.

- 7. Company's Payment Obligations.** As of the applicable settlement date, Company will maintain available funds in each Account sufficient to cover the credit Entries originated against it. Company's obligation to pay Bank for each credit Entry matures when Bank transmits the credit Entry to the ACH or gateway operator or posts an on-us Entry. Bank is authorized to debit the Account for the total amount of all credit Entries originated from it at any time. If requested by Bank, Company will pay to Bank, in immediately available funds, an amount equal to all credit Entries Company originates through Bank before the date Bank delivers the credit Entries to the ACH or gateway operator or posts an on-us Entry. If Company fails to comply with Bank's request, Bank may refuse to send the Entries to the ACH or gateway operator or post an on-us Entry. Bank may take such other actions as it deems necessary or appropriate to ensure Bank receives payment for Company's credit Entries including without limitation (a) upon notice to Company, placing a hold on funds in Company's corresponding Account at Bank or sufficient to cover Company's credit Entries (or, if such corresponding Account has closed or contains insufficient funds, on funds in Company's Master Account or any sub-account established thereunder or, with Company's consent, another Account at Bank) and (b) setting off against any amount Bank or an affiliate of Bank owes Company. In addition, Bank may charge the corresponding Company Account at Bank for any debit, correcting or reversing Entry which is later returned to Bank; provided, however, that if such corresponding Account has closed or contains insufficient funds, then Bank may charge Company's Master Account or any sub-account established thereunder or, with Company's consent, another Account at Bank.
- 8. Provisional Credit.** A credit to Company's Account for an Entry is provisional until Bank receives final settlement for the Entry. If Bank does not receive final settlement, Bank is entitled to debit Company's corresponding Account for the amount of the Entry (or, if such corresponding Account has closed or contains insufficient funds, Bank may debit Company's Master Account or any sub-account established thereunder or, with Company's consent, another Account at Bank). Company will pay any shortfall remaining after such debit to Bank immediately upon demand.
- 9. Rejected Entries.** Bank may reject an Entry or File if Company fails to comply with the terms of this Service Description. Bank will attempt to notify Company promptly so Company may cure the defect but will have no liability to Company for rejecting an Entry or File or any loss resulting from Bank's failure to provide notice. If Company requests Bank repair an Entry or File and Bank attempts to do so, Bank will not be liable if it is unable to make the requested repair. Company will pay all charges and expenses Bank incurs in connection with any repair or attempted repair.
- 10. Cancellation, Amendment, Reversal.** If Company requests Bank cancel, amend or reverse an Entry or File, Bank may, at its sole discretion, attempt to honor such request but will have no liability for its failure to do so. Bank cannot assure that any attempted cancellation, amendment or reversal of an Entry or File after its receipt by Bank will be successful. To the extent permitted by applicable law,

Company will be responsible for any losses actually incurred or expenses actually paid by Bank in connection with its effecting or attempting to effect Company's request.

11. **Returned Entries.** Bank will have no obligation to re-transmit a returned Entry or File to the ACH or gateway operator, or to take any further action with respect to a returned on-us Entry, if Bank complied with the terms of this Service Description with respect to the original Entry or File. Company will reimburse Bank for any returned debit Entries on the same day Company receives notice of such returned Entry.
12. **Reconstruction of Entries and Files.** Company will retain sufficient records to permit it to reconstruct each Entry and File it delivers to Bank for a period of five (5) Business Days after the applicable settlement date and will submit the reconstructed Entry or File to Bank upon request.
13. **Audit.** Except as otherwise provided by Florida law, Company grants Bank ongoing access to Company's Files and the right to audit periodically such Files and Company's ACH processes and controls so Bank can verify Company's compliance with this Service Description.
14. **Bank's Internal Risk Parameters.** Bank establishes internal risk parameters to identify out-of-pattern or suspect Entries or Files and protect Company and Bank from potential losses. These parameters may include without limitation limits on debit and credit settlements on a single Business Day and/or over multiple consecutive Business Days. Bank may pend or delete an Entry or File exceeding the applicable parameters. In addition, any transaction TYPE (debit or credit) or SEC (standard entry class) as defined in the ACH Rules may, at Bank's option, be conditioned upon Bank's prior approval. Upon notice to Company, Bank may discontinue processing a TYPE and/or SEC of transactions Bank has previously processed for Company.
15. **International Entries.**
  - 15.1. **General.** This section contains additional terms applicable when the financial institution holding the account designated to receive an Entry is in a jurisdiction ("Receiving Country") other than the United States (each, an "International Entry"). Bank will process each International Entry in accordance with (a) the laws and payment system rules of the Receiving Country (b) any agreement governing International Entries between Bank and the gateway operator through which Bank processes the International Entry, the terms of which Bank communicates to Company prior to Company's use of the Service or from time to time thereafter, and (c) the ACH Rules. If there is a conflict among these three clauses, they will govern in the order set forth in this subsection.
  - 15.2. **Credit Entries.** With respect to credit Entries Bank agrees to originate in the currency of a designated foreign government or intergovernmental organization ("Foreign Currency"), Bank will convert the amount to be transferred from U.S. dollars ("USD") to the Foreign Currency at Bank's sell rate for exchange in effect on the Business Day the Entry is transmitted by Bank to the ACH or gateway operator. If the financial institution designated to receive the funds does not pay the Receiver specified in the Entry, or if the Entry is subsequently determined to be erroneous, Bank will not be liable for a sum in excess of the amount of the original Entry after it has been converted from the Foreign Currency to USD at Bank's buy rate for exchange at the time the Entry is returned to Bank.
  - 15.3. **Debit Entries.** With respect to debit Entries Bank agrees to originate in a Foreign Currency, Bank will convert the amount of each Entry from the Foreign Currency to U.S. Dollars at Bank's buy rate for exchange in effect on the settlement date of the Entry. If the financial institution designated to receive the Entry subsequently returns it, Bank may charge the applicable Account (or any other accounts Company owns in whole or in part at Bank or any affiliate of Bank) for the amount equal to the value of the returned Entry, after Bank has converted the

Foreign Currency to USD at Bank's sell rate for exchange at the time the Entry is returned to Bank. Bank will not be liable for a sum in excess of the original amount of the Entry after conversion.

**15.4. Acts or Omissions of Third Parties.** Bank will not be liable for any failure or delay by a gateway operator, any intermediary financial institution, or the financial institution designated to receive the Entry in the Receiving Country in processing or failing to process any Entry Bank transmits to the Receiving Country, or for acts or omissions by a third party including without limitation the delay or failure of any third party to process, credit or debit any Entry.

**16. Third-Party Sender Activities.** This section contains additional terms applicable when Company is a Third-Party Sender, as defined by the ACH Rules.

**16.1 General.** Prior to originating any Entry on behalf of a customer of Company, Company will (a) notify Bank in writing of any other financial institution Company is using to originate transactions as a Third-Party Sender and thereafter notify Bank before Company adds any new financial institution for this purpose; (b) provide Bank with the information Bank requires to enable it to understand the nature of Company's customer's business including without limitation the name, Taxpayer Identification Number, business activity and geographic location of Company's customer; (c) if specifically required by Bank, obtain Bank's written approval to initiate or continue to initiate Entries for that customer, which approval Bank may rescind upon written notice to Company; and (d) enter into a written agreement with that customer whereby that customer agrees:

**16.1.1.** to assume the responsibilities of an originator under the ACH Rules and to be bound by the ACH Rules as in effect from time to time;

**16.1.2.** ACH entries may not be initiated in violation of the laws or regulations of the United States including without limitation the regulations issued by the Office of Foreign Assets Control;

**16.1.3.** to grant Bank ongoing access to audit it and any ACH entry that it has transmitted to Company for transmission to Bank; and

**16.1.4.** Bank may at any time refuse to process an ACH entry for that customer.

**16.2. Representations and Warranties.** Company represents and warrants to Bank Company (a) has conducted due diligence with respect to each customer of Company for which Company is originating transactions through Bank and determined that each such customer is engaged in a legitimate business and that the type, size and frequency of transactions that each such customer is originating is normal and expected for the customer's type of business; and (b) will, in accordance with reasonable commercial standards, monitor each customer's business and transactions on an ongoing basis and notify Bank promptly if Company identifies any unusual activity by Company's customer.

**17. Perfect NOC Service.** This section contains additional terms applicable to Bank's Perfect NOC Service. Bank maintains a database of Notifications of Change (each, a "NOC") that Bank receives and uses this database to update Company's Entries in accordance with the Service options Company selects from time to time. Bank will notify Company of each NOC Bank receives in connection with Company's Entries.

**18. Smart Decision Service.** This section contains additional terms applicable to Bank's Smart Decision Service. Bank will process for credit to the Account specified by Company checks and other instruments payable to Company (each, an "Item") that Company delivers to Bank. Company will use

the depository channels through which Bank offers the Service including electronic channels and other channels specified by Bank through which Bank accepts Items for processing. When Company uses electronic depository channels, Company transmits an "Electronic File" to Bank that includes electronic images of Items (each, an "Electronic Image") and other information regarding Items in the Electronic File. Each Business Day, Bank processes Company's Electronic File and other Items according to the processing criteria Bank has on file for Company, the issuer of an Electronic Image or Item, and Bank (each, respectively, a "Company Preference," an "Issuer Preference," or a "Bank Preference.") Based on these Preferences, Bank will (a) convert each eligible Electronic Image and Item to an ACH debit Entry on the deposit account on which it was drawn; (b) process remaining Electronic Images in accordance with Bank's separate Service Documentation governing the electronic depository channel Company used to deliver the Electronic Image to Bank; or (c) process remaining Items in accordance with Bank's Commercial Account Agreement. If a Company Preference or an Issuer Preference conflicts with a Bank Preference, Bank will follow the Bank Preference.

## **19. Warranties.**

**19.1 General.** Company acknowledges Bank makes certain warranties under the ACH Rules with respect to each Entry. To the extent permitted by applicable law, Company will be responsible any loss Bank incurs as the result of a breach of a warranty made by Bank in connection with any Entry Bank originates upon the instructions received from Company, except to the extent that the loss resulted from Bank's own gross negligence or intentional misconduct.

**19.2 Smart Decision Service.** If Company subscribes to Bank's Smart Decision Service, Company warrants Company (a) will transmit to Bank only Electronic Images that are suitable for processing, including, but not limited to, Electronic Images that are legible and contain machine-readable MICR data; (b) will not deposit to the Account or otherwise negotiate any original Paper Item from which Company has previously created and submitted to Bank an Electronic Image, unless Bank has notified Company the Electronic Image is not legible or contains MICR data that is not machine readable; and (c) has received copies of the then-current ACH Rules and Reg E and will comply with both at all times Bank provides the Service.

## **20. Reserved.**

**21. Termination.** In addition to the termination provisions contained in the Master Agreement, Bank may terminate the Services immediately upon notice to Company if Bank determines in its sole discretion: (a) the number of returned debit Entries originated under this Service Description is excessive; or (b) Company has breached a warranty provided under the ACH Rules or this Service Description or otherwise failed to comply with the ACH Rules.

**22. Survival.** Sections 4, 5, and 7-19 will survive termination of the Services.



## CHEXSTOR<sup>®</sup> SERVICE DESCRIPTION

The Wells Fargo logo, consisting of the words "WELLS" and "FARGO" stacked vertically in a white, sans-serif font on a black rectangular background.

1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") CheXstor service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Service.** The Service enables Company to have Bank maintain microfilm records of all Items paid on each deposit account of Company at Bank that Company enrolls in the Service (each an "Account"). Bank will maintain microfilm records for a period of seven years or any longer period required by Florida or any other applicable law ("Record Period"). Except as otherwise provided by Florida law, each Item Bank microfilms will be shredded and recycled. As part of the Service, Bank will provide a photocopy of any Item posted against the Account which Company requests during the Record Period. Company may request a photocopy electronically via Bank's *Commercial Electronic Office*<sup>®</sup> or by contacting Bank at the telephone number on Company's account statement.
3. **Liability.** If Bank fails to provide in a timely manner a copy of an Item Company requests during the Record Period, Bank will reimburse Company for (and Bank's liability will be limited to) any direct monetary loss Company incurs as a result of the Item's unavailability (not to exceed the amount of the Item). Bank will require Company to substantiate any claimed loss.

# PAYMENT AUTHORIZATION SERVICE DESCRIPTION



1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Payment Authorization Service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Service.** Company may, by executing and delivering to Bank a Payment Authorization Service Set-up Form, elect to utilize the Service for deposit accounts which Company maintains at Bank (each an "account"). Under the terms of the Service, Bank will without Company's specific approval as to any particular Item, (a) automatically return unpaid (marked "REFER TO MAKER") Items drawn against the account which are presented to Bank, and which exceed the "Maximum Dollar Authorized Payment Amount" specified on the Setup Form, (b) refuse encashment of Items drawn against the account which are presented to Bank through its branch/store network, and which exceed the "Maximum Check Cashing Amount" specified on the Setup Form, (c) refuse withdrawal requests against the account which are presented to Bank through its branch/store network, and which exceed the "Maximum over the Counter Withdrawal Amount" specified on the Setup Form, and/or (d) refuse encashment of Items drawn against the account which are presented to Bank through its branch/store network, and which are made payable to an individual.

# ACCOUNT RECONCILIATION PLAN SERVICE

## SERVICE DESCRIPTION



1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Account Reconciliation Plan service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Services.** Bank's account reconciliation plan service ("ARP") Services enable Company to use Bank to (a) store information about Items Company issues on demand deposit accounts that Company enrolls in the Services (each, an "Account"); and (b) process the information in accordance with the Service option(s) that Company elects during the set up process for the Services and from time to time thereafter. Bank's User Guide for the Services details the Service options. "Item" is defined in Bank's Commercial Account Agreement.
3. **Issued Check Information.** If Company elects Bank's full ARP Service, each Business Day prior to the cutoff time Bank separately discloses, Company will provide Bank with the issue date, serial number and dollar amount of each Item Company issues on the Account ("Issued Check Information") using the communication channel(s) Company elects. If Company elects Bank's Deposit Location Reporting Service, Company will provide Bank with a list of Company's location numbers and names and may amend the list from time to time by notifying Bank in writing.
4. **Stop Payment Orders.** If Company uses the Service to place a stop payment order on any Item, Company understands that (a) Bank's Commercial Account Agreement governs the stop payment order; (b) each stop payment order is subject to Bank's verification that the Item described in the stop payment order has not been paid; and (c) this verification may occur a minimum of ninety (90) minutes after the time Company transmits the stop payment order to Bank.

## INFORMATION REPORTING SERVICE DESCRIPTION

The Wells Fargo logo, consisting of the words "WELLS" and "FARGO" stacked vertically in a white, serif font, set against a black square background.

1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Information Reporting services (each, a "Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Services.** The Services enable Company to view and or receive files containing data and/or images (each, a "File") regarding specified transactions on each deposit account at Bank that Company enrolls in the Service (each, an "Account"). The means used to transmit Files to Company include without limitation BAI File Transfer, Bank's Commercial Electronic Office<sup>®</sup> ("CEO"<sup>®</sup>), and CD-ROM. Depending on the Service Company elects, the transactions may include checks or other instruments (each, an "Item") (a) posted to Company's Account; (b) cashed or collected by Bank or accepted for deposit to Company's Account; and (c) returned unpaid to Company's Account. "Item" is defined in Bank's Commercial Account Agreement.
3. **Information From Company's Accounts at Other Financial Institutions.** If the Service Company elects permits Company to have information from deposit accounts Company maintains at other financial institutions imported to Bank and included in a report Bank provides to Company in connection with the Service, Bank will not verify the accuracy or completeness of the information.
4. **Software Sublicense.** If a software sublicense is required for Company to access the Service ("Software Sublicense"), Bank will make the terms of the Software Sublicense available to Company as part of the set up process for the Service. Company will be required to accept the Software Sublicense before being allowed to access the Service. Bank may terminate any Service requiring use of a Software Sublicense immediately on written notice to Company, if Company fails to comply with the Software Sublicense. Company's obligations under this section 4 will survive the termination of Service.

# COMMERCIAL ELECTRONIC OFFICE® ("CEO"®) SERVICE DESCRIPTION

The Wells Fargo logo, consisting of the words "WELLS" and "FARGO" stacked vertically in a white, sans-serif font on a black rectangular background.

1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Commercial Electronic Office Service ("CEO"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Service.** The CEO is Bank's electronic banking portal that is accessed via the Internet. Authorized Representatives (see section 3) may use the CEO to access (a) Bank Services in which Company has separately enrolled (each, an "Accessed Service") and (b) third-party sites Bank may make available through the CEO. Bank offers different channels through which Company may access the CEO that may include without limitation personal computers and mobile devices. Bank may add or eliminate channels at any time. A Bank Service or third party site accessible through one channel may not be accessible through another channel. The Service Documentation includes the Service Description for each Accessed Service. In the event of a conflict between the Service Description for the Accessed Service and this Service Description, the Service Description for the Accessed Service will control.
3. **Access to the CEO.** When Company enrolls in the CEO and as Bank may determine is necessary after enrollment, Bank will (in accordance with section 4) provide one or more secure means of accessing the Services (each, a "Log-On Credential") to the persons who are authorized to access the CEO on Company's behalf (each an, "Authorized Representative"). Log-On Credentials may include without limitation Company and user IDs, passwords, token IDs and other means of providing secure access to the CEO Service that Bank adopts after the date Company begins using the CEO and may be changed by Bank at any time. Bank will have no obligation to Company to authenticate separately any communication Bank receives in Company's name through the CEO, whether or not an Authorized Representative actually issued the communication. Bank may, at Bank's sole option, contact Company with respect to any communication Bank receives in Company's name, but Bank's election to contact Company with respect to one or more communication(s) will not obligate Bank to contact Company with respect to any subsequent communication Bank receives in Company's name.
4. **Administration of the CEO.**
  - 4.1. **General.** Bank offers two options for administering the CEO: (a) self-administration and (b) Bank administration.
  - 4.2. **Self-Administration.** If Company enrolls in Bank's self-administration option, there are three categories of Authorized Representatives: Company Administrator, Administrator or User. Bank provides Bank's then-current Log-On Credentials only to Company's initial Company Administrator(s) who will (a) assign Bank's Log-On Credentials to other individuals and (b) designate each such individual as (i) a Company Administrator, who may perform all functions of Company's initial Company Administrator; (ii) an Administrator, who may perform all the functions of an Administrator including without limitation designating other Administrator(s) and User(s); or (iii) a User, who may access those Services as designated by a Company Administrator or an Administrator and

those in which Bank permits a User to self-enroll. Each Company Administrator and Administrator has the authority to enroll Company in additional Services. Company will promptly revoke the Log-On Credentials of any Authorized Representative when that individual is no longer an Authorized Representative.

**4.3. Bank Administration.** If Company does not enroll in Bank's self-administration option, there is one category of Authorized Representatives: Users. Bank will assign Bank's then-current Log-On credentials to each User Company designates. Each User Company designates will remain authorized until Bank has a reasonable time to act after receiving Company's notification that the User is no longer so authorized.

**5. Restricting or Terminating Access to the CEO.** Bank will not be obligated to permit any Authorized Representative to use any Service through the CEO if Bank determines such use is (a) not in accordance with any term applicable to the CEO, (b) not permitted by Florida or federal law or regulation, (c) not authorized by Company or any third person whose authorization Bank believes is necessary for such use, or (d) should be denied for Company's or Bank's protection (without Bank's agreeing to, or being required to, make this determination in any circumstance).

**6. Financial Information.** Financial market data, quotes, news, research, and other financial information developed by third parties and transmitted to Bank (collectively, "Financial Information") may be available to Company at the CEO. The posting of any Financial Information or any other information or data at the CEO will not be a recommendation by Bank of any particular Service or transaction. Bank does not guarantee the accuracy or completeness, (a) of any Financial Information, (b) is not responsible for the actions or omissions of the third parties developing or transmitting Financial Information or (c) for any decision made or action taken by Company in reliance on any Financial Information.

**7. Cash Flow Analysis Service.** This section contains additional terms applicable to Bank's Cash Flow Analysis Service. This Service enables Company to view and use certain data for global cash positioning and forecasting and journal entry. Bank will automatically populate data from Company's deposit account(s) at Bank and other financial institutions Company directs to provide data to Bank. Company may also manually populate data. Bank will not verify the accuracy of data from other financial institutions, customer-populated data or forecasting information. Forecasting information is not a guarantee of actual performance. If Company uses this Service to convert balances to a currency other than the currency in which the Account is denominated, the conversion rate used through the Service may differ from the conversion rate actually used when the funds are converted on a given Business Day.

**8. Company's Representations and Warranties.** Company represents and warrants to Bank:

**8.1.** Company's governing body has duly authorized each Authorized Representative, regardless of whether Company enrolls in Bank's self-administration option, Bank Administration or whether the individual is designated to act as Company Administrator; and

**8.2.** Except as otherwise required by Florida law, Company will preserve the confidentiality of the Log-On Credentials and immediately notify Bank if Company becomes aware or suspects that any Log-On Credential may have been compromised.

9. **[Reserved.]**

10. **Survival.** Sections 3, 4, 5, 6, 7, and 8 will survive termination of the Service.

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## STOPS—IMAGES—SEARCH (“SIS”) SERVICE DESCRIPTION

**This Service Description contains provisions which, in addition to the provisions contained in the Master Agreement for Treasury Management Services between Bank and Company (the “Agreement”), will govern the Stops—Images—Search {“SIS”} Service (the “Service”).**

1. **The Service.** Company may, using a computer or a computer and browser acceptable to Bank, request stop payment orders on checks drawn on Company’s deposit account(s) or Company’s account(s) with another financial institution maintained in connection with the Controlled Disbursement Service (a “Controlled Disbursement Account”) and, where applicable, request photocopies of checks that have cleared Company’s deposit account(s) or Controlled Disbursement Account(s).
2. **Stop Payments.**
  - 2.1 **Requirements.** Bank may pay a check against Company’s deposit account(s) whenever it is presented and without regard to its date (unless Company has implemented Bank’s stale dated check service as part of its Positive Pay service). If Company does not want Bank to pay a check, it must place a stop payment order which is valid for the period specified when Company opened its deposit account and must be received within sufficient time for Bank to act.
  - 2.2 **Limitations.** A stop payment order will be ineffective with respect to (a) a check deposited to an account at a Wells Fargo Bank if it cannot be charged back without creating an overdraft in that account, and (b) a check that was cashed by any Wells Fargo Bank. Company authorizes Bank to accept telephone stop payment orders from any person who Bank in good faith believes is acting on Company’s behalf.
3. **Survival.** The provisions of this Service Description designated as Sections 2 and 3 will survive termination of the Service.



## RETURNED ITEM SERVICES SERVICE DESCRIPTION



1. **Introduction.** This Returned Item Services Service Description ("Service Description") and the other Service Documentation as defined in the Master Agreement for Treasury Management Services between Wells Fargo Bank, N.A. ("Bank"), and the company identified in the Acceptance of Services ("Company") between Bank and Company govern Bank's Returned Item Services (each, a "Service").
2. **Description of Bank's Returned Items Services.** Bank's Returned Item Services enable Company to have Bank (a) act as Company's returned Item processor with respect to Items payable to Company that are presented to Bank or another financial institution for payment and returned to Bank unpaid (each, a "Returned Item") in accordance with Company's Special Instructions to Bank for Returned Items ("Special Instructions") and (b) originate debits and report and process credits received for Company's returned check fee ("Returned Item Service Fee Recovery"). Company will communicate its Special Instructions regarding Company's Returned Items to Bank, and Bank will communicate to Company regarding the Services, using the media, format and communication channel(s) to which Company and Bank agree, separately.
3. **Conditions to Provision of Bank's Service.** As conditions to Bank's provision of the Services, Company will at all times (a) maintain Company's demand deposit account(s) at Bank (each, an "Account") in good standing; (b) subscribe to Bank's *Commercial Electronic Office®* ("CEO®") Service; and (c) comply with all Rules Applicable to Bank's Returned Item Services as set forth in this Service Description.
4. **Rules Applicable to Bank's Returned Item Services.** Bank will provide its Services to Company in accordance with:
  - 4.1. the Service Documentation including without limitation the User Guide that Bank makes available to Company at [www.wellsfargo.com](http://www.wellsfargo.com); and
  - 4.2. State and federal laws and regulations and clearinghouse rules applicable to a Returned Item which may include Federal Reserve Board Regulation CC Subpart C relating to the collection of checks ("Reg CC"), Federal Reserve Board Regulation E ("Reg E") and, in the case of Bank's Returned Item Service Fee Recovery Service when Bank originates an ACH entry on Company's behalf, the National Automated Clearinghouse Association Operating Rules, as supplemented by any applicable operating rules of any automated clearing house of which Bank is a member (together, the "NACHA Rules"), all as amended from time to time.
5. **Special Instructions.** Bank will process Company's Returned Items in accordance with Company's Special Instructions, unless Bank determines in Bank's sole discretion that doing so with respect to a Returned Item would prevent Bank from effectively providing Bank's Service to Company.

6. **Bank's Right to Chargeback Returned Items.** Bank will chargeback a Returned Item to Company's corresponding Account at Bank (or, if such corresponding Account has been closed or contains insufficient funds, Company's Master Account at Bank or a sub-account established thereunder or, with notice to Company and its consent, another Account at Bank) without regard to whether the Returned Item was initially deposited to such corresponding Account or to an account at another financial institution.
7. **Returned Item Service Fee Recovery.** Bank will assess the maximum returned check fee permitted by Florida law.
8. **ACH Entries.**
  - 8.1. **Payment Obligations; Settlement; Returned Debit Entries.** In the case of Services for which Bank originates ACH debit entries on Company's behalf, each credit to Company's Account will be made on the applicable settlement date. Bank may charge Company's Account for any debit, correcting or reversing entry which is later returned to Bank. Company authorizes Bank upon prior oral or written notice to Company to place a hold on an equal amount of funds in Company's Account or to take any other action Bank deems appropriate to ensure Bank receives payment for any debit, correcting or reversing entry which is later returned to Bank.
  - 8.2. [Reserved.]
9. **Company's Representations and Warranties.** Company represents and warrants to Bank that:
  - 9.1. The information about Company's locations that Company provides to Bank is accurate.
  - 9.2. Company has received and will maintain current copies of the Rules Applicable to Services including without limitation Reg CC, Reg E and the NACHA Rules and is in compliance therewith.
  - 9.3. In connection with its use of Bank's Returned Item Services, Company will not (a) violate or cause Bank to violate any applicable law, statute, or regulation or rules applicable to such Returned Item Services, including without limitation Reg CC, Reg E or the NACHA Rules, (b) breach or cause Bank to breach any warranty Company or Bank makes under the NACHA Rules
10. [Reserved.]
11. [Reserved.]
12. **Survival.** Sections 6, 7, 8, and 9 of this Service Description will survive termination of the Service.

## WIRE TRANSFER SERVICE DESCRIPTION

1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") wire transfer service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of the Service.** The Service enables Company to instruct Bank to transfer funds in accordance with Chapter 670, Florida Statutes (2014), as amended from time to time ("UCC 4A") and the rules and regulations of any funds transfer system Bank uses to effect the transfer. In this Service Description, an instruction to Bank (including any communication cancelling or amending an instruction) in Company's name to transfer funds from Company's account at Bank or Bank's affiliate (each, an "Account") is a "Payment Order" (as defined in UCC4A). Section 5 of this Service Description describes (a) the means Bank offers to Company for transmitting Payment Orders to Bank (each, an "Initiation Method") and (b) the means Bank will use to verify Company's authorization of a Payment Order or a communication amending or canceling a Payment Order (each, a "Security Procedure").
3. **Preparation of Payment Orders; Processing Schedules.** Company will prepare each Payment Order in accordance with guidelines Bank separately makes available from time to time. Bank will execute each Payment Order in accordance with Bank's then current processing schedule and any instructions Company furnishes with the Payment Order regarding the date a Payment Order is to be executed. A Payment Order will be deemed received by Bank when Bank has verified it in compliance with the Security Procedure. If Bank receives a Payment Order after Bank's applicable cutoff time on any Business Day, Bank will treat the Payment Order as having been received prior to Bank's applicable cutoff time on Bank's next Business Day. A "Business Day" is every day except Saturday, Sunday, and federal holidays.
4. **Inconsistency of Name and Number.** If a Payment Order describes the person to receive the funds that are the subject of the Payment Orders both by name and identifying number, Bank may execute the Payment Order on the basis of the identifying number, even if the number identifies a person different from the named person. If a Payment Order describes a financial institution both by name and identification number, the identification number may be relied upon to identify the financial institution, even if the identification number refers to a financial institution other than the named financial institution.
5. **Initiation Methods and Security Procedures.** This section lists the Initiation Methods and Security Procedures Bank offers for wire transfers. Company's elections regarding Initiation Methods and Security Procedures is/are set forth in the Acceptance.
  - 5.1. **Commercial Electronic Office® (CEO®) Initiation Method.**

The CEO® portal is Bank's electronic banking portal that is accessed via the Internet. The CEO® security procedures are log-on credentials specified by Bank including a company ID, user ID, password, token, and any other authentication or authorization process Bank requires from time to time. Bank's standard CEO® security procedures also include dual custody for select, high-risk wire transfer activities. With dual custody, an authenticated second user approves these activities. There is no additional charge for dual custody.

## 5.2. Payment Manager® Initiation Method.

**Secure Application File Exchange Transmission (“SAFE-T”).** This transmission platform offers a variety of transmission protocols including hypertext transfer protocol secured (https), FTP over SSL (FTP/S), secure FTP (S-FTP), and Applicability Statement 2 (AS2).

**Machine-to-Machine (“M2M”).** This transmission method may use an XML message interface that is based on the Interactive Financial eXchange (IFX) message standard using SOAP structured messages; or it may use other formats and protocols such as JSON and REST. Data is communicated via the Internet using 128-bit encryption and Secure Socket Layers (SSL).

**IBM® Connect:Direct® with Secure Plus+.** Secure Plus+ is an add-on to Connect:Direct® to enhance security by means of Secure Socket Layer (“SSL”) or Transport Layer Security (“TLS”). Connect:Direct® is a registered trademark of Sterling Commerce, Inc., an IBM company.

**Value-Added Network (“VAN”).** With this transmission method, a third party serves as an intermediary for transmitting data between Company and Bank. Procedures for transmitting Payment Orders may vary by VAN. Bank follows the procedures of the VAN selected by Company to authenticate each Payment Order transmitted to Bank through the VAN in Company’s name.

**SWIFT® File Act.** SWIFT has established procedures for controlling access to SWIFT messaging services (each, an “Access Control”) that may include access codes, message authentication codes, secure card readers, digital signatures, and Hardware Security Modules. In addition, SWIFT authenticates certain messages including without limitation Payment Orders based on SWIFT message type prior to accepting them for routing as SWIFT messages. This authentication may include confirming that the sender and recipient of the message have exchanged bilateral keys (“BKE”), entered into a relationship management application (“RMA”) agreement, or taken other steps to secure the transmission of SWIFT messages between them as SWIFT requires from time to time.

## 5.3. Voice Initiation Method.

Bank's voice initiation security procedure consists of confirming (a) the personal identification number (“PIN”) accompanying a Payment Order corresponds with a valid PIN assigned to Company for voice-initiated Payment Orders and (b) the voice print provided when placing a Payment Order matches the voice print registered for the PIN holder.

## 5.4. SWIFT® (FIN) Initiation Method.

SWIFT has established procedures for controlling access to SWIFT messaging services that may include access codes, message authentication codes, secure card readers, digital signatures, and Hardware Security Modules. In addition, SWIFT authenticates certain messages including without limitation Files based on SWIFT message type prior to accepting them for routing as SWIFT messages. This authentication may include confirming that the sender and recipient of the message have exchanged bilateral keys (“BKE”), entered into a relationship management application (“RMA”) agreement, or taken other steps to secure the transmission of SWIFT messages between them as SWIFT requires from time to time.

6. **Authorization to Pay.** Company authorizes Bank to (a) execute any Payment Order Bank verifies in accordance with the Security Procedure and (b) debit the account specified in the Payment Order (and if no account is specified, the Account or any other account of Company at Bank or an affiliate) even if a debit results in an overdraft on the execution date (as defined in UCC4A). Company will maintain sufficient available funds in the account specified in the Payment Order at the time of each debit.
7. **Company's Duty to Report Erroneous or Unauthorized Transfer Instructions.** Company will exercise ordinary care to determine whether a Payment Order accepted by Bank was either erroneous or not authorized and to notify Bank of the relevant facts within a reasonable time not exceeding fourteen (14) days after Company receives notification from Bank that the Payment Order was accepted or that the Account was debited with respect to the Payment Order, whichever is earlier.
8. **Rejected Payment Orders.** If a Payment Order is rejected for any reason Bank will attempt to notify Company promptly so Company may cure the defect but will have no liability to Company for a rejected Payment Order or any loss resulting from Bank's failure to provide notice.
9. **Cancellation, Amendment, Reversal.** A Payment Order will be final and not subject to cancellation, amendment or reversal by Company, except Bank may, at Company's request, make an effort to effect such cancellation, amendment or reversal without incurring any liability for its failure or inability to do so.
10. **International Wire Transfers.** A Payment Order expressed in U.S. Dollars will be sent in U.S. Dollars. Company may request that prior to executing a Payment Order, Bank convert the amount to be transferred from U.S. Dollars to the currency of a designated foreign government or intergovernmental organization ("Foreign Currency") at Bank's sell rate for exchange in effect on the date Bank executes the Payment Order. If the financial institution designated to receive the funds does not pay the beneficiary specified in a Payment Order payable in Foreign Currency and the funds are returned to Bank, Bank will not be liable for a sum in excess of the value of the funds after they have been converted from Foreign Currency to U.S. Dollars at Bank's buy rate for exchange at the time the cancellation of the Payment Order is confirmed by Bank. Bank will not be liable for any failure or delay by any financial institution or other third party in the designated foreign country in executing or failing to execute any Payment Order Bank transmits to a foreign country.
11. **Drawdown Requests.** A "drawdown request" is an instruction from Company to another depository institution to debit (a) an account at that institution and transfer the funds to Bank (each, an "outgoing drawdown request") or (b) the Account and transfer the funds to that institution (each, an "incoming drawdown request"). In this Service Description, "Payment Order" includes drawdown requests. Bank may execute an incoming drawdown request that conforms with instructions it receives through Fed Wire, SWIFT, CHIPS or any other funds transfer system, provided such instructions are not inconsistent with instructions Company separately provides in writing. The authority to execute the incoming drawdown request will continue until Bank receives express written notice from Company that such authority is revoked.
12. **Limitation of Bank's Liability.** If Bank executes Company's Payment Order by sending instructions to another financial institution, Bank may send the payment order by any transmission method and by any route Bank in its sole discretion considers reasonable. Bank will not be liable for any third party's failure to or delay or error in processing a Payment Order.

If the beneficiary bank does not pay the beneficiary specified in the Payment Order, a refund will be made only after Bank has received confirmation of the effective cancellation of the Payment Order and Bank is in free possession of the funds debited or earmarked in connection with the Payment Order. If Bank is notified it did not transfer the full amount stated in a Payment Order, Bank's sole obligation will be to promptly execute a second Payment Order in the amount of the stated deficiency. If Bank executes a Payment Order in excess of the amount stated in the Payment Order, to the extent Company does not receive the benefit of the Payment Order, Bank will only be liable for any loss of the principal amount transferred in excess of the amount stated in the Payment Order. Additionally, Bank will be liable for the amount of interest Company has lost due to the transfer of the excess amount, computed at the then current Federal Funds rate. However, Bank's liability for loss of interest will be limited to twenty (20) calendar days' interest. This section sets forth Bank's complete liability for a Payment Order issued or received under this Service Description.

**13. Survival. Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 will survive the termination of Services.**

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# TARGET BALANCE ACCOUNT SERVICE DESCRIPTION



1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Payment Authorization Service ("Service"). "Service Documentation" is defined in Bank's Master Agreement for Treasury Management Services ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Service.** If Company maintains multiple accounts at Bank, Company may designate in writing one such account as its "Principal Account" and one or more additional accounts as "Target Balance Accounts". For each Target Balance Account, Company will separately specify to Bank in writing the Ledger Balance or Collected Balance which Company wishes to maintain in such account (the "Target Balance"). At the end of each Business Day, Bank will determine the applicable balance on deposit in each Target Balance Account. If the applicable balance in a Target Balance Account exceeds its Target Balance, Bank will transfer from the Target Balance Account to the Principal Account such funds as are necessary to bring the applicable balance to the Target Balance. If the applicable balance is less than the Target Balance, Bank will transfer from the Principal Account to the Target Balance Account such funds as are necessary to bring the applicable balance to the Target Balance. Bank may, but will not be required to, transfer funds if the transfer would create an overdraft or exceed the Collected Balance then on deposit in the Principal Account.

# WELLSIMAGE® CD SERVICE DESCRIPTION



1. **Introduction.** This Service Description and the other Service Documentation as defined in the Master Agreement for Treasury Management Services ("Master Agreement") between Wells Fargo Bank, N.A. ("Bank"), and the company identified in the signature block of the Acceptance of Services ("Company") between Bank and Company govern Bank's WellsImage CD Service (the "Service").
2. **Description of the Service.** The Service enables Company to receive a WellsImage CD-ROM ("CD-ROM") containing (a) an index of each Paper Item that has been paid against each Company checking account at Bank that is enrolled in the Service (each, an "Account") for the specified CD-ROM cycle; and (b) images of the front and back of each paid Paper Item. After the end of each CD-ROM cycle, CD-ROMs will be sent to Company at the address(es) designated by Company. CD-ROMs may be viewed using the WellsImage Viewer™ Software (the "Software") which will be provided pursuant to Section 7 below. "Paper Item" is defined in Bank's Commercial Account Agreement.
3. **Condition to Provision of the Service.** As conditions to Bank's provision of the Service, Company will (a) at all times maintain the Account(s) in good standing, and, (b) comply with the Software Sublicense (see Section 7).
4. **Rules Applicable to the Service.** Bank will provide the Service to Company in accordance with (a) the Service Documentation including, without limitation, the WellsImage Viewer User Guide(s) that Bank makes available to Company; and (b) State of Florida and federal laws and regulations, including the National Automated Clearing House Association Rules ("NACHA Rules") applying to Paper Item conversion.
5. **Paper Item Conversion.** The NACHA Rules allow for the conversion of certain Paper Items into ACH items. Images of Paper Items converted pursuant to the NACHA Rules may not be available through the Service.
6. **Images and Replacement CD-ROMs.** If a Paper Item on a CD-ROM index is not imaged on the CD-ROM (and the image is available), Bank will, upon request and without charge, send an image copy of the front and back of the Paper Item. However, each Paper Item will be indexed and the data contained on the Paper Item will be provided on the CD-ROM whether or not an image of the Paper Item is available. In addition, Bank will, at Company's request, recreate a CD-ROM, but only for a period of sixty (60) days after the CD-ROM is first created.
7. **Software Sublicense.** Company will use the Software in accordance the non-exclusive, non-assignable sublicense ("Software Sublicense") from Bank. This Section will survive termination of this Service.
8. **Termination.** In addition to the termination provisions of the Master Agreement, the Service may also be terminated by Bank immediately on written notice to Company if Company fails to comply with its obligations under the Software Sublicense.



## **WELLSIMAGE® VIEWER SOFTWARE LICENSE AGREEMENT**

**THIS SOFTWARE LICENSE AGREEMENT (THE "AGREEMENT") CONCERNS CERTAIN WELLSIMAGE VIEWER SOFTWARE (THE "SOFTWARE") WHICH YOU HAVE RECEIVED FROM WELLS FARGO BANK, N.A. ("WELLS FARGO") AND WHICH WILL ALLOW YOU TO USE WELLS FARGO'S WELLSIMAGE VIEWER IN CONNECTION WITH ONE OR MORE WELLS FARGO TREASURY MANAGEMENT SERVICES (THE "SERVICE"). YOU SHOULD CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT (THE "AGREEMENT") BEFORE CLICKING "ACCEPT", BECAUSE CLICKING "ACCEPT" MEANS THAT YOU ACCEPT AND AGREE TO FULLY COMPLY WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO FULLY COMPLY WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU SHOULD CLICK "DECLINE" AND CONTACT YOUR IMPLEMENTATION REPRESENTATIVE AT WELLS FARGO.**

1. **SOFTWARE LICENSE.** Wells Fargo grants you a non-exclusive, non-assignable, non-personal, terminable license to use the Software and the Software Documents in accordance with the terms of this Agreement (the "License"): The "Software Documents" shall mean the WellsImage Viewer User Guide and all other manuals, diskettes, documents, instructions, or other information you receive in connection with the Software, all of which Software Documents are incorporated in this Agreement by this reference. The Software contains (a) a Posted Items Module which allows you to view Wells Fargo-issued CD-ROMs or DVDs and Wells Fargo Image File Import Posted Items files containing digital images of checks posted against your Wells Fargo Commercial Account; and (b) a Lockbox Module which allows you to view Wells Fargo-issued CD-ROMs or DVDs and Wells Fargo Image File Import Lockbox files containing digital images of Wholesale Lockbox Image checks and associated images. You may install the Software or a copy of the Software only on the number of personal computers and file servers designated by Wells Fargo, and as otherwise limited by Wells Fargo (e.g., usage limited to specifically designated personal computers or file servers).

2. **OWNERSHIP OF SOFTWARE.** The Software is owned and copy righted by Wells Fargo. The License confers no title or ownership in the Software and is not a sale of any rights in the Software. Wells Fargo may protect their rights in the Software in case of any violation of the terms or conditions of this Agreement or the License.

3. **U.S. GOVERNMENT RESTRICTED RIGHTS.** The Software and the Software Documents have been developed entirely through private enterprise and are provided to you as "commercial computer software" or "restricted computer software." The Software is delivered and licensed as "commercial computer software" as defined in DFARS 252.227-7013 (Oct. 1988), DFARS 252.211-7015 (May 1991) or DFARS 252.227-7014 (Jun 1995), as "commercial item" as defined in FAR 2.101(a), or as "restricted computer software" as defined in FAR 52.227-19 (Jun 1987) (or any equivalent agency regulation or contract clause), whichever is applicable. You have only those rights provided for the Software and the Software Documents by the applicable FAR or DFARS clause or this License.

4. **USE OF THE SOFTWARE.** You may use the Software (that is, store, load, install, execute or display the Software), including any application and communication components you receive in connection with the Software, only for reading internally within your own business or operations the CD-ROMs, DVDs or Wells Fargo Image File

Import files you will receive under the Service, and for no other purpose.

5. **RESTRICTIONS ON USE OF SOFTWARE.** You agree that neither you nor your employees will, or will attempt to, (a) except as otherwise required by Florida law, transfer or assign the Software or any Software Documents, (b) except as otherwise required by Florida law, copy or otherwise reproduce or duplicate the Software or any Software Documents except for only (i) use of copies of the Software on the number of personal computers and file servers and as otherwise designated by Wells Fargo, and (ii) back-up or archival purposes, (c) disassemble or reverse engineer the Software, (d) decompile or reverse compile the Software, (e) decode the Software, (f) decipher the Software, (g) decrypt the Software, (h) make any modifications to the Software, (i) merge any part of the Software into any other software program, or (j) export or re-export the Software without an export license from the United States government or applicable jurisdiction.

6. **CONFIDENTIALITY.** You acknowledge that, to the extent they are trade secrets pursuant to Florida law, the Software and the Software Documents constitute confidential and proprietary information of Wells Fargo and other persons or entities, and that Wells Fargo and such other persons or entities assert trade secret rights and other proprietary rights over the Software and the Software Documents. You agree that you have no right to access or use such information except as specifically permitted in this Agreement and the License. You agree that, to the extent they are trade secrets pursuant to Florida law, you will implement all necessary and reasonable procedures, controls and policies to protect the confidentiality of the Software and the Software Documents and that you will not disclose the information in the Software or the Software Documents to any person or entity except to your employees requiring access to the Software for use with the Service. The confidentiality provisions of this Section will survive the termination of this Agreement and the License.

7. **MODIFICATIONS TO THE SOFTWARE.** Wells Fargo, as supplier of the Software and the Software Documents may, in its sole discretion at any time during the term of this Agreement, modify or alter the Software, the Software Documents or the procedures for using the Software.

8. **CHANGES IN EQUIPMENT REQUIRED TO USE THE SOFTWARE.** Wells Fargo as supplier of the Software may, in its sole discretion at any time during the term of this Agreement, change the type or configuration of

any equipment required to use the Software. You agree to implement such changes within sixty (60) calendar days after you receive notice of such changes.

9. **ABSENCE OF DEFECTS.** To the best of the knowledge of Wells Fargo, the Software is free from any generally known virus or any other device or program-embedded code which would cause the Software to function in a manner other than as provided in the specifications for the Software or would impair or damage any hardware or software system with which it might be used. However, Wells Fargo makes no representation or warranty to that effect or assumes any liability in such regard. You should therefore take such steps as are appropriate to protect your hardware and software systems and equipment from the existence of any virus or other device within the Software.

10. **NO WARRANTIES.** The Software and the Software Documents are provided "as is" without warranty of any kind, either express or implied, including, but not limited to, any express or implied warranties of merchantability, fitness for a particular purpose, title or non-infringement. Wells Fargo as the supplier of the Software does not warrant that the functions contained in the Software will meet your requirements or that the operation of the Software will be uninterrupted, error-free or defect-free. The entire risk as to the quality and performance of the Software is with you. Any and all warranties, conditions, representations, indemnities, or guarantees with respect to the Software and/or the Software Documents, whether express or implied, arising by law or by prior oral or written statements by Wells Fargo or otherwise are hereby overridden, excluded, and disclaimed.

11. **LIMITATION OF LIABILITY.** Except only in the case and to the extent that applicable law requires, Wells Fargo will have no liability to you for any losses, liabilities, damages, claims, costs or expenses, including, but not limited to, attorneys' fees or damages for lost data or damages for monetary business loss, whether direct, indirect, incidental, special, consequential, punitive or otherwise, (collectively, "Losses and Liabilities") suffered or incurred by, or imposed upon, you or any third party as a result of, or in any way connected with, the License or your use of the Software or the Software Documents, regardless of whether any such Losses and Liabilities are foreseeable or unforeseeable or whether any such Losses and Liabilities arise as a result of, or are in any way connected with, any misrepresentation or breach of an express or implied, negligence, breach of contract, strict

liability in tort or otherwise. In no event shall Wells Fargo be liable to you for any Losses and Liabilities suffered or incurred by, or imposed upon, you or any third party as a result of, or in any way connected with, the unavailability of the Software, any interruption in your ability to use the Software, any malfunction of the Software, or any malfunction in any of the electronic or communications media or systems used in connection with the Software, regardless of whether such electronic or communications media or systems are under the control of Wells Fargo.

12. **TERMINATION OF LICENSE.** The License will terminate upon your receipt of written notice that you have failed to comply with any of the terms or conditions in this Agreement; provided, however, that this License will terminate immediately and automatically if you do any of the following or attempt to do any of the following: (a) transfer or assign the Software or any Software Documents, (b) disassemble or reverse engineer the Software, (c) decompile or reverse compile the Software, (d) decode the Software, (e) decipher the Software, (f) decrypt the Software, (g) make any modifications to the Software, (h) merge any part of the Software into any other software program, or (i) export or re-export the Software without an export license from the United States government and/or any necessary or appropriate government or other authority. This License will also terminate immediately and automatically if the Software or any Software Documents are transferred or assigned to any other person or entity by operation of law.

13. **RIGHTS OF THE PARTIES UPON TERMINATION.** Upon termination of the License, except as otherwise provided by Florida law, you must return to Wells Fargo the Software and the Software Documents in your possession or, in the alternative, except as otherwise provided by Florida law, you may destroy, and then certify to us in writing that you have destroyed, the Software and the Software Documents.

14. **APPLICABLE LAW.** Notwithstanding your location, this Agreement shall be governed by, and be interpreted in accordance with, the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida.

**YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS IN IT. YOU FURTHER AGREE THAT IT (TOGETHER WITH THE SOFTWARE DOCUMENTS AND ALL THE AGREEMENTS YOU HAVE ENTERED INTO WITH WELLS FARGO IN CONNECTION WITH THE SOFTWARE OR THE SERVICE) IS A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND WELLS FARGO WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT OR THE LICENSE.**

ATTEST: CITY OF FORT LAUDERDALE

\_\_\_\_\_  
Jeffrey A. Modarelli, City Clerk

By

Approved

By: \_\_\_\_\_  
John P. "Jack" Seiler, Mayor

: \_\_\_\_\_  
Lee R. Feldman, City Manager

as to form:

\_\_\_\_\_  
City Attorney

ATTEST: CONTRACTOR

\_\_\_\_\_  
Print Name:  
Title:

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

(CORPORATE SEAL)

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by  
\_\_\_\_\_ as \_\_\_\_\_ (title) for Wells Fargo Bank, N.A., a national banking association.

(SEAL)

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

# Commercial Account Signature Card

## I. Account Title(s)

<b>Account #1</b> _____ <b>CoID</b> _____ (Internal Use Only)	<b>Account #2</b> _____ <b>CoID</b> _____ (Internal Use Only)
<b>Account Type:</b> <input type="checkbox"/> Checking (Non-interest) <input type="checkbox"/> Checking with Interest <input type="checkbox"/> Money Market Account <input type="checkbox"/> Other: _____	<b>Account Type:</b> <input type="checkbox"/> Checking (Non-interest) <input type="checkbox"/> Checking with Interest <input type="checkbox"/> Money Market Account <input type="checkbox"/> Other: _____
<b>Title Line 1</b> _____ (Customer's Legal Name. Should match Federal income tax return. 40 characters max.)	<b>Title Line 1</b> _____ (Customer's Legal Name. Should match Federal income tax return. 40 characters max.)
Optional Account Title Lines (40 characters max per line.)  <b>Title Line 2</b> _____  <b>Title Line 3</b> _____  <b>Title Line 4</b> _____ (Enter DBA Name in last available title line, if applicable.)	Optional Account Title Lines (40 characters max per line.)  <b>Title Line 2</b> _____  <b>Title Line 3</b> _____  <b>Title Line 4</b> _____ (Enter DBA Name in last available title line, if applicable.)

## II. Regulation GG Certification

Customer or any entity for which account(s) will be maintained (f/b/o) engaged in business of internet gambling? ☐ Yes ☐ No

## III. Authorized Account Signers

#1	_____	_____	_____
	Signature	Printed Name	Position/Title
#2	_____	_____	_____
	Signature	Printed Name	Position/Title
#3	_____	_____	_____
	Signature	Printed Name	Position/Title
#4	_____	_____	_____
	Signature	Printed Name	Position/Title

## IV. Customer Acknowledgement & Agreement

On behalf of the Customer, I hereby certify, by my signature below, that each of the individuals designated in Section III above as an "Authorized Signer" is authorized, acting alone, to (a) sign checks drawn on and make cash withdrawals from the Account(s), (b) request stop payment orders for checks drawn on the Account(s), and (c) initiate funds transfers by ACH, wire or other means from the Account(s) in accordance with the Customer's contractual arrangements with Wells Fargo regarding these services. Wells Fargo may obtain credit reports or other information about the Customer. Wells Fargo may disclose information about each account to its affiliates, to credit reporting agencies, and to other persons or agencies that, in Wells Fargo's judgment, have a legitimate purpose for obtaining the information.

**I acknowledge that the Customer has received Wells Fargo Bank's Commercial Account Agreement and agree that its terms and conditions, as negotiated by Wells Fargo Bank and the Customer, will govern the Account(s).**

\_\_\_\_\_  
Printed Name Position / Title

\_\_\_\_\_  
Authorized Signature Date

## V. Substitute Form W-9

☐ **W-8 provided for Foreign Entity** (Substitute W-9 Does Not Apply)

Customer's Legal Name (as shown on Customer's Federal income tax return)

Business Name/Disregarded Entity Name (if different from above)

☐ Individual/Sole Proprietor      ☐ C Corporation      ☐ S Corporation      ☐ Partnership      ☐ Trust Estate

☐ Limited Liability Company Enter the tax classification (C=C Corporation, S=S Corporation, P=Partnership) \_\_\_\_\_

☐ Other \_\_\_\_\_

Address (number, street, and apartment or suite number)

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

### Part I. Taxpayer Identification Number (TIN)

Enter your TIN on the appropriate line below. The TIN provided must match the Customer's legal name on the first line of this Section V to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Form W-9 Part I instructions at [www.irs.gov](http://www.irs.gov) for additional information. For other entities, it is your employer identification number (EIN).

Social Security Number (SSN) \_\_\_\_\_

Employer Identification Number \_\_\_\_\_

### Part II. Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

☐ You must check this box if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

3. I am a U.S. citizen or other U.S. person, and (See the Form W-9 Part II instructions at [www.irs.gov](http://www.irs.gov) for additional information.)

4. I am exempt from Foreign Account Tax Compliance Act (FATCA) reporting.

Printed Name \_\_\_\_\_

Position / Title \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

### Bank Use Only

Banker Name	Banker Telephone	Banker MAC
AU	RAU	Officer #
Submitter Name	Submitter Phone #	

# Wire Transfer Services Customer Setup Form and Agreement

## Part I - Setup Information

### Treasury Management Customers

Complete Part I and sign as provided in Part III. The information in this setup form and your separate treasury management documents relating to wire transfers govern your use of Wells Fargo's wire transfer service.

### All Other Customers (Including consumers and non-Treasury Management business customers)

Complete Part I, review the Wire Transfer Services Agreement in Part II, and sign as provided in Part III.

Type of Request: ☐ New ☐ Update Existing Information ☐ Delete Existing Information

### A. Account Numbers (list accounts to be debited for each wire transfer)

For additional accounts attach a signed listing with notation of Customer's name and the additional account numbers. Check the appropriate box for each account number to identify the account type.

1) <input type="checkbox"/> DDA <input type="checkbox"/> G/L	2) <input type="checkbox"/> DDA <input type="checkbox"/> G/L	3) <input type="checkbox"/> DDA <input type="checkbox"/> G/L	4) <input type="checkbox"/> DDA <input type="checkbox"/> G/L
5) <input type="checkbox"/> DDA <input type="checkbox"/> G/L	6) <input type="checkbox"/> DDA <input type="checkbox"/> G/L	7) <input type="checkbox"/> DDA <input type="checkbox"/> G/L	8) <input type="checkbox"/> DDA <input type="checkbox"/> G/L
9) <input type="checkbox"/> DDA <input type="checkbox"/> G/L	10) <input type="checkbox"/> DDA <input type="checkbox"/> G/L	11) <input type="checkbox"/> DDA <input type="checkbox"/> G/L	12) <input type="checkbox"/> DDA <input type="checkbox"/> G/L

### B. Advice Information (additional fees apply for these services)

For Fax or Email Notification on Intraday wire activity use the InfoFax setup form.

Mail Advice for <input type="checkbox"/> Debit Wires <input type="checkbox"/> Credit Wires <input type="checkbox"/> No Mail Advice	Mail Advice to (If different than address noted below in Part III)
--	--

### C. Authorized Callers (people authorized to initiate wires)

**\$ Limit** = Use "N" if unlimited. The limit applies to all functions unless noted otherwise. If no limit is noted we will set the limit as unlimited.

**Initiation Type** = If no Initiation Type is noted, we will set the Individual up for both Repetitive and Non-Repetitive Wire Initiation. Complete by checking appropriate box: R = Repetitive / B = Both Repetitive & Non-Repetitive.

Authorized Callers first & last name	\$ Limit	Phone Number including area code	Initiation Type R B
	\$		<input type="checkbox"/> <input type="checkbox"/>
	\$		<input type="checkbox"/> <input type="checkbox"/>
	\$		<input type="checkbox"/> <input type="checkbox"/>
	\$		<input type="checkbox"/> <input type="checkbox"/>
	\$		<input type="checkbox"/> <input type="checkbox"/>

**D. OPTIONAL Verify Callback Service** (does not apply to repetitive wires)

Selecting this fee-based service requires a minimum of two persons with wire transfer authority because the initiator of a wire cannot also approve the wire. If the form does not indicate an Authorized Approver other than the initiator, the optional Verify Callback Service cannot be provided.

Verify Orders exceeding: \$ \_\_\_\_\_

Authorized Approver first & last name	\$ Limit	Phone number including area code
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	
	\$	

**E. Alternate Account to be Charged for Wire Fees** (Available to Business and Wealth Private Banking customers ONLY)

List account only if wire fees are to be assessed to this account for the accounts listed in Part I-A.

☐ DDA    ☐ AU and G/L \_\_\_\_\_

**F. Account Relationship Link**

To link accounts to the Master Account number (for Book Transfer pricing) enter the Master Account number.

\_\_\_\_\_

**Part II - Wire Transfer Services Agreement**

(Reserved)

**Part III – Agreement and Approval****Customer Approval** – Signatures as required by Certificate of Authority or Signature Card.***Under the dispute resolution program in your account agreement, you agree our disputes may be decided before one or more neutral persons in an arbitration proceeding and not by a judge or jury trial.***

Legal Name as it appears on your Account

Customer's Primary Phone No.

Mailing address for PINs and mail advice including City, State, and zip code. (If blank, items will be mailed to address on primary statement mailing address.)

Printed Name of Authorized Signer

Printed Name of Authorized Signer

Signature

Date

Signature

Date

X

X

**Bank Approval** – Forms submitted without Customer and Banker signatures or older than 90 days will be returned unprocessed.

<b>Customers' 1<sup>st</sup> ID</b>	ID Type	ID Number	Issued by State / Country	Expiration Date
<b>Customers' 2<sup>nd</sup> ID</b>	ID Type	ID Number	Issued by State / Country	Expiration Date
Banker/Officer's Phone #	Banker/Officer's Fax #	Bank MAC	Document Prepared by & phone # (In case of questions about this setup)	
Banker's Wells Fargo email address for notification. A reasonable attempt will be made to contact the banker at the Wells Fargo email provided upon completion. Notification will NOT be sent to any email address outside the Wells Fargo system.				
Banker/Officer's Printed Name		Banker/Officer's Signature – Required	Date	
		X		

**Once the customer approves and signs the form, the Banker/Relationship Manager must approve and sign the form, then fax it to Wire Implementation at 866-922-6202 from a valid Wells Fargo Fax. File copies in your location's record-retention file.**