

Second Amendment to Contract No. C-114826

Between  
The City of Los Angeles  
and  
Wells Fargo Bank, N.A.

 DRAFT

 DRAFT

This Second Amendment to Contract No. C-114826 between the City of Los Angeles (hereinafter "City") and Wells Fargo Bank, N.A. (hereinafter "Bank") is entered into with reference to the following:

**WHEREAS** on July 1, 2008, the parties entered into Contract No. C-114826 (hereinafter "Contract") wherein the Bank agreed to provide general banking services as described in the Contract; and

**WHEREAS** the term of the current Contract expires June 30, 2014; and

**WHEREAS** the Contract allows the option to extend the term of the contract on a year to year basis for up to five years if both parties agree; and

**WHEREAS** the City continues to require the above-mentioned services provided by the Bank; and

**WHEREAS** the parties hereto desire to exercise the second option to extend the term of the current Contract by one year.

**AGREEMENT**

**NOW THEREFORE**, the parties hereby covenant and agree that this Contract shall be amended effective July 1, 2014, as follows:

**I.** Article 2, Term, on page 1 of Contract C-114826 is hereby amended in its entirety to read:

"This AGREEMENT shall commence July 1, 2008 and end on June 30, 2015, subject to the termination provisions herein. The CITY has the option to extend this AGREEMENT for three additional years, in one-year increments, on the same terms and conditions."

**II.** Except as amended by this Second Amendment, all other terms and conditions of Contract No. C-114826 shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be executed by their respective duly authorized representatives.

Approved Corporate Signature Methods (please sign in blue ink):

- a) Two signatures: one by Chairman of Board of Directors, President or Vice President; **and** one by Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer.
- b) One signature by Corporate designated individual **together with** properly attested resolution of Board of Directors authorizing person to sign on the company behalf.

**City of Los Angeles**

**Wells Fargo Bank, N.A.**

By: \_\_\_\_\_  
 Antoinette D. Christovale, CPA  
 Director of Finance / City Treasurer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
*Signature*

Name: \_\_\_\_\_  
*Printed / Typed*

Title: \_\_\_\_\_  
*Printed / Typed*

Date: \_\_\_\_\_

By: \_\_\_\_\_  
*Signature*

Name: \_\_\_\_\_  
*Printed / Typed*

Title: \_\_\_\_\_  
*Printed / Typed*

Date: \_\_\_\_\_

**Approved as to Form:**  
 MICHAEL N. FEUER  
 City Attorney

By \_\_\_\_\_  
 Deputy City Attorney

Date \_\_\_\_\_

**Attest:**  
 HOLLY L. WOLCOTT  
 Interim City Clerk

By \_\_\_\_\_  
 Deputy City Clerk

Date \_\_\_\_\_

**First Amendment to Contract No. C-114826**

**Between  
The City of Los Angeles  
and  
Wells Fargo Bank, N.A.**

This First Amendment to Contract No. C-114826 between the City of Los Angeles (hereinafter "City") and Wells Fargo Bank, N.A. (hereinafter "Bank") is entered into with reference to the following:

**WHEREAS** on July 1, 2008, the parties entered into Contract No. C-114826 (hereinafter "Contract") wherein the Bank agreed to provide general banking services as described in the Contract; and

**WHEREAS** the term of the current Contract expires June 30, 2013; and

**WHEREAS** the Contract allows the option to extend the term of the contract on a year to year basis for up to five years if both parties agree; and

**WHEREAS** the City continues to require the above-mentioned services provided by the Bank; and

**WHEREAS** the parties hereto desire to exercise the first option to extend the term of the current Contract by one year.

**AGREEMENT**

**NOW THEREFORE**, the parties hereby covenant and agree that this Contract shall be amended effective July 1, 2013, as follows:

**I.** Article 2, Term, on page 1 of Contract C-114826 is hereby amended in its entirety to read:

"This AGREEMENT shall commence July 1, 2008 and end on June 30, 2014, subject to the termination provisions herein. The CITY has the option to extend this AGREEMENT for four additional years, in one-year increments, on the same terms and conditions."

**II.** Amend Article 18, Notices, on page 5 of contract C-114826, is hereby updated to read in its entirety:

"Any notice of communication given under this AGREEMENT shall be effective when deposited, postage prepaid, with the United State Postal Service and addressed to the parties as follows:

City:  
Antoinette D. Christovale  
Director of Finance/City Treasurer  
City of Los Angeles  
Office of Finance  
200 North Spring Street, Room 220  
Los Angeles, CA 90012

Bank:  
Mark C. Hewlett  
Senior Vice President / Regional Manager  
Wells Fargo Bank, Government and  
Institutional Banking  
707 Wilshire Blvd., 11th Floor  
Los Angeles, CA 90017

Either party may change the address to which notice or communication is to be sent by providing advance written notice to the other party.”

- III. The contractor agrees to comply with all terms and conditions set forth in the City’s *Standard Provisions for City Personal Services Contracts – March 2009 Revision*, a copy of which is attached hereto as Exhibit A, and which supercedes and replaces the earlier version of the *Standard Provisions for City Contracts – October 2003 Revision*, originally attached to contract C-114826.
- IV. Notwithstanding section III, above, the following paragraphs modify the *Standard Provisions for City Personal Services Contracts – March 2009 Revision*, a copy of which is attached hereto as Exhibit A, as follows:

- A. PSC-12. CONTRACTOR’S PERSONNEL is hereby modified in its entirety to read:

“Unless otherwise provided or approved by the CITY, CONTRACTOR shall use its own employees to perform the services described in this Contract. The CITY shall have the right to review any personnel who are assigned to work under this Contract. CONTRACTOR agrees to remove personnel from performing work under this Contract if requested to do so by the CITY provided that no such request may be based on any characteristic or status of personnel which is protected by law.

CONTRACTOR shall not use subcontractors to assist in performance of this Contract without the prior approval of the CITY. If the CITY permits the use of subcontractors, CONTRACTOR shall remain responsible for performing all aspects of this Contract. The CITY has the right to review CONTRACTOR’S subcontractors, and the CITY reserves the right to request replacement of subcontractors provided that no such request may be based on any characteristic or status of personnel which is protected by law. The CITY does not have any obligation to pay CONTRACTOR’S subcontractors, and nothing herein creates any privity between the CITY and the subcontractors.”

- B. PSC- 17. RETENTION OF RECORDS, AUDITS AND REPORTS is hereby modified in its entirety to read:

“CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form, in accordance with CONTRACTOR’S record retention policy, which is a rolling seven-year basis. Said records shall be subject to examination and audit by authorized CITY personnel or by the CITY’S representative at any time during the term of this Contract or within the three

years following final payment made by the CITY hereunder or the expiration date of this Contract, whichever occurs last. CONTRACTOR shall provide any reports requested by the CITY regarding performance of this Contract. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.”

C. PSC-21. INTELLECTUAL PROPERTY INDEMNIFICATION is hereby modified in part to read:

“CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorney’s fees (both in house and outside counsel) and costs of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, or any intellectual property rights, including, without limitation, patent, copyright trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, methods application, equipment, device, instrumentation, software, hardware, or firmware used by CONTRACTOR, or its subcontractors or any tier, in performing the work under this Contract; or (2) as a result of the CITY’S actual or intended use of any Work Produce Rights and remedies available to the CITY under this provision are cumulative of those rights provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of PSC-21 shall survive expiration or termination of this Contract.

If any product(s) furnished by CONTRACTOR becomes the subject of a claim of infringement, CONTRACTOR will, at its option: a) procure for the right to continue using the applicable product; b) replace the product with a non-infringing product substantially complying with the product’s specifications; or c) modify the item so it becomes non-infringing and performs in a substantially similar manner to the original item.”

D. PSC-23. OWNERSHIP AND LICENSE is hereby modified in part to read:

“Unless otherwise provided for herein, all Work Products originated and prepared by CONTRACTOR or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONTRACTOR hereby assigns and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONTRACTOR under this Contract. CONTRACTOR further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY’S ownership of rights provided herein.

For all Work Products delivered to the CITY that are not originated or prepared by CONTRACTOR or its subcontractors of any tier under this Contract, CONTRACTOR hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of the CITY.

Any subcontract entered into by CONTRACTOR relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract to contractually bind or otherwise oblige its subcontractors performing work under this Contract such that CITY'S ownership and license rights for all Work Products are preserved and protected as intended herein. Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its subcontractors with such obligation shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONTRACTOR'S contract with the CITY.

Notwithstanding the foregoing, CONTRACTOR will provide customary data and reports associated with the requested services. CONTRACTOR will retain all ownership and related rights in its intellectual property (including, but not limited to, systems, software and hardware) used or developed in connection with the requested services, now and hereafter. CITY shall own that portion of the copyright in all reports, studies, and other tangible materials delivered hereunder that contain information specifically related to CITY that are first created by CONTRACTOR and delivered to CITY under this Contract."

- V. In the event of any inconsistency between any of the provisions of the Agreement (including amendments thereto) and the documents incorporated by reference, the inconsistency shall be resolved by giving precedence in the following order:
1. Sections of this Agreement (including amendments);
  2. Standard Provision for City Contracts (revised March 2009), attached at Exhibit A;
  3. City contract Number C-114826;
  4. The City's RFP relating to contract C-114826;
  5. Contractor's Response to the RFP relating to contract C-114826.
- VI. Except as amended by this First Amendment, all other terms and conditions of Contract No. C-114826 shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be executed by their respective duly authorized representatives.

Approved Corporate Signature Methods (please sign in blue ink):

- a) Two signatures: one by Chairman of Board of Directors, President or Vice President; **and** one by Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer.
- b) One signature by Corporate designated individual **together with** properly attested resolution of Board of Directors authorizing person to sign on the company behalf.

City of Los Angeles

Wells Fargo Bank, N.A.

By: Antoinette D. Christovale  
 Antoinette D. Christovale, CPA  
 Director of Finance / City Treasurer

By: Lynn Love  
 Signature

Date: 6/27/13

Name: Lynn Love  
 Printed / Typed

Title: Vice President  
 Printed / Typed

Date: 06/24/13

By: \_\_\_\_\_  
 Signature

Name: \_\_\_\_\_  
 Printed / Typed

Title: \_\_\_\_\_  
 Printed / Typed

Date: \_\_\_\_\_

Approved as to Form:  
 CARMEN A. TRUTANICH  
 City Attorney



By: [Signature]  
 Deputy City Attorney

Attest:  
 JUNE LAGMAY  
 City Clerk

By: [Signature]  
 Deputy City Clerk

Date: 6/27/13

Date: 06-27-2013  
C-114826-1

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

**ASSISTANT SECRETARY'S CERTIFICATE**

I, Hope Armstrong Howe, an Assistant Secretary of Wells Fargo Bank, National Association, a national banking association (the "Bank"), hereby certify as follows:

1. The following is a true and correct extract from resolutions duly adopted by the Board of Directors of the Bank on November 25, 2003, as amended, and no modification, amendment, rescission or revocation of such resolutions has occurred affecting such extract as of the date of this certificate.

**RESOLVED**, that agreements, instruments, or other documents, including amendments and modifications thereto, relating to or affecting the property or business and affairs of the Bank, whether acting for its own account or in a fiduciary or other representative capacity, may be executed in its name by the persons hereinafter authorized;

**FURTHER RESOLVED**, that for the purposes of these resolutions, "Executive Officer" shall mean any person specifically designated as an Executive Officer of the Bank by resolution of the Board of Directors, and "Signing Officer" shall mean the Chairman of the Board, the President, any Senior Executive Vice President, any Executive Vice President, any Senior Vice President, the Treasurer, any Vice President, any Assistant Vice President, any person whose title includes the word "Officer" (e.g., Commercial Banking Officer, Personal Banking Officer, Trust Officer), or any other person whose title has been or is hereafter designated by the Board of Directors as a title for an officer of the Bank, and such officers are hereby authorized to sign agreements, instruments and other documents on behalf of the Bank in accordance with the signing authorities conferred in Parts A, B and C of these resolutions;

\* \* \*

**B. Vice Presidents and Above**

**FURTHER RESOLVED**, that the Chairman, the President, any Senior Executive Vice President, any Executive Vice President, any Senior Vice President and any Vice President, acting alone, may execute on behalf of the Bank:

1. Deeds, leases, assignments, bills of sale, purchase agreements and other instruments of conveyance to purchase, sell, lease or sublease to or from a third party real property, or any interest therein, for the Bank's own account; provided, however, that such agreements, instruments and other documents may also be signed as hereinafter provided with respect to real property acquired by the Bank in connection with collateral for a loan.
2. Bonds of indemnity and powers of attorney; provided, however, that proxies to vote stock in a corporation or to vote other interests in other legal entities and stock and bond powers may also be signed as hereinafter provided.



C. Signing Officers

**FURTHER RESOLVED**, that any Signing Officer, acting alone, may execute on behalf of the Bank, whether acting for its own account or in a fiduciary or other representative capacity:

\* \* \*

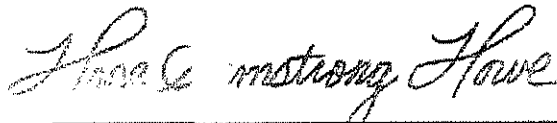
15. Agreements and proposals to provide services to or receive services from third parties.

\* \* \*

2. The following person is duly appointed and is an acting officer of the Bank with the title opposite their name as of the date hereof, such officer is a "Signing Officer" within the meaning of the foregoing resolution.

**Corrie L. Bowman      Senior Vice President**

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the Bank this 4<sup>th</sup> day of November, 2011.



\_\_\_\_\_  
Hope Armstrong Howe  
Assistant Secretary  
Wells Fargo Bank, National Association

[Seal]



\*\*\* Redacted [Indicates portions of the resolution which have been omitted because they are not relevant to the transaction for which this certificate has been requested.]

**STANDARD PROVISIONS FOR CITY CONTRACTS**

**TABLE OF CONTENTS**

PSC-1 **CONSTRUCTION OF PROVISIONS AND TITLES HEREIN**..... 1

PSC-2 **NUMBER OF ORIGINALS**..... 1

PSC-3 **APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT**..... 1

PSC-4 **TIME OF EFFECTIVENESS** ..... 2

PSC-5 **INTEGRATED CONTRACT** ..... 2

PSC-6 **AMENDMENT** ..... 2

PSC-7 **EXCUSABLE DELAYS**..... 2

PSC-8 **BREACH** ..... 2

PSC-9 **WAIVER**..... 3

PSC-10 **TERMINATION**..... 3

PSC-11 **INDEPENDENT CONTRACTOR** ..... 4

PSC-12 **CONTRACTOR'S PERSONNEL** ..... 4

PSC-13 **PROHIBITION AGAINST ASSIGNMENT OR DELEGATION** ..... 5

PSC-14 **PERMITS** ..... 5

PSC-15 **CLAIMS FOR LABOR AND MATERIALS**..... 5

PSC-16 **CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION  
CERTIFICATE REQUIRED**..... 5

PSC-17 **RETENTION OF RECORDS, AUDIT AND REPORTS**..... 5

PSC-18 **FALSE CLAIMS ACT**..... 6

PSC-19 **BONDS** ..... 6

PSC-20 **INDEMNIFICATION** ..... 6

PSC-21 **INTELLECTUAL PROPERTY INDEMNIFICATION**..... 6

TABLE OF CONTENTS (Continued)

PSC-22	<u>INTELLECTUAL PROPERTY WARRANTY</u> .....	7
PSC-23	<u>OWNERSHIP AND LICENSE</u> .....	7
PSC-24	<u>INSURANCE</u> .....	8
PSC-25	<u>DISCOUNT TERMS</u> .....	8
PSC-26	<u>WARRANTY AND RESPONSIBILITY OF CONTRACTOR</u> .....	8
PSC-27	<u>NON-DISCRIMINATION</u> .....	8
PSC-28	<u>EQUAL EMPLOYMENT PRACTICES</u> .....	9
PSC-29	<u>AFFIRMATIVE ACTION PROGRAM</u> .....	11
PSC-30	<u>CHILD SUPPORT ASSIGNMENT ORDERS</u> .....	15
PSC-31	<u>LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE</u> .....	16
PSC-32	<u>AMERICANS WITH DISABILITIES ACT</u> .....	17
PSC-33	<u>CONTRACTOR RESPONSIBILITY ORDINANCE</u> .....	18
PSC-34	<u>MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM</u> .....	18
PSC-35	<u>EQUAL BENEFITS ORDINANCE</u> .....	18
PSC-36	<u>SLAVERY DISCLOSURE ORDINANCE</u> .....	19
EXHIBIT 1	<u>INSURANCE CONTRACTUAL REQUIREMENTS</u> .....	20

## STANDARD PROVISIONS FOR CITY CONTRACTS

### **PSC-1. CONSTRUCTION OF PROVISIONS AND TITLES HEREIN**

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions hereof. The language of this Contract shall be construed according to its fair meaning and not strictly for or against the **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" herein in this Contract includes the party or parties identified in the Contract. The singular shall include the plural; if there is more than one **CONTRACTOR** herein, unless expressly stated otherwise, their obligations and liabilities hereunder shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

### **PSC-2. NUMBER OF ORIGINALS**

The number of original texts of this Contract shall be equal to the number of the parties hereto, one text being retained by each party. At the **CITY'S** option, one or more additional original texts of this Contract may also be retained by the City.

### **PSC-3. APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT**

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Contract.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Contract, the validity of the remaining parts, terms or provisions of the Contract shall not be affected thereby.

**PSC-4. TIME OF EFFECTIVENESS**

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR** hereto;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of the **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

**PSC-5. INTEGRATED CONTRACT**

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in paragraph PSC-6 hereof.

**PSC-6. AMENDMENT**

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-4.

**PSC-7. EXCUSABLE DELAYS**

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

**PSC-8. BREACH**

Except for excusable delays as described in PSC-7, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights

and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

**PSC-9. WAIVER**

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

**PSC-10. TERMINATION**

**A. TERMINATION FOR CONVENIENCE**

The CITY may terminate this Contract for the CITY'S convenience at any time by giving CONTRACTOR thirty days written notice thereof. Upon receipt of said notice, CONTRACTOR shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The CITY shall pay CONTRACTOR its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by CONTRACTOR to affect such termination. Thereafter, CONTRACTOR shall have no further claims against the CITY under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become CITY property upon the date of such termination. CONTRACTOR agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

**B. TERMINATION FOR BREACH OF CONTRACT**

1. Except for excusable delays as provided in PSC-7, if CONTRACTOR fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the CITY may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to the CITY within the time permitted by the CITY, then the CITY may terminate this Contract due to CONTRACTOR'S breach of this Contract.
2. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.
3. If CONTRACTOR engages in any dishonest conduct related to the performance or administration of this Contract or violates the

**CITY'S** lobbying policies, then the **CITY** may immediately terminate this Contract.

4. In the event the **CITY** terminates this Contract as provided in this section, the **CITY** may procure, upon such terms and in such manner as the **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to the **CITY** for all of its costs and damages, including, but not limited, any excess costs for such services.
5. All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become **CITY** property upon date of such termination. **CONTRACTOR** agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.
6. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-10(A) Termination for Convenience.
7. The rights and remedies of the **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

#### **PSC-11. INDEPENDENT CONTRACTOR**

**CONTRACTOR** is acting hereunder as an independent contractor and not as an agent or employee of the **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the **CITY**.

#### **PSC-12. CONTRACTOR'S PERSONNEL**

Unless otherwise provided or approved by the **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. The **CITY** shall have the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** agrees to remove personnel from performing work under this Contract if requested to do so by the **CITY**.

**CONTRACTOR** shall not use subcontractors to assist in performance of this Contract without the prior written approval of the **CITY**. If the **CITY** permits the use of subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of

this Contract. The **CITY** has the right to approve **CONTRACTOR'S** subcontractors, and the **CITY** reserves the right to request replacement of subcontractors. The **CITY** does not have any obligation to pay **CONTRACTOR'S** subcontractors, and nothing herein creates any privity between the **CITY** and the subcontractors.

**PSC-13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION**

**CONTRACTOR** may not, unless it has first obtained the written permission of the **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

**PSC-14. PERMITS**

**CONTRACTOR** and its directors, officers, partners, agents, employees, and subcontractors, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance hereunder and shall pay any fees required therefor. **CONTRACTOR** certifies to immediately notify the **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

**PSC-15. CLAIMS FOR LABOR AND MATERIALS**

**CONTRACTOR** shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), against **CONTRACTOR'S** rights to payments hereunder, or against the **CITY**, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

**PSC-16. CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED**

If applicable, **CONTRACTOR** represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this Contract, **CONTRACTOR** shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

**PSC-17. RETENTION OF RECORDS, AUDIT AND REPORTS**

**CONTRACTOR** shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form, in accordance with



requirements prescribed by the **CITY**. These records shall be retained for a period of no less than three years following final payment made by the **CITY** hereunder or the expiration date of this Contract, whichever occurs last. Said records shall be subject to examination and audit by authorized **CITY** personnel or by the **CITY'S** representative at any time during the term of this Contract or within the three years following final payment made by the **CITY** hereunder or the expiration date of this Contract, whichever occurs last. **CONTRACTOR** shall provide any reports requested by the **CITY** regarding performance of this Contract. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

#### **PSC-18. FALSE CLAIMS ACT**

**CONTRACTOR** acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the **CITY** under the False Claims Act (Cal. Gov. Code §§ 12650 *et seq.*), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

#### **PSC-19. BONDS**

All bonds which may be required hereunder shall conform to **CITY** requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

#### **PSC-20. INDEMNIFICATION**

Except for the active negligence or willful misconduct of the **CITY**, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, **CONTRACTOR** undertakes and agrees to defend, indemnify and hold harmless the **CITY** and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by **CONTRACTOR** or its subcontractors of any tier. Rights and remedies available to the **CITY** under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the **CITY**. The provisions of PSC-20 shall survive expiration or termination of this Contract.

#### **PSC-21. INTELLECTUAL PROPERTY INDEMNIFICATION**

**CONTRACTOR**, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the **CITY**, and any of its Boards, Officers, Agents, Employees, Assigns,

and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its subcontractors of any tier, in performing the work under this Contract; or (2) as a result of the **CITY'S** actual or intended use of any Work Product furnished by **CONTRACTOR**, or its subcontractors of any tier, under the Agreement. Rights and remedies available to the **CITY** under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the **CITY**. The provisions of PSC-21 shall survive expiration or termination of this Contract.

#### **PSC-22. INTELLECTUAL PROPERTY WARRANTY**

**CONTRACTOR** represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.

#### **PSC-23. OWNERSHIP AND LICENSE**

Unless otherwise provided for herein, all Work Products originated and prepared by **CONTRACTOR** or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the **CITY** for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. **CONTRACTOR** hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by **CONTRACTOR** under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.

For all Work Products delivered to the **CITY** that are not originated or prepared by **CONTRACTOR** or its subcontractors of any tier under this Contract, **CONTRACTOR** hereby grants a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

**CONTRACTOR** shall not provide or disclose any Work Product to any third party without prior written consent of the **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract to contractually bind or otherwise oblige its subcontractors performing work under this Contract such that the **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of **CONTRACTOR'S** contract with the **CITY**.

#### **PSC-24. INSURANCE**

During the term of this Contract and without limiting **CONTRACTOR'S** indemnification of the **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by **CONTRACTOR**, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146 in Exhibit 1 hereto), covering its operations hereunder. Such insurance shall conform to **CITY** requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto) and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

#### **PSC-25. DISCOUNT TERMS**

**CONTRACTOR** agrees to offer the **CITY** any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discount to payments made under this Contract which meet the discount terms.

#### **PSC-26. WARRANTY AND RESPONSIBILITY OF CONTRACTOR**

**CONTRACTOR** warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

#### **PSC-27. NON-DISCRIMINATION**

Unless otherwise exempt, this Contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the **CITY**. In performing this Contract, **CONTRACTOR** shall not

discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of **CONTRACTOR'S** contract with the **CITY**.

### **PSC-28. EQUAL EMPLOYMENT PRACTICES**

Unless otherwise exempt, this Contract is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of this Contract, **CONTRACTOR** agrees and represents that it will provide equal employment practices and **CONTRACTOR** and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
  - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
  - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  - 3. **CONTRACTOR** agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, **CONTRACTOR** shall certify in the specified format that he or she has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of

race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of **CITY** contracts. On their or either of their request **CONTRACTOR** shall provide evidence that he or she has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of **CITY** contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has failed to comply with the Equal Employment Practices provisions of a **CITY** contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until **CONTRACTOR** shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the **CITY**, or when an individual bid or proposal is submitted, **CONTRACTOR** shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of **CITY** Contracts.

- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Hiring practices;
  2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
  3. Training and promotional opportunities; and
  4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of the **CONTRACTOR'S** Contract with the **CITY**.

**PSC-29. AFFIRMATIVE ACTION PROGRAM**

Unless otherwise exempt, this Contract is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of a **CITY** contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
  2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  3. **CONTRACTOR** shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to

their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, **CONTRACTOR** shall certify on an electronic or hard copy form to be supplied, that **CONTRACTOR** has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of **CITY** contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Affirmative Action Program provisions of **CITY** contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has breached the Affirmative Action Program provisions of a **CITY** contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that **CONTRACTOR** has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a **CITY** contract, there may be deducted from the amount payable to **CONTRACTOR** by the **CITY** under the contract, a penalty of ten dollars

(\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a **CITY** contract.

- H. Notwithstanding any other provisions of a **CITY** contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in **CITY** contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. **CONTRACTOR** shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the **CITY**. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, **CONTRACTOR** may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, **CONTRACTOR** must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
  - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
  - 2. **CONTRACTOR** may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the **CITY** with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and **CONTRACTOR**.



- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
  2. Classroom preparation for the job when not apprenticeable;
  3. Pre-apprenticeship education and preparation;
  4. Upgrading training and opportunities;
  5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
  6. The entry of qualified women, minority and all other journeymen into the industry; and
  7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the **CITY'S** Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the **CITY** and may be used at the discretion of the **CITY** in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.

- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the **CITY** and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the **CITY**.

### **PSC-30. CHILD SUPPORT ASSIGNMENT ORDERS**

This Contract is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, **CONTRACTOR** will fully comply with all applicable State and Federal employment reporting requirements for **CONTRACTOR'S** employees. **CONTRACTOR** shall also certify (1) that the Principal Owner(s) of **CONTRACTOR** are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that **CONTRACTOR** will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, *et seq.* of the California Family Code; and (3) that **CONTRACTOR** will maintain such compliance throughout the term of this Contract.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract, subjecting this Contract to termination if such default shall continue for more than ninety (90) days after notice of such default to **CONTRACTOR** by the **CITY**.

Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of **CONTRACTOR** to obtain compliance of its subcontractors shall constitute a default by **CONTRACTOR** under this Contract, subjecting this Contract to termination where such default shall continue for more than ninety (90) days after notice of such default to **CONTRACTOR** by the **CITY**.

**CONTRACTOR** certifies that, to the best of its knowledge, it is fully complying with the Earnings Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

**PSC-31. LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE**

- A. Unless otherwise exempt, this Contract is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 *et seq.* of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time. These Ordinances require the following:
1. **CONTRACTOR** assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of compensated and uncompensated days off and health benefits, as defined in the LWO.
  2. **CONTRACTOR** further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. **CONTRACTOR** shall require each of its subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. **CONTRACTOR** shall deliver the executed pledges from each such subcontractor to the **CITY** within ninety (90) days of the execution of the subcontract. **CONTRACTOR'S** delivery of executed pledges from each such subcontractor shall fully discharge the obligation of **CONTRACTOR** with respect to such pledges and fully discharge the obligation of **CONTRACTOR** to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
  3. **CONTRACTOR**, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the **CITY** with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. **CONTRACTOR** shall post the Notice of Prohibition Against Retaliation provided by the **CITY**.
  4. Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of PSC-31 and shall incorporate the provisions of the LWO and the SCWRO.

5. **CONTRACTOR** shall comply with all rules, regulations and policies promulgated by the **CITY'S** Designated Administrative Agency which may be amended from time to time.
- B. Under the provisions of Sections 10.36.3(c) and 10.37.6(c) of the Los Angeles Administrative Code, the **CITY** shall have the authority, under appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if the **CITY** determines that the subject **CONTRACTOR** has violated provisions of either the LWO or the SCWRO, or both.
- C. Where under the LWO Section 10.37.6(d), the **CITY'S** Designated Administrative Agency has determined (a) that **CONTRACTOR** is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the **CITY** in such circumstances may impound monies otherwise due **CONTRACTOR** in accordance with the following procedures. Impoundment shall mean that from monies due **CONTRACTOR**, **CITY** may deduct the amount determined to be due and owing by **CONTRACTOR** to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d)(3) and disposed of under procedures described therein through final and binding arbitration. Whether **CONTRACTOR** is to continue work following an impoundment shall remain in the sole discretion of the **CITY**. **CONTRACTOR** may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.
- D. **CONTRACTOR** shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). **CONTRACTOR** shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from **CONTRACTOR**.

**PSC-32. AMERICANS WITH DISABILITIES ACT**

**CONTRACTOR** hereby certifies that it will comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, and its implementing regulations. **CONTRACTOR** will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. **CONTRACTOR** will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by **CONTRACTOR**, relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

**PSC-33. CONTRACTOR RESPONSIBILITY ORDINANCE**

Unless otherwise exempt, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time, which requires **CONTRACTOR** to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect **CONTRACTOR'S** fitness and ability to continue performing this Contract.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Contract, **CONTRACTOR** pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. **CONTRACTOR** further agrees to: (1) notify the **CITY** within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that **CONTRACTOR** is not in compliance with all applicable federal, state and local laws in performance of this Contract; (2) notify the **CITY** within thirty calendar days of all findings by a government agency or court of competent jurisdiction that **CONTRACTOR** has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the **CITY**; and (4) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the **CITY** within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

**PSC-34. MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM**

**CONTRACTOR** agrees and obligates itself to utilize the services of Minority, Women and Other Business Enterprise firms on a level so designated in its proposal, if any. **CONTRACTOR** certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Personal Services Contracts Greater than \$100,000, if applicable. **CONTRACTOR** shall not change any of these designated subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of the **CITY**, provided that such approval shall not be unreasonably withheld.

**PSC-35. EQUAL BENEFITS ORDINANCE**

Unless otherwise exempt, this Contract is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of the Contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** will comply with the EBO.
- B. The failure of **CONTRACTOR** to comply with the EBO will be deemed to be a material breach of this Contract by the **CITY**.
- C. If **CONTRACTOR** fails to comply with the EBO the **CITY** may cancel, terminate or suspend this Contract, in whole or in part, and all monies due or to become due under this Contract may be retained by the **CITY**. The **CITY** may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against **CONTRACTOR** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
- E. If the **CITY'S** Designated Administrative Agency determines that a **CONTRACTOR** has set up or used its contracting entity for the purpose of evading the intent of the EBO, the **CITY** may terminate the Contract. Violation of this provision may be used as evidence against **CONTRACTOR** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

**CONTRACTOR** shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-1922."

**PSC-36. SLAVERY DISCLOSURE ORDINANCE**

Unless otherwise exempt, this Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as amended from time to time. **CONTRACTOR** certifies that it has complied with the applicable provisions of the Slavery Disclosure Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract.

**EXHIBIT 1**

**INSURANCE CONTRACTUAL REQUIREMENTS**

**CONTACT** For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at [www.lacity.org/cao/risk](http://www.lacity.org/cao/risk). The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

**CONTRACTUAL REQUIREMENTS**

**CONTRACTOR AGREES THAT:**

**1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.

**2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.

**3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.

**4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.

**5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

**6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

**7. California Licensee.** All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

**8. Aggregate Limits/Impairment.** If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

**9. Commencement of Work.** For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-4, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.



Agreement for Government Banking Services

This Agreement for Government Banking Services (the "AGREEMENT") is made as of this July 1, 2008 between the City of Los Angeles (the "CITY") and Wells Fargo Bank, N.A. (the "BANK"), a national banking association.

WHEREAS, the CITY issued a Request for Proposal ("RFP") dated January 2008; and

WHEREAS, the BANK was one of the successful bidders under the RFP having submitted its proposal dated March 6, 2008 (the "Proposal");

WHEREAS, the parties wish to enter into this AGREEMENT for the purpose of specifying the terms and conditions of the AGREEMENT between the CITY and the BANK regarding the Services;

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the parties hereby agree as follows:

1. Integrated AGREEMENT

The entire and integrated AGREEMENT between CITY and BANK related to the Services shall consist of this AGREEMENT, the City's Standard Provisions dated as of October 2003, the City's RFP and all addendum thereto, the BANK'S proposal, the Wells Fargo Agreements for the City of Los Angeles, and the Merchant Services Agreement.

In the event of conflict among any of the preceding documents, such documents shall govern in the following order of precedence: (1) the paragraphs of this AGREEMENT, (2) the City's Standard Provisions dated October 2003 (**Exhibit A**) (3) the City's RFP dated January 2008 and all addendum thereto (**Exhibit B**) 4) the Bank's proposal, including the proposed Pricing Schedule (**Exhibit C**) 5) the Wells Fargo Agreements for the City of Los Angeles (**Exhibit D**) (6) the Merchant Services Agreement (**Exhibit E**). The integrated AGREEMENT supersedes all prior negotiations, representations, statements, and agreements, whether written or oral, regarding the services.

2. Term

This AGREEMENT shall commence on July 1, 2008, and end on June 30, 2013, subject to the termination provisions herein. The CITY has the option to extend this AGREEMENT for five additional years, in one-year increments, on the same terms and conditions.

3. Scope of Work

CITY hereby engages BANK to provide general banking services, including but not limited to general account services, demand deposit accounts, State LAIF transfers, overnight sweeps, direct deposit services, payroll tax processing, information reporting, reconciliation, electronic fund transfers, positive pay, controlled disbursement, returned items processing, image capture, lockbox services, custody services, investment services, electronic receipt and payment platforms, purchasing cards, payroll cards, and services and products relating to business continuity planning. CITY further engages BANK to provide consulting services directly related to banking services.

4. Agreement Administrator

In performing services under this AGREEMENT, BANK shall coordinate all contact with CITY through its Agreement Administrator. For purposes of this AGREEMENT, CITY designates Ms. Joya C. De Foor as the Agreement Administrator.

5. Compensation

For complete and satisfactory performance of the terms of this AGREEMENT, the CITY will pay the BANK at the City's option, either by compensating balances or cash in accordance with the Fee Schedule set forth in Exhibit C which is attached hereto and made a part hereof, after City has received a monthly consolidated analysis and reviewed and approved the services performed. The foregoing amount represents the total compensation to be paid by CITY to BANK for services performed under this AGREEMENT. Settlement will be annually on June 30<sup>th</sup>, or if June 30<sup>th</sup> is on a Saturday, Sunday or legal holiday, then settlement will occur on the next business day thereafter.

6. Audit

a. BANK shall be responsible for ensuring the accuracy and propriety of all billings and shall maintain all supporting documentation for the period specified below.

b. CITY will have the right to audit BANK's monthly analysis and all supporting documentation for the purposes of compliance with this AGREEMENT at any time during the term of this AGREEMENT for a period of three years following the completion of services under this AGREEMENT.

c. Upon reasonable notice from CITY, BANK shall cooperate fully with any audit of its billings conducted by CITY and shall permit reasonable access to its books, records and accounts as may be necessary to conduct such audits.

7. Successors and Assignment

This AGREEMENT covers professional services of a specific and unique nature, except as otherwise provided herein, BANK shall not assign or transfer its rights in this AGREEMENT nor delegate its obligations to perform any services to be performed without CITY's prior written approval and without an appropriate amendment to this AGREEMENT.

8. Change in Ownership or Control

BANK shall notify the Agreement Administrator, in writing, of any change in structure or control of BANK. Change of structure of BANK will require an amendment to the AGREEMENT.

9. Use of Materials

a. CITY will make available to BANK such materials from its files as may be required by Bank to perform services under this AGREEMENT. Such materials shall remain the property of CITY while in BANK's possession and shall be returned to City upon request and in no event later than completion of work described herein. Work produced in accordance with this AGREEMENT shall, upon termination of this AGREEMENT or completion of work under this AGREEMENT, be returned to CITY. Unless BANK is required under applicable federal

or state laws and regulations to retain copies, BANK shall turn over to CITY any property of CITY in its possession and any calculations, notes, reports, electronic files, or other materials prepared by BANK in the course of performance of this AGREEMENT upon termination of this AGREEMENT, completion of work under this AGREEMENT, or when requested by CITY.

- b. All original written or recorded data, documents, graphic displays, reports or other material, which are originated and prepared for the City pursuant to this AGREEMENT shall be "Work Made for Hire" and shall become the property of the CITY. The BANK hereby assigns all of its right, title and interest therein to the CITY. In addition, the CITY reserves the right to use, duplicate and disclose, in whole or in part, in any manner and for any purpose whatsoever, all such data, documents, graphic displays, reports or other materials delivered to the CITY pursuant to this AGREEMENT and to authorize others to do so.

10. Intellectual Property

All right, title and interest in all intellectual property conceived or developed in the course of, and for the purpose of, BANK's work for CITY under this AGREEMENT shall be the property of the CITY. As used herein, the term "intellectual property" includes, but is not limited to, all inventions, patents, copyrightable subject matter, copyrights, test data, trade secrets, other confidential information and software.

- a. BANK shall not use or disclose any intellectual property conceived or developed in the course of, and for the purpose of, BANK's work for CITY, except: (i) intellectual property in the public domain through no fault of BANK (ii) intellectual property which BANK can prove was received by him or her from a third party owing no duty to CITY, (iii) intellectual property for which BANK has received express, written permission from the Agreement Administrator for CITY, or from the Agreement Administrator's designated agent, (iv) is authorized or required to use or disclose under the terms of this AGREEMENT or as is required by law.
- b. BANK shall promptly notify CITY, in writing, of all intellectual property conceived or developed in the course of, and for the purpose of, BANK's work for CITY under this AGREEMENT.
- c. BANK shall assign and does hereby assign to CITY all right, title and interest to intellectual property conceived or developed by BANK in course of, and for the purpose of, BANK's past and future work for CITY.
- d. BANK shall cooperate in the execution of all documents necessary to protect CITY's right to intellectual property under this AGREEMENT.
- e. When requested by CITY, or upon the completion of each work assignment or upon termination of this AGREEMENT, BANK shall return all documents and other tangible media containing intellectual property developed by BANK during the course of, and for the purpose of, this AGREEMENT, including all prototypes and computer programs.
- f. When requested by CITY or upon termination of this AGREEMENT, BANK shall promptly erase copies of all CITY intellectual property from BANK's computers.

11. Nonuse of Intellectual Property of Third Parties

- a. BANK shall not use, disclose or copy any intellectual property of any third parties in connection with work carried out under this AGREEMENT, except for intellectual property for which BANK has a license, or other authorization or permission. BANK shall

indemnify and hold CITY harmless against all claims raised against CITY based upon allegations that BANK has wrongfully used intellectual property of others in performing work for CITY, or that CITY has wrongfully used intellectual property developed by BANK pursuant to this AGREEMENT.

b. BANK, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorney's fees, experts' fees and cost of litigation, damage or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by BANK in performing the work under this AGREEMENT; or (2) as a result of the CITY's actual or intended use of any Work Product furnished by BANK under this AGREEMENT. Rights and remedies available to the CITY hereinabove are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the City of Los Angeles. This provision shall survive expiration or termination of this AGREEMENT.

c. Work Products are all works, tangible or not, created under this AGREEMENT including, but not limited to, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formula matters and combinations thereof, and all forms of intellectual property.

12. Legal Requirements

BANK shall secure and maintain all licenses or permits required by law and shall comply with all ordinances, laws, orders, rules, and regulations pertaining to the work.

13. Representation and Warranty

BANK represents and warrants that the work shall be performed and completed in accordance with generally accepted industry standards, practices, and principles applicable to the work. Among other things, and without waiver of CITY's other rights or remedies, CITY may require BANK to re-perform any of said services which were not performed accordance with these standards. BANK shall perform the remedial services at its sole expense. CITY's representatives shall at all times have access to the work for purposes of inspecting same and determining that the work is being performed in accordance with the terms of this AGREEMENT.

14. Confidentiality

All documents, data, reports, computer codes, or information ("INFORMATION") that the CITY provides to BANK during the term of this AGREEMENT, or that BANK has access to during the term of this AGREEMENT shall be considered confidential and shall not be released or disclosed by the BANK unless authorized by the CITY or required to do so by law or unless such information is public by nature. BANK agrees that all documents or other information used or reviewed in connection with BANK's work for the CITY shall be used only for the purpose of carrying out City business and cannot be used for any other purpose. Such confidentiality shall survive the termination of the AGREEMENT.

15. Release of Information

BANK shall not make public any such INFORMATION releases or otherwise publish any such INFORMATION without prior written authorization from the Agreement Administrator.

16. Use of CITY's Name and Seal

BANK shall not publish or use any advertising, sales promotion, or publicity in matters relating to services, equipment, products, reports, and material furnished by BANK in which CITY's name is used, or its identity implied without the Agreement Administrator's prior written consent approval

17. Termination

CITY may terminate this AGREEMENT with or without cause by providing written notice to BANK not less than ninety (90) days prior to an effective termination date. CITY's only obligation in the event of termination will be payment of fees for approved services incurred up to and including the effective date of termination. Bank shall assist in the orderly and timely transfer of funds and closure of services as requested by the City.

18. Notices

Any notice or communication given under this AGREEMENT shall be effective when deposited, postage prepaid, with the United States Postal Service and addressed to the parties as follows:

Client: Ms. Joya C. De Foor, CTP  
City Treasurer  
City of Los Angeles  
200 N. Spring Street, Room 201, City Hall  
Los Angeles, CA 90012

Bank: Mr. James M. Thompson  
Senior Vice President  
Attn: Mark Hewlett  
Wells Fargo Bank, Government Banking  
707 Wilshire Blvd., 11<sup>th</sup> Floor  
Los Angeles, CA 90017

Either party may change the address to which notice or communication is to be sent by providing advance written notice to the other party.

19. Joint Drafting

Both parties have participated in the drafting of this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective duly authorized representatives.

TREASURER, CITY OF LOS ANGELES

Joya C. De Foor, CTP

Joya C. De Foor

Date 12/1/2008

WELLS FARGO BANK, N.A.

By [Signature]

Print Name MARK C. HEWITT

Title VICE PRESIDENT

Approved as to Form and Legality

Rocky Delgadillo, City Attorney

Attest: Karen E. Kalfayan, City Clerk

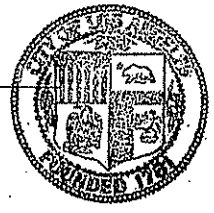
By Kelly Red

Date 12-1-08

By Vera Munday

Date 12-1-08

C-114826



**Exhibit A**

**Standard Provisions For City Contracts (Rev. 10/03)**

**Exhibit B**

**City's Request For Proposal**



**Exhibit C**

**Pricing Schedule**

## EXHIBIT C

Wells Fargo Bank, N.A.

Attachment 2

CITY OF LOS ANGELES, OFFICE OF THE TREASURER  
2008 REQUEST FOR PROPOSALS BANKING SERVICES - PRICING SCHEDULE

Codes	Descriptions	Per Unit Charge	Average Monthly Volume	Average Monthly Charge
000210	Negative Collected Balance - Assessment	0.00		0.00
000230	FDIC Assessment	0.05		0.00
010000	Account Maintenance	3.00	65	195.00
010000	Depository Plus Sub Account Maintenance	1.00	24	24.00
010020	Zero Balance Account Maintenance - Master	2.00	1	2.00
010021	Zero Balance Account Maintenance - Sub-Account	2.00	14	28.00
010100	General Account Activity - Debit Posting	0.03	420	12.60
010101	General Account Activity - Credit Posting	0.40	8100	3240.00
010305	DDA Statement - Automated - Network	0.00	11	0.00
010310	Additional Paper Statements	0.00	28	0.00
010310	Facsimile Transmission	0.00	25	0.00
010320	DDA Statement - Custom	15.00	7	105.00
010405	Account Analysis - Automated - Network	0.00	1	0.00
010600	General Account Relationship Assistance - Inquiries/Requests	0.00	4	0.00
010610	General Account Relationship Assistance - Copies	0.00	29	0.00
050000	Wholesale Lockbox Image Lbx Maintenance	62.50	2	125.00
050000	Wholesale Lockbox Auto Paper Lbx Maintenance	50.00	23	1150.00
050100	Wholesale Lockbox Image Proc Per Item	0.30	350	105.00
050100	Wholesale Lockbox Auto Paper Proc Per Item	0.27	45000	12150.00
05011A	Wholesale Lockbox Photocopy	0.27	30421	8213.67
05011F	Wholesale Lockbox Return Envelope With Remittance Unassociated	0.00	40981	0.00
05011L	Wholesale Lockbox Delivery Preparation Charge	1.00	19	19.00
05011P	Wholesale Lockbox Negotiability Review	0.00	7050	0.00
05011P	Wholesale Lockbox Walk In Deposit	7.00	450	3150.00
05011P	Wholesale Lockbox Balance Cks - Invoice	0.00	2143	0.00
05011P	Wholesale Lockbox Exception Proc - Per Item	0.50	23955	11977.50
05011R	Wholesale Lockbox Image	0.30	1100	330.00
050112	Wholesale Lockbox Detail Sorting - Rough Sort	0.05	26280	1314.00
050114	Wholesale Lockbox Detail Sorting - Fine Sort Alphanumeric	0.05	980	49.00
050117	Wholesale Lockbox Stapling - Attach Document	0.04	32652	1142.82
050121	Wholesale Lockbox Image Access Per Item	0.03	352	10.56
050121	Wholesale Lockbox Data Trans Per Item	0.00	10775	0.00
050126	Wholesale Lockbox Data Capture - Alphanumeric Single Entry	0.01	1000000	8000.00
05013A	Wholesale Lockbox Merchant Card Processing	0.50	1107	553.50
05013B	Wholesale Lockbox Cash Payment Processing	2.00	1	2.00
05013F	Wholesale Lockbox Non-Standard Processing	0.50	7370	3685.00
050130	Wholesale Lockbox Early Morning Clearing	0.00	5	0.00
050130	Wholesale Lockbox Mid Morning Clearings	0.00	6	0.00
050131	Wholesale Lockbox 21-40 Acceptable Payees	0.06	445	26.70
050131	Wholesale Lockbox 11-20 Acceptable Payees	0.06	7735	464.10
050134	Wholesale Lockbox Special Detail Assembly	0.09	3439	309.51
050134	Wholesale Lockbox Reassoc W-O Staples	0.00	452	0.00
050300	Wholesale Lockbox Deposit Prep Per Deposit	1.00	1500	1500.00
050300	Lockbox Deposit	0.40	175	70.00
050320	Lockbox Deposit Reporting - Manual - Total		20	0.00
050321	Lockbox Deposit Reporting - Manual - Detail		16	0.00
050400	Lockbox Information Delivery - Automated - Maintenance	10.00	2	20.00
050401	Wholesale Lockbox Data Tran Maint 1st Box	100.00	15	1500.00
050401	Wholesale Lockbox Non Business Day Trans	100.00	1	100.00
050404	Lockbox Information Delivery - Automated - Network		14	0.00
050412	Lockbox Information Delivery - Manual - Bundled		1	0.00
050410	Lockbox Information Delivery - Manual - Postage	1.00	1974	1974.00
050413	Lockbox Information Delivery - Manual - Courier/Messenger	1.00		0.00
050530	Lockbox Reject Items - Unprocessable	0.25	10015	2503.75
100000	Branch Deposit	0.40	4043	1617.20
100007	Branch Deposit - Delayed Processing	0.40	75	30.00
100012	Curr/Coin Dep/\$100-BKG CTR-CA	0.01	11599	92.79
100012	Curr/Coin Dep/\$100-QBD-ND-CA	0.01	2193	17.54
100040	Branch Coin and/or Currency Order - Manual	2.00	45	90.00
100044	Coin Supplied / Roll -Box Bkg Ctr-CA	2.25	200	450.00

Codes	Descriptions	Per Unit Charge	Average Monthly Volume	Average Monthly Charge
100044	Coin Supplied/Roll -Bkg Ctr-CA	0.10	299	29.90
100049	Currency Supp/\$100-Bkg Ctr-CA	0.01	413	3.30
100100	Vault Deposit	0.40	15	6.00
100112	Vault Deposited Coin and Currency - Bundled	0.01	114343	686.06
100111	Vault Deposited Coin - Non-Standard Bag	1.75	125	218.75
100113	Vault Deposited Coin - Fed Standard Bag	1.00	3388	3388.00
100115	Vault Deposited Currency - Fed Standard Strap	0.01	145307	871.84
10014A	Vault Furnished Currency - Fed Standard Strap	0.01	283	1.70
100141	Vault Coin and/or Currency Order - Automated	1.00	41	41.00
100144	Coin Supp/Roll-Box-Vlt-CA	2.25	1704	3834.00
100144	Coin Supplied-Per Roll-Vlt-CA	0.10	883	88.30
100148	Vault Furnished Currency - Loose	0.01	110	0.66
100151	Vault Deposit - Extended Hours	0.40	2298	919.20
100154	Vault Deposit - Special	0.40	3400	1360.00
100200	Cash Letter/Item Proc Deposits	0.40	56	22.40
100200	ICL Transmission Deposit	0.40	253	101.20
100209	Transmssion Maintenance	0.00	1	0.00
100210	Encoded Checks-On-Ups	0.02	78690	1180.35
100212	Encoded Checks - Local Clearinghouse	0.03	71000	2130.00
100213	Encoded Checks - Local Fed	0.04	111530	3903.55
100214	Encoded Checks - Other Fed	0.04	37254	1378.40
10022Z	Unencoded Checks-Bundled	0.04	130630	5219.97
100229	IRD Deposited Items	0.00	188987	0.00
100229	Image Deposited Items	0.02	228220	5134.95
100230	Checks Deposit Rejects-CA	0.30	18	5.40
100230	Checks Deposit Rejects>.8%-CA	0.30	0	0.00
100249	Fixed Monthly Package Fee	0.00	1	0.00
100310	Non-U.S. Collection Item - U.S. Dollar/Non-U.S. Bank - Outgoing	2.00	2	4.00
100400	Return Item Processing - Regular	0.75	2000	1500.00
100401	Returns-Special Delivery	0.15	18	2.70
100401	Returns-Alternate Charge	0.15	21	3.15
100401	Returns-Dup Advice	0.50	18	9.00
100402	Return Item Processing - Reclear Item	0.25	2000	500.00
100501	Deposit Adjustment Processing - Coin and/or Currency	2.50	68	170.00
100502	Deposit Adjustment Processing - Checks	0.25	95	23.75
101010	Special Depository Service - Armored Carrier Service			0.00
150100	Checks Paid - Regular	0.05	6800	340.00
150102	Checks Paid - Regular - Truncated	0.05	33	1.65
150322	Returned Checks - Presented Without Issuance	3.50	1	3.50
150340	Non-Sufficient Funds (NSF) - Check Handling Fee	3.00	20	60.00
150400	Check Inquiries - Automated	0.35	17	5.95
150410	Bamtrac Stop Pay-Con Rpt Items	0.02	340	6.80
150410	Stop Pay Automated<= 12 Months	2.00	171	342.00
150410	Stop Pay Automated> 12 Months	2.00	5	10.00
150420	Stop Payment - Manual	2.00	2	4.00
150500	Checks Cashed - Non-Customer	0.00	666	0.00
150511	Cashier's Check	0.00	4	0.00
150711	Payable Through Draft Notification - Transmission	0.02	60000	1200.00
150799	PTD Rejected Electronic Items		5	0.00
150810	Check Supplies			0.00
151100	Check Sorting-Fine	0.03	2350	70.50
151200	Paper Disbursement Information Delivery - Postage			0.00
151341	Check Retrieval - Photocopy - Automated	0.25	4	1.00
151342	Check Retrieval - Photocopy - Manual	0.25	30	7.50
151350	Check Imaging - Maintenance	0.00	10	0.00
151351	CD Rom Per Image	0.02	62000	1240.00
151351	Image Retrieval Direct	0.25	408	102.00
151353	Check Image - Retrieval - CD-ROM	10.00	3	30.00
200010	Paper Disbursement Reconciliation Maintenance - Full	15.00	3	45.00
200020	Paper Disbursement Reconciliation Maintenance - Partial	15.00	11	165.00
200120	Paper Disbursement Reconciliation Processing - Partial	0.03	63000	1890.00
200121	Partial AR-Credit Per Item		1300	0.00
200201	Check Issue Input-Transm Media	0.00	12	0.00

Codes	Descriptions	Per Unit Charge	Average Monthly Volume	Average Monthly Charge
200201	Full Ppay Input Per Item Transm	0.03	2500	75.00
200301	Paper Disbursement Reconciliation Reports - Transmission	5.00	21	105.00
200305	Paper Disbursement Reconciliation Reports - Network	5.00	3	15.00
209999	Undefined Paper Disbursement Reconciliation Services		171	0.00
250000	ACH Monthly Maintenance	15.00	4	60.00
250000	ACH LV-Monthly Maintenance	15.00	2	30.00
250101	Corporate On US Credits	0.01	17	0.17
250101	Corporate Off US Credits	0.01	91	0.91
250102	ACH LV On-US Items	0.01	20	0.20
250102	ACH LV Off-US Items	0.01	100	1.00
250107	Consumer On US Credits	0.01	21000	210.00
250107	Consumer Off US Credits	0.01	87000	870.00
250120	ACH Originated - Addenda Records	0.02	157	3.14
250150	ACH Account Block or Filter	3.00	68	204.00
250200	ACH Received - Debit	0.03	100	3.00
250201	ACH Received - Credit	0.03	1500	45.00
250300	ACH Return Item - Debit	0.50	45	22.50
250501	ACH Input - Automated - Transmission	5.00	5	25.00
250504	ACH Input - Automated - Network	5.00	9	45.00
250640	ACH Exception Processing - Item Reversal	3.00	32	96.00
250703	ACH Activity Reporting - Automated - Intraday - Detail	10.00	1	10.00
250800	ACH Master File - Origination	0.02	77000	1540.00
251070	Special ACH Service - Notification of Change - Automated	0.50	40	20.00
251110	ACH Software - Usage	0.00	1	0.00
259999	ACH Optional Reports - Electronic	0.00	2	0.00
259999	ACH Optional Reports - Fax	0.00	29	0.00
259999	ACH Optional Reports - Mail	0.00	27	0.00
259999	ACH Standard Reports - Mail	0.00	25	0.00
259999	ACH Standard Reports - Electronic	0.00	6	0.00
259999	ACH Standard Reports - Fax	0.00	35	0.00
259999	Manual Assisted Fedwire - EFTPS	3.00	3	9.00
30TTTT	Scanner Maintenance	0.00	1	0.00
30TTTT	RDS - Monthly Maintenance	0.00	1	0.00
30TTTT	RDS - Monthly License Fee	0.00	2	0.00
30TTTT	RDS - Image Processing	0.05	8573	450.08
300010	EDI Maintenance - Receiving		1	0.00
300100	EDI Origination Transmssion - Direct		3	0.00
300222	EDI Receiving Remittance Advising - Network	10.00	1	10.00
300223	EDI Receiving Remittance Advising - Direct		1	0.00
300522	EDI Remittance Advising-Network	0.05	7000	350.00
350103	Outgoing Fedwire Transfer - Automated - Freeform Straight-Through	3.00	170	510.00
350113	Outgoing CHIPS Transfer - Automated - Qualified	3.00	7	21.00
350123	Outgoing Book Transfer - Automated - Freeform Straight-Through	1.00	12	12.00
350300	Incoming Fedwire Transfer	2.50	112	280.00
350320	Incoming Book Transfer	1.00	27	27.00
350412	Wire Advice - Phone	2.00	1	2.00
350412	Wire Advice - Mail	0.25	13	3.25
350551	Bank Maintenance Template Storage	0.25	62	15.50
350551	Customer Maintenance Template Storage	0.25	230	57.50
350560	Funds Transfer Investigation	15.00	1	15.00
350600	Funds Transfer Software - Maintenance	0.00	1	0.00
400050	Domestic Information Maintenance - Internet - Previous Day - Summary	10.00	15	150.00
400051	Direct Previous Day Ext Item	0.01	21000	210.00
400051	Direct Previous Day Std Item	0.00	2800	0.00
400052	Domestic Information Maintenance - Internet - Previous Day - Summary/Detail	10.00	2	20.00
400053	Domestic Information Maintenance - Internet - Intraday - Summary	10.00	7	70.00
400054	Domestic Information Maintenance - Internet - Intraday - Detail	0.05	17000	850.00
400055	Domestic Information Maintenance - Internet - Intraday - Summary/Detail	10.00	2	20.00
400220	Domestic Reporting - Terminal/Network - Previous Day - Summary	10.00	2	20.00
400221	Domestic Reporting - Terminal/Network - Previous Day - Detail	0.05	15000	750.00
400224	Domestic Reporting - Terminal/Network - Intraday - Detail	10.00	4	40.00
			<b>Total</b>	<b>111884.93</b>

Codes	Descriptions	Per Unit Charge	Average Monthly Volume	Average Monthly Charge
	The services listed above are specifically requested by the City of Los Angeles. If you wish to propose additional services, please provide detailed descriptions and any associated fees.			
	<b>OTHER PROPOSED SERVICES</b>		Base on Estimate	
	Wells Fargo Bank is pleased to offer the City of Los Angeles fixed pricing for 5 years with option to review pricing for the next 5 years thereafter.			0.00
	1st Year	111884.93		0.00
	2nd Year	111884.93		0.00
	3rd Year	111884.93		0.00
	4th Year	111884.93		0.00
	5th Year	111884.93		0.00
	Required Services			0.00
	CEO Fraud Filter/Block - Per Item	0.25		0.00
	ACH Wells Fargo NOC - Trans or Fax Advice	0.50		0.00
	ARP Register Input CEO - Item	0.02		0.00
	ARP Serial Sort Monthly Base	12.00		0.00
	ARP Cks Returned With Statement - Per Item	0.05		0.00
	ARP Checks Paid - Full Recon	0.03		0.00
	Positive Pay Monthly Base	0.00		0.00
	Positive Pay Exception Item	0.65		0.00
	Positive Pay Exception Item - CEO Image	0.25		0.00
	Positive Pay Exception Checks Returned	1.50		0.00
	Payee Validation Standard Item	0.01		0.00
	CEO Event Messaging - ARP Recon Verification	0.25		0.00
	Cash Vault Monthly Base Fee	0.00		0.00
	CEO E-Statement-Custom - Per Item	0.05		0.00
	Reverse Positive Pay - CEO Image Retrieval	0.10		0.00
	Reverse Positive Pay - Returned Item	3.50		0.00
	Returned Items Special Instruction Monthly Base	0.25		0.00
	Unencoded Checks - Bundled - Wells Fargo Breakdown			0.00
	Checks Deposited - Branch/ Cash Vault - On Us Items	0.03		0.00
	Checks Deposited - Branch/ Cash Vault - WFB Affiliates	0.04		0.00
	Checks Deposited - Branch/ Cash Vault - Local Clearing	0.03		0.00
	Checks Deposited - Branch/ Cash Vault - Regional	0.05		0.00
	Checks Deposited - Branch/ Cash Vault - Transit	0.05		0.00
	Image Deposited Items - Bundled - Wells Fargo Breakdown			0.00
	Electronic Cash Letter - Wells Fargo Items	0.02		0.00
	Electronic Cash Letter-Non Wells Fargo Items	0.03		0.00
	Electronic Cash Letter Adjustment	1.00		0.00
	Electronic Deposited Check - Micr Rej	1.00		0.00
	Electronic Deposited Check - File Error Reject	1.00		0.00
	Remote Deposit - CEO Desktop Deposit - Bundled - Wells Fargo Breakdown			0.00
	Desktop Deposit - Wells Fargo Items	0.03		0.00
	Desktop Deposit - Non Wells Fargo Items	0.06		0.00
	Electronic Cash Letter -Non Wells Fargo Items	0.03		0.00
	Electronic Cash Letter Adjustment	1.00		0.00
	Electronic Deposited Check - Micr Rej	1.00		0.00
	Electronic Deposited Check - File Error Reject	1.00		0.00
	Remote Deposit - CEO Desktop Deposit - Bundled - Wells Fargo Breakdown			0.00
	Desktop Deposit - Wells Fargo Items	0.03		0.00
	Desktop Deposit - Non Wells Fargo Items	0.06		0.00
	Wholesale Lockbox - Required Services			#REF!
	CEO Lockbox Reporting Per Item	0.05		0.00
	Wholesale Lockbox - Image Storage - Per Item	0.04		0.00
	Wholesale Lockbox - Document Scanned - Per Item	0.03		0.00
	<b>Total</b>			<b>#REF!</b>

EXHIBIT 1

Codes	Descriptions	Per Unit Charge	Average Monthly Volume	Average Monthly Charge
	The services listed above are specifically requested by the City of Los Angeles. If you wish to propose additional services, please provide detailed descriptions and any associated fees.			
	<b>OTHER PROPOSED SERVICES</b>		Base on Estimate	
	Wells Fargo Bank is pleased to offer the City of Los Angeles fixed pricing for 5 years with option to review pricing for the next 5 years thereafter.			0.00
	1st Year	111884.93		0.00
	2nd Year	111884.93		0.00
	3rd Year	111884.93		0.00
	4th Year	111884.93		0.00
	5th Year	111884.93		0.00
	Required Services			0.00
	CEO Fraud Filter/Block - Per Item	0.25		0.00
	ACH Wells Fargo NOC - Trans or Fax Advice	0.50		0.00
	ARP Register Input CEO - Item	0.02		0.00
	ARP Serial Sort Monthly Base	12.00		0.00
	ARP Cks Returned With Statement - Per Item	0.05		0.00
	ARP Checks Paid - Full Recon	0.03		0.00
	Positive Pay Monthly Base	0.00		0.00
	Positive Pay Exception Item	0.65		0.00
	Positive Pay Exception Item - CEO Image	0.25		0.00
	Positive Pay Exception Checks Returned	1.50		0.00
	Payee Validation Standard Item	0.01		0.00
	CEO Event Messaging - ARP Recon Verification	0.25		0.00
	Cash Vault Monthly Base Fee	0.00		0.00
	CEO E-Statement-Custom - Per Item	0.05		0.00
	Reverse Positive Pay - CEO Image Retrieval	0.10		0.00
	Reverse Positive Pay - Returned Item	3.50		0.00
	Returned Items Special Instruction Monthly Base	0.25		0.00
	Unencoded Checks - Bundled - Wells Fargo Breakdown			0.00
	Checks Deposited - Branch/ Cash Vault - On Us Items	0.03		0.00
	Checks Deposited - Branch/ Cash Vault - WFB Affiliates	0.04		0.00
	Checks Deposited - Branch/ Cash Vault - Local Clearing	0.03		0.00
	Checks Deposited - Branch/ Cash Vault - Regional	0.05		0.00
	Checks Deposited - Branch/ Cash Vault - Transit	0.05		0.00
	Image Deposited Items - Bundled - Wells Fargo Breakdown			0.00
	Electronic Cash Letter - Wells Fargo Items	0.02		0.00
	Electronic Cash Letter -Non Wells Fargo Items	0.03		0.00
	Electronic Cash Letter Adjustment	1.00		0.00
	Electronic Deposited Check - Micr Rej	1.00		0.00
	Electronic Deposited Check - File Error Reject	1.00		0.00
	Remote Deposit - CEO Desktop Deposit - Bundled - Wells Fargo Breakdown			0.00
	Desktop Deposit - Wells Fargo Items	0.03		0.00
	Desktop Deposit - Non Wells Fargo Items	0.06		0.00
	Electronic Cash Letter -Non Wells Fargo Items	0.03		0.00
	Electronic Cash Letter Adjustment	1.00		0.00
	Electronic Deposited Check - Micr Rej	1.00		0.00
	Electronic Deposited Check - File Error Reject	1.00		0.00
	Remote Deposit - CEO Desktop Deposit - Bundled - Wells Fargo Breakdown			0.00
	Desktop Deposit - Wells Fargo Items	0.03		0.00
	Desktop Deposit - Non Wells Fargo Items	0.06		0.00
	Wholesale Lockbox - Required Services			#REF!
	CEO Lockbox Reporting Per Item	0.05		0.00
	Wholesale Lockbox - Image Storage - Per Item	0.04		0.00
	Wholesale Lockbox - Document Scanned - Per Item	0.03		0.00
	<b>Total</b>			<b>#REF!</b>

**Exhibit D**

**Wells Fargo Agreements For The City Of Los Angeles**



EXHIBIT D

**Wells Fargo Bank Agreements for the City of Los Angeles**

1. Acceptance of Services
2. ACH Origination Services
3. Wire Transfer Services Security Procedures Agreement
4. Account Reconciliation Plan
5. Cash Letter
6. CheXstor<sup>SM</sup>
7. Commercial Account Agreement
8. Commercial Electronic Office<sup>SM</sup>
9. Desktop Deposit – CEO<sup>®</sup>
10. Electronic Deposit
11. Image File Import
12. Information Reporting
13. Master Agreement for Treasury Management Services
14. Payment Authorization
15. Perfect Receivables
16. Positive Pay – Return Default
17. Receivables Manager
18. Returned Item Decisioning
19. Stops-Images-Search
20. Target Balance
21. WellsImage<sup>®</sup> CD
22. Wire Transfer Services

# ACCEPTANCE OF SERVICES



## Part I - Certification

- New Agreement**  **Designation of Sweep Option**  
*(If checked, complete Part II, below.)*

Each person signing this Acceptance of Services ("Acceptance") certifies that:

- (a) the company identified in the signature block of this Acceptance ("Company") has received and agrees to be bound by the Service Documentation, as defined in the Master Agreement for Treasury Management Services between Company and Wells Fargo Bank, N.A. ("Bank"), and any Sweep Option Company has designated in Part II of this Acceptance;
- (b) he or she has full authority to execute this Acceptance on behalf of Company, to enter into other agreements with Bank for Treasury Management services now or hereafter offered by Bank (each, a "Service"), and to amend, terminate or otherwise act on behalf of Company with respect to each Service; and
- (c) Company's use of any Service, including without limitation each Service that Company commences using after the Effective Date of this Acceptance, confirms Company's agreement to be bound by the Service Documentation relating to that Service.

## Part II - Sweep Option

### A. DESIGNATION OF WELLS FARGO STAGECOACH SWEEP<sup>SM</sup> OPTION.

Company designates the following Sweep Option (check one box only):

- Wells Fargo Stagecoach Sweep, Preferred Option with secondary Wells Fargo Stagecoach Sweep, Repurchase Agreement.**
- Wells Fargo Stagecoach Sweep, Preferred Option.**
- Wells Fargo Stagecoach Sweep, Repurchase Agreement with secondary Wells Fargo Stagecoach Sweep, Preferred Option.**
- Wells Fargo Stagecoach Sweep, Repurchase Agreement.**
- Wells Fargo Stagecoach Sweep, Money Market Fund. (Check one box only.)**
  - California Tax Free Money Market Fund - Class A - Fund 29.
  - Treasury Plus Money Market Fund - Class A - Fund 453.
  - National Tax-Free Money Market Fund - Class A - Fund 452.
  - 100% Treasury Money Market Fund - Service Class - Fund 8.

**B. ADDITIONAL INFORMATION.**

- Checking Account Number: \_\_\_\_\_.
- Credit Sweep Option:  Yes  No LOC Number: \_\_\_\_\_.
- Statements and/or Confirmations will be sent to Company by electronic means unless otherwise requested by Company. Electronic means include Bank's Commercial Electronic Office®, facsimile and/or Secure E-Mail.

**Part III – Signature**

**Agreed To and Accepted By:**

Company: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

Effective Date: \_\_\_\_\_

## ACH ORIGATION SERVICES SERVICE DESCRIPTION



- 1. Introduction.** This Service Description together with 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 this Service Description ("Company") govern Bank's ACH Origination Services ("Services") and Company's ACH security procedure election(s).
- 2. Description of Services.** Bank's Services enable Company to originate automated clearing house ("ACH") credit and debit entries (each, an "Entry") in accordance with the National Automated Clearing House Association Operating Rules (the "ACH Rules"). Company shall maintain one or more deposit account(s) at Bank or Bank's affiliate (each, an "Account"), which Bank may use to process such Entries. Company will transmit Entries to Bank using a data file or batch release (each, a "File") through the communications channel(s) to which Bank and Company separately agree in writing. Bank will verify that Company has authorized, canceled or amended a File or Entry solely by means of the security procedure(s) Company has elected in this Service Description (each, the "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. Conditions to Provision of Services.** As conditions to Bank's provision of the Services, Company shall (a) comply with the ACH Rules in effect from time to time and any applicable local ACH rules; (b) maintain Company's Account(s) in good standing; (c) complete Bank's set-up process for the Services; (d) in the case of Services requiring use of Bank's *Commercial Electronic Office*<sup>®</sup> ("CEO<sup>®</sup>"), subscribe to Bank's CEO and (e) comply with such requirements regarding hardware and software as Bank may from time to time communicate to Company. Company acknowledges that Entries may not be originated that violate the laws or regulations of the United States including without limitation the regulations issued by the Office of Foreign Assets Control. Company acknowledges that Bank has provided Company with a copy of the ACH Rules as of the date of this Service Description and that Company is responsible for obtaining and complying with any amendments to the ACH Rules.
- 4. Preparation of Entries and Files; Processing Schedules.** Company shall prepare each File in accordance with the ACH Rules and Bank's Reference Guide for the Service. 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 (as defined in Bank's Commercial Account Agreement) 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. 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 modify the TYPE and SEC of transactions Bank will process for Company.

5. **Inconsistency of Name and Number.** If an Entry describes a receiver 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. **Company's Payment Obligations.** As of the applicable settlement date, Company shall maintain available funds in each Account sufficient to cover the credit Entries originated against that Account. If requested by Bank, Company shall maintain such available funds in the Account(s) prior to Bank's delivering the Entries to the ACH or gateway operator or Bank's posting an on-us Entry. If Company fails to comply with such request, Bank may refuse to send the Entries to the ACH or gateway operator or to post an on-us Entry. Upon notice to Company, Bank may place a hold on funds in any account at Bank or any affiliate of Bank that Company owns in whole or in part sufficient to cover Company's credit Entries. Bank may take such other actions as it deems necessary or appropriate to ensure that Bank receives payment for Company's credit Entries. Company's obligation to pay Bank for each credit Entry matures at the time Bank transmits or otherwise delivers the credit Entry to the ACH or gateway operator or posts an on-us Entry. Bank may debit an Account for credit Entries originated from that Account on the applicable settlement date or at an earlier time upon notice to Company. Bank may, where applicable, debit an Account for any correcting or reversing Entry originated by Company. If there are insufficient funds in the applicable Account to cover such correcting or reversing Entry, Bank may debit any other account(s) Company owns in whole or in part at Bank or any affiliate of Bank.
7. **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 Account or any other accounts Company owns in whole or in part at Bank or any affiliate of Bank for the amount of the Entry. Company shall pay any shortfall remaining after such debit to Bank immediately upon demand.
8. **Rejected Entries.** Bank may reject an Entry or File if Company fails to comply with the terms of this Service Description. If Bank rejects an Entry or File, Bank will attempt to notify Company promptly so that Company may cure the defect. Bank's notice of its rejection of an Entry or File will be effective when given. Bank will have no liability to Company for rejecting an Entry or File, not giving notice at an earlier time than the time provided for in this Service Description, or any loss resulting from Bank's failure to provide notice. If Company requests that Bank repair an Entry or File and Bank endeavors to do so, Bank shall not be liable for Bank's failure to make the requested repair. Company will pay all charges and expenses Bank incurs in connection with any repair.
9. **Cancellation, Amendment, Reversal.** Company has no right to cancel, amend or reverse an Entry or File after its receipt by Bank. If Company requests that Bank cancel, amend or reverse an Entry or File, Bank may, at its sole discretion, attempt to honor such request. Bank will have no liability for its failure to give effect to Company's request. Company will reimburse Bank for any expenses, losses or damages Bank incurs in effecting or attempting to effect Company's request.

10. **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 shall reimburse Bank for any returned debit Entries on the same day that Company receives notice of such returned Entry.
11. **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.
12. **Audit.** 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 that Bank can verify Company's compliance with this Service Description.
13. **Bank's Internal Risk Parameters.** Bank establishes internal risk parameters to identify out-of-pattern or suspect transactions 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 reserves the right to pend or delete a transaction, batch, or File in forward origination exceeding the applicable parameters as Bank would if Bank had reason to believe same had not been duly authorized or should not be honored for Company's or Bank's protection.
14. **Company's Agents.** Company will certify to Bank the identity of any person Company has authorized to act as its agent with respect to the Services. Any such person is authorized to, without limitation, originate, receive, return, adjust, correct, cancel, amend and transmit Entries and Files on Company's behalf and elect the security procedure used to authenticate Company's Entries and Files. Bank shall be able to conclusively presume that such agency continues until Bank receives, and has a reasonable opportunity to act on, written notice to the contrary. Bank may rely on instructions received from such persons and need not make any inquiries to confirm that the instructions are within the scope of the agency.
15. **Currency Conversion.**
  - 15.1. 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.
  - 15.2. 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.

- 15.3.** 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 designated foreign country in processing or failing to process any Entry Bank transmits to the foreign 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.** If Company is a Third-Party Sender, as defined by the ACH Rules, this Section shall apply to Company's use of Bank's Services.

- 16.1.** Prior to originating any Entry on behalf of a customer of Company, Company shall (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 that Bank determines Bank requires to enable Bank 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.** 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 file that it has transmitted to Company for transmission to Bank; and

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

- 16.2.** Company represents and warrants to Bank that 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 immediately if Company identifies any unusual activity by Company's customer.

- 17. Perfect NOC Service.** If Company subscribes to Bank's Perfect NOC Service, this Section will apply. 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 that Bank receives in connection with Company's Entries.

18. **Warranties.** Company acknowledges that under the ACH Rules, Bank makes certain warranties with respect to each Entry. Company agrees to reimburse Bank for any loss Bank incurs, including Bank's reasonable attorneys' fees and legal expenses, 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. **Indemnification.** Company acknowledges that under the ACH Rules, Bank indemnifies certain persons. Company agrees to reimburse Bank for any loss Bank incurs, including its reasonable attorneys' fees and legal expenses, as the result of the enforcement of any such indemnity, except to the extent that the loss resulted solely from Bank's own gross negligence or intentional misconduct.
20. **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 that: (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 otherwise failed to comply with the ACH Rules.
21. **Survival.** Sections 5, 6, 7, 15, 16, 18, 19, 20, 21 and 22 survive termination of the Services.
22. **Description and Election of Security Procedure.** The purpose of the Security Procedure is to verify the authenticity of an Entry or File, not to detect an erroneous or duplicate Entry or File. Company shall be responsible for any erroneous or duplicate Entry or File issued to Bank in Company's name.
- 22.1. **Commercially Reasonable.** Company has determined that the Security Procedure Company has elected best meets Company's requirements with regard to the size, type and frequency of the Entries and Files issued by Company to Bank and that the Security Procedure is commercially reasonable. Company refuses to have its Entries and Files verified by any security procedure other than the Security Procedure Company has elected in this Service Description.
- 22.2. **Binding Instructions.** Company agrees to be bound by each Entry and File, or request to cancel or amend an Entry or File, whether or not authorized by Company, that is issued in Company's name and accepted by Bank in compliance with the Security Procedure.
- 22.3. **Confidentiality.** Company and Bank will preserve the confidentiality of the Security Procedure, and any passwords, codes, security devices and related instructions provided by Bank. If Company becomes aware of a breach, or suspects that a breach may occur, it will immediately notify Bank in a manner affording Bank a reasonable opportunity to act on Company's notification.
- 22.4. **Authorized Person(s).** Company will promptly notify Bank in writing of the identity of each person authorized to receive information regarding the Security Procedure (each, an "Authorized Person") and when a person is no longer an Authorized Person, affording Bank in each instance a reasonable opportunity to act on Company's notification. Company will establish and maintain effective internal procedures to safeguard against unauthorized Entries and Files. Company warrants that no individual will be allowed to initiate an Entry or File without proper supervision and safeguards.



22.5. Election of Security Procedure. The Security Procedure Company has elected is:

- Secure File Transport Security Procedure - Single-Factor Authentication.** Secure File Transport is Bank's suite of secure Internet protocol transmission methods that meets Bank's minimum security standards for authentication and encryption. Bank will authenticate each Entry and File transmitted to Bank in Company's name using an agreed upon ID password combination or digital certificate.
- Bank's Internet ACH Service Security Procedure - Two-Factor Authentication.** Bank's Internet ACH Service Security Procedure is an Internet-based method that meets Bank's minimum security standards for authentication and encryption. Bank will authenticate each Entry and File released to Bank in Company's name using an agreed upon ID password combination and a token card.
- Connect Direct with Secure +.** Connect Direct with Secure + is a method that meets Bank's minimum security standards for authentication and encryption. Secure+ is an add-on to Connect Direct to enhance security by means of Secure Socket Layer ("SSL") or Transport Layer Security ("TLS"). Bank will authenticate each Entry and File transmitted to Bank in Company's name using an agreed upon ID password combination and a token card. Connect Direct and Secure + are trademarks of Sterling Commerce.
- 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 Entry and File transmitted to Bank in Company's name in accordance with the security procedure the Company's TPSP has elected. Company shall notify Bank of any change to Company's TPSP in a manner affording Bank a reasonable opportunity to act on the information. Company's TPSP is identified as:

Third Party Service Provider: \_\_\_\_\_ Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

- Non-Standard Security Procedure.** Company has refused to utilize any of the security procedures described above and has elected to use the Security Procedure set forth in Attachment B.

IN WITNESS WHEREOF, Company and Bank agree to and accept this ACH Origination Services Service Description.

("Company")

Wells Fargo Bank, N.A. ("Bank")

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:



## Wire Transfer Services Security Procedures Agreement

### Section 1 - Agreement

NEW  
 REPLACEMENT      Account Number:

This agreement is made this \_\_\_\_ day of \_\_\_\_, 20\_\_ by and between \_\_\_\_ ("Company") and Wells Fargo Bank, N.A. ("Bank"). By signing below or, if applicable, on the Acceptance of Services, Company acknowledges receiving and agreeing to be bound by these terms and conditions and those referred to in Bank's Wire Transfer Customer Setup Form (the "Setup Form") and the Wire Transfer Services Agreement or the Master Agreement for Treasury Management Services and Wire Transfer Services Description and, if applicable, the CEO Service Description. Company understands that in any instructions to transfer funds by wire from accounts Company maintain at Bank ("Orders"), Bank may rely solely (i) on the account number of the person ("Beneficiary") who is to receive the wire transfer rather than the Beneficiary's name, and (ii) if provided by Company, on the identification number of any other financial institution through or to which the funds are to be transferred, rather than the name of the financial institution. Company agrees that it is bound by any Order, whether or not authorized, issued in its name and accepted by Bank in compliance with the security procedure selected by Company.

### Section 2 – Standard Security Procedures

- 2.1 **Voice Initiated Orders.** Bank's standard security procedures consist of confirming that the personal identification number ("PIN") that accompanies an Order corresponds with a valid PIN assigned to Company on voice-initiated Orders. A PIN is required for all voice-initiated transfers.
- 2.2 **Terminal Initiated Orders.** Bank's standard security procedures for terminal-initiated Orders (including Orders placed via the Internet) consist of RSA SecurID® or other system security features offered by Bank.

### Section 3 - Additional Security Procedures for Specific Services. *(Unless designated as "optional", the following security procedures are required in addition to the Standard Security Procedures.)*

#### 3.1 Voice Initiated, Non-Repetitive Wires.

**3.1.1 Telephone Verification Service: Non-Repetitive Outgoing wire of \$\_\_\_\_ or more.** By indicating an amount Company has agreed that Bank will make a reasonable attempt to telephone a person(s) designated by Company on the Bank's most current Setup form, to verify that a voice-initiated, non-repetitive Order is authorized if it exceeds the amount noted above. If Bank is unable to complete the call the Order will not be processed. Bank will not telephone to verify a Repetitive Order. A "Repetitive Order" is an Order to Bank to pay a specified amount of money to a previously designated Beneficiary at a previously designated beneficiary's financial institution.

#### 3.2 Commercial Electronic Office Portal (CEO ®) Wire Transfer Service (or WellsNet Wire Transfer Service.)

- 3.2.1 **Availability of Self-Administration.** If Company requests Self-Administration of Company's access to the CEO, most of the set-up and administration of Company's access to CEO services (including the CEO Wire Transfer Service) will be performed by Company's Company Administrator rather than Bank. Three levels of access authorization are available: *Company Administrator, Administrator and Operator.* A "Company Administrator" has access to all services Company receives through the CEO and is able to set up and administer access for other Company Administrators, Administrators and Operators for all such services. An "Administrator" has access to specific CEO services and can set up other Administrators and Operators for such specific services. "Operators" are authorized to access specific services and functions (for example, the create/modify function or the verify function for wire transfer requests) within those services, but they are not authorized to set up or administer access for such services or functions.

**3.2.1.1 No Self-Administration.** If Company does not have Self-Administration, Company's designated security administrator will determine Operators and the dollar limits per transaction and per day assigned to each Operator and will communicate this information to Bank. Bank will set up the Operators by assigning each a personal ID code. Company's security administrator will also be responsible for communicating any changes in Operators or in Operator limits or authorization(s) to Bank. Company will promptly report to Bank any lost or stolen token cards.

**3.2.1.2 Self-Administration.** If Company has requested Self-Administration, Bank will assign a Company ID code and will set up Company's first Company Administrator by assigning a personal ID code and password to be used when he/she first enters the CEO number. He/She can then set up additional Company Administrators, Administrators or Operators. Any Company Administrator: (a) can set up additional Company Administrators, Administrators and Operators (issuing each a password that will be changed upon first entry to the CEO) and a personal ID code; (b) can reset passwords for all services; and (c) shall be required to immediately disable access to the CEO for any Company Administrator, Administrator or Operator who ceases to be a Company Administrator, Administrator or Operator. An Administrator can set up additional Administrators and Operators and reset passwords for the specific service(s) he/she is set up to access. Bank will not know the password of any Company Administrator, Administrator, or Operator except the initial password assigned to the first Company Administrator. Bank will give each Company Administrator and Administrator a token card and a PIN, known only by them individually and Bank. Self-Administration will also allow a Company Administrator or an Administrator to initiate a request to Bank to reassign an existing token card to another Company Administrator, Administrator or Operator.

**3.2.1.3 Self-Administration with Dual Control.** If Company has requested Self-Administration with dual control, Bank will assign a Company ID code and will set up Company's first *two* Company Administrators by assigning each a personal ID code and password to be used when each first enters the CEO. All actions that can be performed by a Company Administrator or an Administrator in Section 3.2.1.2 will require that one Company Administrator (or Administrator with appropriate function access) initiate the action and a second Company Administrator (or Administrator with appropriate function access) approve the action.

**3.2.2 Token Cards.** Bank will assign a token card to each Operator. The token card generates a random and unique security code every minute. The code combines with a PIN to provide a unique password (the "Passcode") every minute. The PIN is set by each Operator individually upon first logon. The Passcode must be presented with each request to access the Service and is used by Bank to authenticate the identity of Company and/or the person originating the request. Bank will verify each request to access the Service by determining if the Passcode is valid for the associated personal ID code for the Operator and if the personal ID code used by the person requesting access is the personal ID code of one of the persons Company has designated in writing as being authorized such access. Bank has no obligation to confirm in any other way the identity of any person making such a request.

**3.2.3 Non-Repetitive Requests.** For domestic and international non-repetitive wire transfer requests, Operators who create/modify such requests additionally will be required to use a Password which is initially provided to the Operator by Bank, or by a Company Administrator or Administrator if Company has Self-Administration, and is changed by the Operator upon first logon.

### **3.3 Electronic Commerce/Payment Manager Services. (Check applicable box.)**

**3.3.1**  Password - File Transmission (Non-Encrypted). This procedure requires that a unique eight-digit code separately agreed upon in writing by Company and Bank be presented with Company's wire file. Company may be required to change the password on a regular basis.

- 3.3.2.  Secure File Transport (Encrypted). This procedure uses 128-bit SSL (Secure Sockets Layer) encryption and requires the use of a transmission ID and a customer selected transmission password. Use of a Bank issued digital certificate is optional.

**Section 4 – Additional Provisions**

- 4.1 **Separation of Operator Function.** Bank strongly recommends that Company separate among Operators using the Wire Transfer Service the ability to create/modify and to verify wire transfer requests. in order to reduce Company's risk of suffering a loss resulting from an unauthorized or fraudulent wire transfers
- 4.2 **Additional Actions by Bank.** Any actions Bank takes to detect erroneous wire transfer requests, or any actions Bank takes beyond those described above in an attempt to detect unauthorized requests or instructions will be taken at Bank's sole discretion. No matter how many times Bank takes these actions they will not become part of Bank's standard procedures for attempting to detect such erroneous or unauthorized requests or instructions, and Bank will not in any situation be liable for failing to take or to correctly perform these actions.
- 4.3 **Protection of Passwords, PINS, etc.** It is Company's responsibility to ensure that the ID codes, passwords, token cards, PINs, and Passcodes are known to, and used only by, persons who have been properly authorized by Company to use the Wire Transfer Service. Bank, in its sole discretion, may cancel or reissue any PIN it believes may have been compromised, including, without limitation, a PIN that has never been acknowledged as having been received and any PIN that has been used by anyone other than the intended authorized user.

**Section 5 - Customer Approvals - Signature(s) as required by certificate of authority on signature card**

Company Name as it appears on Company's account	
Printed Name of Authorized Signer	Printed Name of Authorized Signer
Signature X	Signature X
Date	Date

**Section 7 - Bank Approvals**

Bank Name	RAU/CC/AU	
Banker/Officer Name	MAC	
Banker/Officer Signature X	Phone Number ( )	Date

## ACCOUNT RECONCILIATION PLAN SERVICE SERVICE DESCRIPTION



- 1. Introduction.** This 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 Account Reconciliation Plan ("ARP") Services (each, a "Service").
- 2. Description of Services.** Bank's ARP Services (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. Conditions to Provision of Services.** As conditions to Bank's provision of the Services, Company shall (a) maintain Company's Account(s) in good standing; (b) complete Bank's set-up process for the Services; and (c) in the case of Services requiring use of Bank's *Commercial Electronic Office*<sup>®</sup> ("CEO<sup>®</sup>"), subscribe to Bank's CEO.
- 4. Bank's Obligations.** Bank will provide the Services in accordance with Bank's User Guide for the Services and the Service Options Company selects from time to time.
- 5. Company's Obligations.** If Company elects Bank's full ARP Service, Company will provide Bank with the issue date, serial number and dollar amount of each Item Company issues on the Account (the "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 its location numbers and names and may amend the list from time to time by notifying Bank in writing.
- 6. 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.

# Cash Letter Service Description



1. **Description of Service.** The Cash Letter Service (the "Service") is provided to corporate and commercial customers and correspondent banks which deposit large volumes of checks.
2. **Presentation and Deposit.** Company may present cash letters ("Cash Letters") to Bank which contain pre-encoded and properly endorsed U.S. dollar checks drawn on Bank or another domestic financial institution ("Checks"), and which conform to all applicable requirements imposed by the Federal Reserve Banks or contained in Bank's Cash Letter User Guide. Bank will deposit the aggregate amount of Checks contained in a Cash Letter into Company's account with Bank designated in such Cash Letter in accordance with the provisions of the account agreement governing the account.
3. **Encoding Responsibilities.** Company is responsible for accurately encoding the dollar amount on each Check presented with a Cash Letter. The dollar amount and applicable paying bank or nonbank payor routing number must be printed on each Check in Magnetic Ink Character Recognition ("MICR") numbers. The form, content and placement of this MICR printing must conform to all applicable technical standards established by the American National Standards Institute and the American Bankers Association ("Industry Standards").
4. **Service Charges and Collected Funds Availability for Reject Items.** Checks contained in Cash Letters which are rejected by Bank's processing equipment because they have not been encoded in accordance with Industry Standards, or which require repair and/or reentry ("Reject Items"), are subject to a per-Check service charge. The service charge is assessed for those Reject Items exceeding one percent (1.0%) of the total volume of items deposited in an individual Cash Letter. In addition, all Reject Items will be made available as collected funds one Business Day after they otherwise would have been made available under the applicable collected funds schedule.
5. **Liability; Indemnification.** In addition to the limitation of liability and indemnification provisions set forth in the Agreement, Bank will not be liable for, and Company will indemnify and hold Bank, its directors, officers, employees and agents harmless from all loss, liability, claims, demands, judgments and expenses paid or suffered or incurred by any such indemnified party arising directly or indirectly as a result of or in connection with: (i) Bank's processing of photocopies of Checks from a Cash Letter, (ii) Bank's return unpaid of any Check in a Cash Letter, (iii) Bank's not notifying Company of any returned Check that is represented and then paid as provided in the Cash Letter User Guide, (iv) the late reclamation of any returned Check caused by Bank's depositing the Check more than once in accordance with the Cash Letter User Guide, (v) the late reclamation of any Check caused by the delay of another bank or financial institution, (vi) Company's failure to accurately encode any Check in accordance with the requirements of Section 3 of this Service Description, or (vii) any breach by Bank of encoding warranties under the Uniform Commercial Code which is attributable to Company's failure to accurately encode any Check. Company acknowledges that this indemnification shall survive termination of this Service.

## CheXstor<sup>SM</sup> Service Description

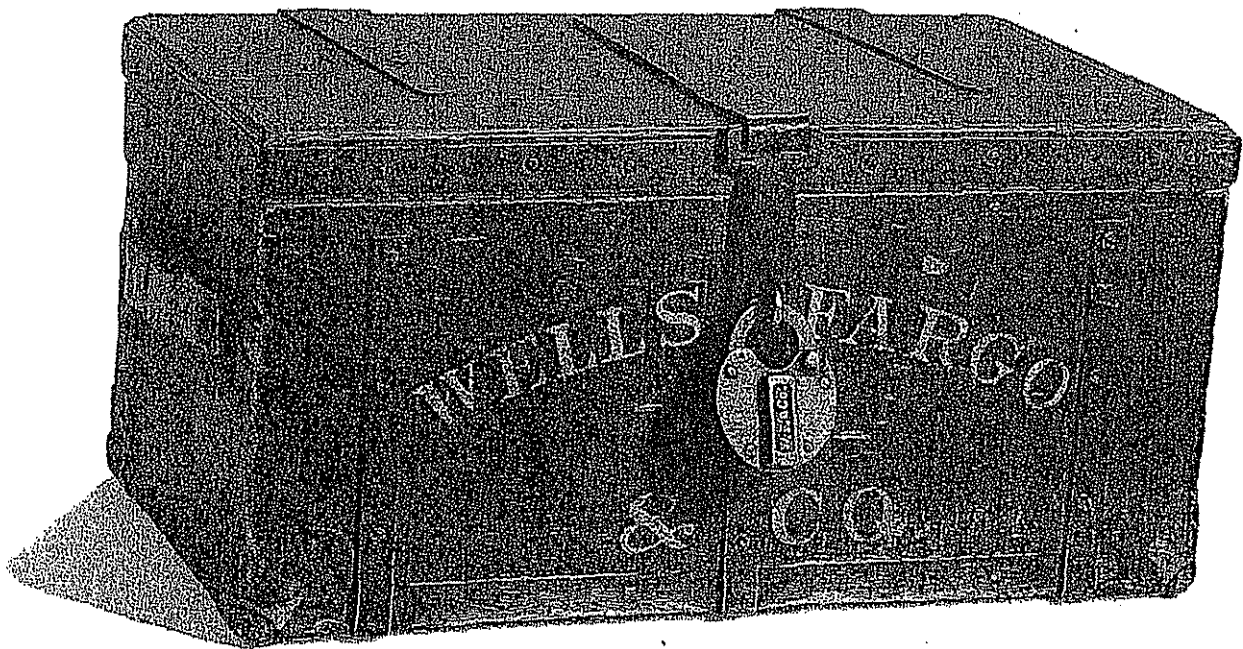


**Description of Service.** Company may elect to utilize Bank's *CheXstor* Service in connection with deposit accounts which Company maintains at Bank (each an "account"). As part of this Service, Bank will maintain microfilm records of all Items paid against the account for a period of seven years or any longer period required by applicable law ("Record Period"). Canceled Items are shredded and recycled. As part of this 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 its personal computer or by contacting Bank at the telephone number listed on Company's account statement for such purpose. If Bank fails to provide Company with 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 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.

**WELLS  
FARGO**

# Commercial Account Agreement

Effective May 1, 2005





# Table of Contents

## I. Terms Applicable to All Commercial Deposit Accounts .....5

### Introduction

### Defined Terms

Affiliate .....	5
Authorized Signer .....	5
Business Day .....	5
Collected Balance .....	5
Commercial Deposit Account .....	5
Deposit Float .....	5
Deposited Item .....	6
Investable Balance .....	6
Item .....	6
Ledger Balance .....	6
Overdraft .....	6
Paper Item .....	6
Service .....	6

### Arbitration Agreement

Agreement to Arbitrate .....	6
Governing Rules .....	6
No Waiver of Self-Help or Provisional Remedies .....	7
Arbitrator Qualifications and Powers .....	7
Discovery .....	7
Class Actions and Consolidations .....	7
Payment of Arbitration Costs and Fees .....	7
Miscellaneous .....	7

### Statements and Other Account-Related Information

Mailing Statements and Other Account-Related Information to Company .....	8
Company's Obligation to Review Statements and Other Account-Related Information and to Notify Bank of Errors .....	8
Returned, Unclaimed Statements or Other Account-Related Information .....	8
Address Changes for Statements for Company's Account and Other Account-Related Information .....	9
Notices and Other Mail .....	9
Electronic Communications .....	9

## Fraud Prevention

Protection Against Unauthorized Items .....	9
Lost or Stolen Paper Items; Unauthorized Items .....	9
Preventing Misuse of Company's Account .....	10

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

Investigation by Bank; Company's Agreement to Cooperate .....	10
Standard of Care .....	11
Limitation of Liability; Indemnification .....	11
Adverse Claims .....	11
Legal Process .....	11
"Freezing" Company's Account .....	11
Force Majeure .....	12
Company's Insurance Coverage .....	12

## Substitute Checks

### Deposits to Company's Account

General .....	12
Collection Items .....	12
Endorsements .....	12
Material Appearing on the Back of Items; Check Legends .....	13
Breach of Warranties .....	13
When Deposits are Credited to Company's Account .....	13
Use of Funds .....	13
Deposits at Affiliates .....	13
Deposits of Non-U.S. Items .....	13
Acts and Omissions of Other Financial Institutions .....	14
Deposited Items Returned .....	14
Direct Deposits Returned by Bank .....	14
Reconstructing Lost or Destroyed Deposited Items .....	14

### Withdrawals from Company's Account

Determining Company's Account's Balance; Debiting Company's Account .....	14
Order of Posting .....	15
Paper Items Presented Over-the-Counter for Payment by a Non-Customer .....	15
Large Cash Withdrawals .....	15
Withdrawals at Affiliates .....	15
Items Resulting From Company's Disclosure of Company's Account Number .....	15
Missing Signatures; Alterations; Forgeries .....	15
Dates and Special Instructions on Paper Items .....	16
Facsimile or Mechanical Signatures .....	16
Consumer ACH Debit Entries .....	16

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

General ..... 16  
Content of Stop Payment Order ..... 16  
Effective Period of Stop Payment Order; Renewal; Revocation ..... 16  
Liability to Holder in Due Course ..... 17  
Paper Items Paid Over Valid Stop Payment Orders ..... 17

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

Overdrafts and Insufficient Funds ..... 17  
Security Interest; Bank's Right to Setoff ..... 17

**Bank Fees and Expenses**

General ..... 18  
Payment of Bank Fees and Expenses; Finance Charges ..... 18  
Earnings Allowance ..... 18

**Checking Subaccounts**

**Miscellaneous**

Acceptable Form of Paper Items; Document and Image Quality ..... 19  
Closing Company's Account ..... 19  
Contract Language ..... 19  
Credit Reports ..... 19  
Disclosure of Information ..... 19  
Dormant and Unclaimed Accounts ..... 20  
Entire Agreement; Headings; No Third Party Beneficiary ..... 20  
Laws Governing Company's Account ..... 20  
Minimum Balance Requirements; Other Restrictions ..... 20  
Modification of Agreement; Account Conversion ..... 20  
Monitoring and Recording Communications ..... 21  
No Fiduciary Relationship ..... 21  
Reliance on Bank's Records ..... 21  
Reordering Checks ..... 21  
Transferring an Interest in Company's Account ..... 21

**II. Additional Terms Applicable to All Commercial Interest-Bearing, Savings and Time Accounts ..... 21**

**Interest-Bearing Accounts**

Variable/Fixed-Rate Accounts ..... 21  
Method Used to Calculate Earned Interest ..... 21  
Interest Accrual ..... 21  
Compounding and Crediting ..... 22  
Target Balance Accounts ..... 22  
Interest Adjustments ..... 22  
Tax Identification Number Certification ..... 22

## Commercial Savings Accounts

Bank's Right to Require Notice.....	22
Limitations on Transfers from Company's Savings Account.....	22

## Commercial Time Accounts

General.....	23
Certificated Time Accounts.....	23
Maturity Date.....	23
Time Requirements.....	23
Payment of Interest.....	23
Additional Deposits.....	23
Withdrawal of Interest Prior to Maturity.....	23
Renewal Policies.....	23
<b>III. Funds Transfers.....</b>	<b>24</b>
General.....	24
Notice of Receipt of Funds.....	24
Reliance on Identification Numbers.....	24
Duty to Report Unauthorized and Erroneous Fund Transfers.....	24
Erroneous Payment Orders.....	24
Automated Clearing House (ACH) Transactions.....	24
<b>IV. Selected Services.....</b>	<b>25</b>
ATM Deposit Service.....	25
Treasury Express Deposit® Service.....	25

## 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 Bank's signature card for Company's Account or by using Company's Account or a Service, 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.

**Arbitration Agreement**

**Agreement to Arbitrate.**

Except as stated in "No Waiver of Self-Help or Provisional Remedies" below, Company and Bank agree, at Company's or Bank's request, to submit to binding arbitration all claims, disputes and controversies between or among Company and Bank (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise arising out of or relating in any way to Company's Account(s) and/or Service(s) and their negotiation, execution, administration, modification, substitution, formation, inducement, enforcement, default or termination (each, a "Dispute").

**Governing Rules.**

Any arbitration proceeding will (i) proceed in a location selected by the American Arbitration Association ("AAA") in the state whose laws govern Company's Account; (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between Company and Bank; and (iii) be conducted by the AAA, or such other administrator as Company and Bank shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least \$1,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and any such Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a lawful demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any Dispute. Nothing contained herein shall be deemed to be a waiver by Bank of the protections

afforded to it under 12 U.S.C. Section 91 or any similar applicable state law.

**No Waiver of Self-Help or Provisional Remedies.**

This arbitration requirement does not limit the right of either party to (i) exercise self-help remedies including setoff or (ii) obtain provisional or ancillary remedies such as injunctive relief or attachment, before, during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of either party to submit any Dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in (i) and (ii) of this subsection.

**Arbitrator Qualifications and Powers.**

Any Dispute in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any Dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. Each arbitrator will be a neutral attorney licensed in the state whose laws govern Company's Account and who has a minimum of ten years experience in the substantive law applicable to the subject matter of the Dispute to be arbitrated. The arbitrator(s) will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator(s) will decide (by documents only or with a hearing at the discretion of the arbitrator(s)) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator(s) shall resolve all Disputes in accordance with the substantive law of the state whose laws govern Company's Account and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator(s) shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as deemed necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the state rules of civil procedure for the state whose laws govern Company's Account or other applicable law. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

**Discovery.**

In any arbitration proceeding, discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the Dispute being arbitrated and must be completed no later than twenty (20) days before the hearing date and within 180 days of the filing of the Dispute with the AAA. Any requests for an extension of the discovery periods, or any discovery Disputes, will be subject to final determination by the arbitrator(s) upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

**Class Actions and Consolidations.**

Company and Bank agree that the resolution of any Dispute arising pursuant to the terms of this Agreement shall be resolved by a separate arbitration proceeding and shall not be consolidated with other Disputes or treated as a class. Neither Company nor Bank shall be entitled to join or consolidate Disputes by or against others in any arbitration, or to include in any arbitration any Dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

**Payment of Arbitration Costs and Fees.**

The arbitrator(s) shall award all costs and expenses of the arbitration proceeding.

**Miscellaneous.**

To the maximum extent practicable, the AAA, the arbitrator(s), Company and Bank shall take all action required to conclude any arbitration proceeding within 180 days of the filing

of the Dispute with the AAA. The arbitrator(s), Company, or Bank may not disclose the existence, content or results thereof, except for disclosures of information by Company or Bank required in the ordinary course of business, by applicable law or regulation, or to the extent necessary to exercise any judicial review rights set forth herein. If more than one agreement for arbitration by or between Company and Bank potentially applies to a Dispute, the arbitration agreement most directly related to Company's Account or the subject matter of the Dispute shall control. This arbitration agreement shall survive the closing of Company's Account or termination of any Service or the relationship between Company and Bank.

### **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 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 Company's Account or applicable rule.

#### **Returned, Unclaimed Statements or Other Account-Related Information.**

Unless otherwise prohibited by the laws governing Company's Account, (i) if two or more statements for Company's Account are returned, Bank may discontinue sending statements for Company's Account and other Account-Related Information to Company until Company provides a valid address to Bank; (ii) Bank may destroy statements for Company's Account



and other Account-Related Information that are sent to Company and returned to Bank as undeliverable; and (iii) if Bank holds the statement for Company's Account or other Account-Related Information for Company to pick up and the statement remains unclaimed for sixty (60) days, Bank may send the statement to the address reflected in Bank's records for Company's Account or destroy it.

#### 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 may act on any such instruction purportedly 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 or if Bank receives information from a third party in the business of providing correct address information 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). Company assumes the risk of loss in the mail. Any notice Bank sends Company will be effective when mailed or otherwise made available to Company.

#### 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 Company's Account require be sent to Company in writing, provided such electronic communication does not violate the laws governing Company's Account. "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, or 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.

If Bank has expressly recommended that Company use one or more of these Services (or any other Service related to fraud prevention that Bank offers after the date of this Agreement), and Company either decides not to use the recommended Service or fails to use the recommended Service in accordance with the applicable Service Description or other Bank documentation applicable to the Service, Company will be treated as having assumed the risk of any losses that could have been prevented if Company had used the recommended Service in accordance with the applicable Service Description or applicable documentation.

#### 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; (iii) complete and return to Bank any documents requested of Company; and (iv) in all 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 Company's Account. 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; Indemnification.

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 Company's Account. 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. Except to the extent that Bank fails to exercise ordinary care or breaches this Agreement, Company agrees to indemnify and hold Bank and its directors, officers, employees and agents harmless from all claims, demands, losses, liabilities, judgments, and expenses (including their attorneys' fees and legal expenses) arising out of or in any way connected with Bank's performance under this Agreement. Company agrees this indemnification will survive the closing of Company's Account and the termination of any Service.

#### Adverse Claims.

If any person or entity makes a claim against funds in Company's Account, or if Bank believes that a conflict exists between or among the Authorized Signers on Company's Account or that there is a dispute over matters such as the ownership of 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 ownership of or the identity of the Authorized Signer(s) for Company's Account; (ii) honor the claim upon receipt of evidence satisfactory to Bank to justify such claim; (iii) freeze all or a part of the funds in Company's Account until the dispute is resolved to Bank's satisfaction; (iv) close Company's Account and send a check for the available balance in Company's Account payable to Company or to Company and each claimant; or (v) pay the funds into an appropriate court.

#### 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 security interest and right of setoff. Bank will not notify Company of a grand jury subpoena affecting Company or Company's Account.

#### "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 Company's Account.

#### **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, 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 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 require that Company deposit an Item that is 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 that a deposit has been verified. Bank may reverse or otherwise adjust any credit Bank believes 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 endorsers 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 Company's Account 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 (such as cash letter or lockbox) 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.

#### 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 without prior 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 recover from Company's Account 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 thereto. 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 any of Company's Account(s) 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. 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, Bank concludes that (i) the Deposited Item is returned in accordance with the laws governing Company's Account or a rule (including a clearing house rule); or (ii) Bank has received a claim that Company has breached a warranty made 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 or any other Account Company maintains at Bank, without prior notice and at any time, except as prohibited by the laws governing Company's Account. 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.**

Bank may post Items presented against Company's Account in any order Bank chooses, unless the laws governing Company's Account either require or prohibit a particular order. For example, Bank may, if it chooses, post Items in the order of highest dollar amount to lowest dollar amount. Bank may change the order of posting Items to Company's Account at any time without notice.

#### **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 charge a fee to the person presenting the Paper Item as a condition for payment of the Paper Item. Company should contact its banker if Company has questions or if Company is required for any reason to have a place where Company's Paper Items can be cashed without a fee. The amount of the fee is disclosed in the fee and information schedule. Bank may require identification acceptable to Bank and not prohibited by the laws governing Company's Account, including a fingerprint of the person presenting the Paper Item. Bank may dishonor the Paper Item if the person refuses to pay this fee or 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, Bank may require five (5) Business Days' 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(s) for a corresponding amount of funds. If the Item is later returned to the Affiliate for any reason, Bank may debit one or more of Company's Accounts 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, and Bank determines that the context of such disclosure implies Company's authorization 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 stale-dated (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 or other mechanical signature (including a stamp) to sign or endorse Paper Items, Bank may rely on that signature (or any signature that purports to be the facsimile or other mechanical signature of an Authorized Signer) as Company's authorized signature without regard to when or by whom or by what means or in what ink color such signature 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 to indemnify and hold Bank harmless from and against any loss incurred by Bank as a result of Bank's paying a Paper Item if any of the information relied upon in the stop payment order is incorrect or incomplete (or as a result of Bank's not paying a Paper Item for which a valid stop payment order is in effect).

#### 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 Company's Account 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. Company agrees to reimburse Bank for the attorneys' fees and other costs and expenses Bank incurs in 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.

**Security Interest; Bank's Right to Setoff.**

To secure Company's performance of this Agreement, Company grants Bank a lien on and security interest in Company's Account and Company's accounts with any Affiliate. In addition, Company acknowledges Bank may setoff against any Account(s) (including matured and unmatured time Account(s)) for any obligation Company owes Bank at any time and for any reason as allowed by the laws governing Company's Account. These obligations include both secured and unsecured debts and debts Company owes individually or together with another person. Bank may consider this Agreement as Company's consent to Bank's asserting its security interest or exercising its right of setoff should the laws governing Company's Account require Company's consent. If Company's Account is an unmatured time account, Bank may deduct any early withdrawal fee that may be due as a result of Bank having exercised its right of setoff. If Company has a Sweep Account, Company also authorizes Bank to redeem Company's shares in the Designated Money Market Fund and apply the proceeds to any obligation Company owes Bank. The rights described in this subsection are in addition to and apart from any other rights, including any rights granted under any security interest that Company may have granted to Bank.

## Bank Fees and Expenses

### General.

Company agrees to pay Bank in accordance with the fee and information schedule. Company also agrees to pay an amount equal to any applicable taxes, however designated, exclusive of taxes based on the net income of Bank.

### Payment of Bank Fees and Expenses; Finance Charges.

Bank may either directly debit Company's Account or invoice Company for Bank fees and expenses and taxes incurred in connection with Company's Account and any Service. If an Earnings Allowance accrues on Company's Account, Bank will periodically apply Company's accrued Earnings Allowance to Bank fees and expenses (unless Bank otherwise indicates in writing). Bank may debit Company's Account (or any other Account Company maintains at Bank) or invoice Company for any amount by which the fees and expenses exceed the accrued Earnings Allowance on Company's Account. Bank may also debit Company's Account (and any other account Company maintains at Bank) for attorneys' fees and any other fees and expenses Bank incurs in exercising its rights under this Agreement including Bank's rights in connection with Overdrafts, Adverse Claims, Legal Process and "Freezing" Company's Account. If there are insufficient funds in Company's Account to cover the debit, Bank may overdraw Company's Account. Company agrees to promptly pay any invoiced amount. Bank may assess finance charges on any invoiced amounts that are not paid within forty-five (45) days of the date of invoice. Finance charges are assessed at a rate of 1.5% per month (18% per annum) or the highest amount permitted by the laws governing Company's Account, whichever is less. Charges for accrued and unpaid interest and previously assessed finance charges will not be included when calculating finance charges. Payments and other reductions of amounts owed will be applied first to that portion of outstanding fees attributable to charges for accrued and unpaid interest and previously assessed finance charges, then to other fees and expenses. Debiting of service fees occurs on the twentieth (20<sup>th</sup>) day of each month, or if the twentieth (20<sup>th</sup>) day is not a Business Day, on the next succeeding Business Day.

### 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.

## 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 (6<sup>th</sup>) 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.

**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, and Company will indemnify Bank from and hold Bank harmless against any claims, demands, judgments or expenses paid, suffered or incurred by Bank, 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.**

Company may close Company's Account at any time. Bank may, in its sole discretion, close Company's Account at any time. 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.

**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 Company's Account 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 Company's Account; (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 Company's Account 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 Company's Account, 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 Company's Account.**

The laws governing Company's Account include the laws and regulations of the United States and, to the extent applicable, the laws of the state in which the Bank office that maintains Company's Account is located (unless Bank has notified Company in writing that the laws of another state shall govern Company's Account), without regard to conflicts of laws principles. If Company's Account was not opened in person at a Bank office (for example, if Company opened its Account by phone, through the mail, or over the Internet), Company's Account will be governed by the laws of the state in which Bank's main office is located, unless Bank notifies Company that its Account has been assigned to a particular Bank office, in which event the laws of the state in which that office is located will govern Company's Account. Any lawsuits, claims, or other proceedings relating in any way to Company's Account, any Service or this Agreement, including without limitation, the enforcement of the Arbitration Agreement in this Agreement and the entry of judgment on any arbitration award shall be venued exclusively in the courts of the state whose laws govern Company's Account, without regard to conflict of laws principles. Each provision of this Agreement stands alone. Any provision of this Agreement which is inconsistent with the laws governing Company's Account, 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 Company's Account. 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.

**Minimum Balance Requirements; Other Restrictions.**

Bank may impose minimum balance requirements or other applicable limitations, or restrictions on Company's Account, provided such requirements, limitations, or restrictions are disclosed to Company.

**Modification of Agreement; Account Conversion.**

Bank may in its sole discretion from time to time 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." When applicable law requires Bank to notify Company of a modification, Bank may do so by posting notice of the modification in Bank or at Bank's home page ([www.wellsfargo.com](http://www.wellsfargo.com)), by including

a message on or with the statement for Company's Account, or by any other means that Bank considers appropriate, unless the laws governing Company's Account requires notice by a specific means. 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. Bank may convert Company's Account to another type of account at any time, provided Bank gives Company any advance notice that may be required.

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

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 Company's Account.

#### **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.

#### **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.**

In most instances, Treasury regulations require Bank to obtain a Tax Identification Number ("TIN") 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 Form W-8BEN 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, Company must provide a Form W-8BEN. Other additional forms 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-8BEN, Bank may either not pay interest or pay interest and comply with the backup withholding requirements of the IRS. If Company's Account is an interest-bearing checking or savings account, it will begin earning interest at the rate in effect on the date Bank receives Company's Form(s) W-9 or W-8BEN. If Company's Account is a time account, it will earn interest at the rate in effect on the date opened or the date of last maturity, whichever is later. If, at any time, Bank receives information which indicates 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 fourteen (14) 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 fourteen (14) 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 Company's Account, 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

### ATM Deposit Service.

Company may elect to utilize Bank's ATM Deposit Service by completing and returning to Bank an ATM Deposit Service Setup Form. This Service allows Company to make deposits to Company's Account using a Treasury Express Deposit<sup>®</sup> card ("Deposit Card") and a designated Wells Fargo<sup>®</sup> ATM ("ATM"). Company shall make such deposits according to the instructions Bank provides and shall 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 will receive same-day availability for cash 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.

### Treasury Express Deposit<sup>®</sup> Service.

If Company elects to utilize Bank's Treasury Express Deposit ("TED") Service, Company will prepare, package and deliver TED 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 TED 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 TED deposits are subject to Bank's acceptance and verification. Bank will verify the currency in Company's TED bag either at a later time in Bank's office or when Company's TED 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 TED deposit may vary, depending on the office to which Company's TED 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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COM1416 (5/05)

# COMMERCIAL ELECTRONIC OFFICE<sup>SM</sup> ("CEO") SERVICE DESCRIPTION



1. **Description of the CEO Service.** The CEO Service will allow Company to enter Bank's CEO website and access those treasury management services offered through the CEO (each, a "Service") for which Company has enrolled. Company agrees to use the CEO only as provided in the Service Documentation (which term includes notices and information posted on the CEO website.) Persons entering the CEO for Company (the "Users") must also accept the Terms of Use for the CEO which appears on the CEO when a User initially logs on. Before Company may use a Service, Company must sign or accept the Service Documentation for that Service.
2. **Security Procedures.**
  - 2.1 Unless Company requests self-administration of its access to the CEO, Bank will give each User an ID code and a password to be used when the User first enters the CEO. (Self-administration may not be available for all services offered through the CEO.) Bank will also assign a Company ID code for use each time a User enters the CEO. Although the Company ID code and the ID codes for each User will remain the same for each entry into the CEO, the password Bank assigns to each User must be changed to a new password the User selects when the User first enters the CEO. Bank will not know the new passwords or any subsequent passwords selected by the Users.
  - 2.2 If Company requests self-administration of its access to the CEO, Bank will assign a Company ID code and will set up the first Company administrator ("FCA") by assigning a personal ID code and password to be used when the FCA first enters the CEO. The FCA can then set up additional Company administrators (who will have access to all Services Company receives through the CEO) and administrators or Users (each of whom will have access only to the specific Service(s) they are set up to access.) Any Company administrator: (a) can set up additional Company administrators, administrators and Users, issuing them a password and a personal ID code; (b) can reset passwords for all Services; and (c) shall be required to immediately disable access to the CEO for any Company administrator, administrator or User who ceases to be a Company administrator, administrator or User. Administrators can set up additional administrators and Users and reset passwords for the specific Service(s) they are set up to access. The Company ID and each personal ID code will remain the same for each entry into the CEO, but the password assigned to each Company administrator, administrator, and User must be changed to a new password they select when they first enter the CEO. Bank will not know the password of any Company administrator, administrator, or User except the initial password assigned to the FCA. Company's administrative contact with respect to the CEO will be the FCA.
  - 2.3 If Company requests self-administration of Company's access to the CEO, Bank will give the Company administrators and the administrators a token card and a personal identification number ("PIN"), known only by them and Bank, to use each time they give personal ID codes and passwords to Company administrators, administrators, and Users. Token cards and PINs will be given to Users by Bank only if they have access to a Service which requires a token card for access. The token card generates a random and unique security code for each token card every minute. The code combines with the PIN to provide a unique password (the "Passcode") every minute.
  - 2.4 Company will be able to manage and control who in Company has access to the CEO and the Services by the ID codes, passwords, token cards, PINs, and Passcodes. It is Company's responsibility to ensure that the ID codes, passwords, token cards, PINs, and Passcodes are known to, and used only by, persons who have been properly authorized by Company to access the CEO and use the Services through the CEO.

- 2.5 FAILURE TO PROTECT ID CODES, PASSWORDS, TOKEN CARDS, PINs, OR PASSCODES MAY ALLOW AN UNAUTHORIZED PARTY TO (1) USE THE SERVICES, (2) CORRECT, CHANGE, VERIFY, OR SEND DATA USED WITH THE SERVICES, (3) SEND INFORMATION AND COMMUNICATIONS TO, OR RECEIVE INFORMATION AND COMMUNICATIONS FROM, BANK OR (4) ACCESS COMPANY'S ELECTRONIC COMMUNICATIONS AND FINANCIAL DATA. ALL ENTRIES INTO THE CEO, ALL COMMUNICATIONS SENT, AND ALL USES OF THE SERVICES, THROUGH COMPANY'S ID CODES, PASSWORDS, TOKEN CARDS, PINs, OR PASSCODES WILL BE DEEMED TO BE ENTRIES, COMMUNICATIONS, AND USES AUTHORIZED BY COMPANY AND BE BINDING UPON COMPANY. COMPANY ASSUMES THE ENTIRE RISK FOR THE FRAUDULENT OR UNAUTHORIZED USE OF ALL ID CODES, PASSWORDS, TOKEN CARDS, PINs, AND PASSCODES. Company acknowledges the importance of developing internal procedures to limit such risk, which procedures will include, at a minimum, (a) if Company is not on self-administration, notifying Bank immediately when any new person becomes a User or when any existing User stops being a User, (b) if Company is on self-administration, disabling access to the CEO immediately for each Company administrator, administrator, and User who stops being a Company administrator, administrator, or User, and (c) not keeping, in any form or in any place, lists of ID codes, passwords, PINs or Passcodes.
- 2.6 Company agrees to notify Bank immediately when Company becomes aware of any loss or theft of, or any unauthorized use of, any ID codes, passwords, token cards, Pins, or Passcodes. Company also agrees to notify Bank immediately when Company becomes aware of any unauthorized entry into the CEO.
3. **Financial Information.** Financial market data, quotes, news, research, and other financial information developed by third parties and transmitted to Bank (collectively, "Financial Information") will be available 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 that any particular Service or transaction is suitable or appropriate for Company or that Company should receive or in any way use any Service. Bank does not guarantee the accuracy, completeness, timeliness or correct sequencing of any Financial Information, nor is it in any way responsible for the actions or omissions of the third parties developing or transmitting Financial Information or for any decision made or action taken by Company in reliance upon any Financial Information.
4. **Use of Certain Software to Access the CEO.** In using the CEO, Company will be sending financial and other data as well as electronic messages directly to Bank through the Internet. Company acknowledges that when the Internet, or any other electronic communications facilities, are used to transmit or receive data and messages, the data and the messages may be accessed by unauthorized third parties. To reduce the likelihood of such third party access, Company agrees to transmit and receive data and messages through the CEO using only software, including, but not limited to, browser software, or other access devices that support the Secure Socket Layer (SSL) protocol- or other protocols required by, or acceptable to, Bank, and to follow the Bank log-on procedures that support such protocols.
5. **Disclaimers.** Bank will not be Company's advisor or fiduciary with respect to this Agreement or any Service.
6. **Limitation of Liability.** Bank will not be liable to Company for any direct or indirect damages or losses suffered or incurred by Company in connection with the CEO, any of the Services, any Financial Information, any other information or data Company receives through the CEO, or any failure to provide, or delay in providing, access to the CEO, any Service, or any Financial Information, except to the extent any Service Documentation specifically provides otherwise and except to the extent such damages or losses arise directly from the negligence or willful misconduct of Bank.

7. **Restricting or Terminating Access to the CEO.** In addition to, and not in substitution for, any provision in this Agreement or any of the other Service Documentation, Company understands and agrees that Bank will not in any way be obligated to permit Users access to any Financial Information or the use of any Service through the CEO if (a) such use or access is not in accordance with any term or condition applicable to the Service or the CEO or to the information to be accessed, (b) such use or access is not permitted by any state or federal law or regulation, (c) Bank has reasonable cause to believe that such use or access may not be authorized by Company or any third person whose authorization Bank believes is necessary for such use or access, or (d) Bank has reasonable cause to deny such use or access for Company's protection or the protection of Bank . If any Service cannot be used through the CEO, Bank will make reasonable efforts for such Service to be used by other means. Bank shall not have liability to Company for any losses or damages Company may suffer or incur as a result of any such termination.
8. **Survival.** Sections 3,6,7 and 8 will survive termination of the Service.
9. **Terminology.** Unless specifically defined in this Service Description, capitalized terms used in this Service Description have the meanings, if any, provided in the Master Agreement for Treasury Management Services (the "Agreement"), as amended from time to time.



## **DESKTOP DEPOSIT<sup>SM</sup> – CEO<sup>®</sup> SERVICE DESCRIPTION**

1. **Introduction.** This Service Description together with the other Service Documentation as defined in the Master Agreement for Treasury Management Services and Acceptance of Services (collectively, the "Master Agreement") between Bank and Company govern Bank's *Desktop Deposit CEO* Service (the "Service").
2. **Description of Service.** The Service enables Company to use hardware provided by Bank in conjunction with Bank's *Commercial Electronic Office<sup>®</sup>* ("CEO") portal to create electronic images of certain Paper Items (each, an "Electronic Image") and to transmit an electronic file of such Electronic Images and other information (collectively, the "Electronic File") to Bank for deposit to Company's checking account with Bank ("Company's Account"). After Bank receives Company's Electronic File, Bank, at its sole option, uses the Electronic File either (a) to create substitute check(s), that Bank presents to the bank on which the Paper Item is either (i) drawn or (ii) payable at or through (each, "Paying Bank"); or (b) to generate one or more electronic files (from the original Electronic File) for presentment directly or indirectly to Paying Bank.
3. **Conditions to Provision of the Service.** As conditions to Bank's provision of the Service, Company shall (a) maintain Company's Account in good standing, (b) subscribe to Bank's CEO service, and (c) comply with such restrictions on the Electronic File as Bank may communicate to Company from time to time.
4. **Creating Electronic Images and Transmitting Company's Electronic File to Bank.** Company shall use Bank provided or approved hardware and Bank's CEO service to scan checks and other Paper Items that Company wishes to deposit to Company's Account by means of the Service and to transmit Company's Electronic File to Bank.
5. **Processing Company's Electronic File.** If Company transmits Company's Electronic File to Bank before the cut-off time Bank separately discloses to Company (the "Cut-Off Time") on any Business Day, Bank shall review and process Company's Electronic File on that Business Day. If Company transmits Company's Electronic File to Bank after the Cut-Off Time on any Business Day, Bank shall review and process Company's Electronic File on the next Business Day.
6. **Exception Items.** When Bank reviews and processes Company's Electronic File, Bank shall reject any Electronic Image that Bank in its sole discretion determines to be ineligible for the Service (each, an "Exception Item") including,

without limitation, Electronic Images of Items drawn on banks located outside the United States, Electronic Images that are illegible, Electronic Images of Items previously converted to substitute checks, and Electronic Images with unreadable MICR information. Each Business Day on which Bank reviews and processes Company's Electronic File, Bank will notify Company of all Exception Items through Bank's CEO or other communication channels at Bank's discretion. Company agrees that if it wishes to attempt to deposit any Exception Item to Company's Account, it shall do so only by depositing the original Paper Item on which the Exception Item is based. Company acknowledges and agrees that even if Bank does not initially identify an Electronic Image as an Exception Item, the substitute check created by Bank therefrom may nevertheless be returned to Bank because, among other reasons, the Electronic Image is deemed illegible by Paying Bank. Bank's failure to identify an Exception Item shall not preclude or limit the obligation of Company to Bank under Paragraph 9.

7. **Funds Availability.** Bank shall make funds from accepted Electronic Files available according to Bank's Electronic Deposit Collected Funds Schedule ("Collected Funds Schedule"). Bank's Collected Funds Schedule will be provided to customer upon request and may be amended by Bank from time to time.
8. **Company's Warranties.** Company represents and warrants to Bank that:
  - 8.1. Company shall use the Service only for Paper Items payable to or endorsed or deposited by Company.
  - 8.2. Company shall, in accordance with instructions from Bank, dispose of original Paper Items from which Company has previously created and submitted to Bank an Electronic Image. In that regard, Company shall maintain control over and responsibility for retention and destruction of original Paper Items, as instructed by Bank.
  - 8.3. Company shall not submit any duplicate Electronic Images to Bank.
  - 8.4. Company shall not deposit to Company's Account or otherwise negotiate any original Paper Item from which Company has previously created and submitted to Bank an Electronic File, unless Bank has notified Company that the Electronic Image is an Exception Item.
  - 8.5. Company shall transmit to Bank only Electronic Images that are suitable for processing, including, but not limited to, Electronic Images that are legible and contain readable MICR data.
9. **Company's Agreement to Indemnify Bank.** Company shall indemnify, defend, and save harmless Bank, its parent company and its affiliates and each of their respective directors, officers, employees, and agents (collectively in this Paragraph 9, "Indemnitees") from and against all liabilities, damages, claims, obligations, demands, charges, costs, or expenses (including reasonable fees and disbursements of legal counsel and accountants) awarded against or

incurred or suffered (collectively, "Losses and Liabilities") by Indemnitees arising directly or indirectly from or related to the following (except for Losses and Liabilities arising directly or indirectly from or related to Bank's own gross negligence or wilful misconduct):

- 9.1. Any negligent or intentional act or omission by Company in the performance of its obligations under this Service Description and the Service Documentation;
- 9.2. Any material breach in a representation, warranty, covenant, or obligation of Company contained in this Service Description and the Service Documentation;
- 9.3. The violation of any applicable law, statute, or regulation in the performance of its obligations under this Service Description and the Service Documentation;
- 9.4. Bank acting as a "reconverting bank" under the Check Clearing for the 21st Century Act through the creation of "substitute checks" or purported substitute checks using an Electronic Image or Electronic File or an illegible Electronic Image;
- 9.5. Bank presenting to Paying Bank an Electronic File for payment; and
- 9.6. Company's failure to dispose of original Paper Items in accordance with Paragraph 8.2, in which event such Losses and Liabilities shall include without limitation consequential damages.

This Paragraph 9 shall survive the termination of the Service.

10. **Termination.** Bank may terminate the Service at any time upon prior notice to Company.





## WELLS FARGO ELECTRONIC DEPOSIT<sup>SM</sup> SERVICE DESCRIPTION

1. **Introduction.** This Service Description together with 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 signature block of the Acceptance of Services ("Company") between Bank and Company govern the Wells Fargo Electronic Deposit Service (the "Service").
2. **Description of Service.** The Service enables Company to create electronic images of the front and back of certain Paper Items and transmit those images and other information, including without limitation MICR data, in an electronic file ("Company's Electronic File") to Bank for review and processing in accordance with this Service Description. "Paper Item" is defined in Bank's Commercial Account Agreement, and "Electronic Item" means the electronic image of each Paper Item and other information captured from the Paper Item. After Bank receives Company's Electronic File, Bank will review each Electronic Item. For each Electronic Item that Bank determines is eligible for processing (see Section 6), Bank will:
  - 2.1. create a substitute check that Bank will present directly or indirectly to the bank (a) on which the original Paper Item to which the Electronic Item relates is drawn, or (b) at or through which the Paper Item is payable (each, the "Paying Bank");
  - 2.2. include the Electronic Item in an electronic file for presentment directly or indirectly to the Paying Bank; or
  - 2.3. present or post any Electronic Item for which Bank is the Paying Bank.
3. **Conditions to Provision of the Service.** As conditions to Bank's provision of the Service, Company will at all times (a) maintain Company's checking account with Bank ("Company's Account") in good standing, (b) subscribe to Bank's *Commercial Electronic Office*<sup>®</sup> ("*CEO*<sup>®</sup>") Service, and (c) comply with such requirements regarding Company's Electronic File, including without limitation specifications for Company's Electronic File and Paper Items that are eligible for the Service, as Bank may communicate to Company from time to time.
4. **Creating Electronic Items and Transmitting Company's Electronic File to Bank.** Company will make its own arrangements for hardware and software to (a) image Paper Items that Company wishes to have Bank process and (b) transmit Company's Electronic File to Bank. Any third party processor that Company uses to prepare and/or transmit Company's Electronic File is Company's agent, and the security and privacy of Company's Electronic File are the responsibility of Company and Company's agent.

5. **Processing Company's Electronic File.** Bank will review each Electronic Item and process the Electronic Items that Bank determines are eligible for processing on the Business Day that Company transmits Company's Electronic File to Bank, if Bank receives Company's Electronic File before the processing deadline Bank separately discloses to Company ("Cut-Off Time") on that Business Day (as defined in Bank's Commercial Account Agreement) and on the next Business Day if Company transmits Company's Electronic File to Bank after Bank's Cut-Off Time.
6. **Exception Items.** Each Business Day on which Bank reviews and processes Company's Electronic File, Bank will use commercially reasonable efforts to review each Electronic Item and to reject an Electronic Item that Bank determines is ineligible for the Service ("Exception Item"). "Exception Item" includes without limitation an Electronic Item that (a) is illegible or contains MICR data that is not machine-readable, (b) was previously processed as an Electronic Item, or (c) is drawn on a bank located outside the United States and is not payable at or through a bank located within the United States. Bank will notify Company of each Exception Item through Bank's CEO or other communication channel at Bank's discretion. If Company wishes to attempt to deposit an Exception Item to Company's Account, Company will do so only by depositing the original Paper Item to which the Exception Item relates or as otherwise agreed between Bank and Company. Even if Bank does not identify an Electronic Item as an Exception Item when Bank reviews and processes the Electronic Item to which the Exception Item relates, the substitute check or purported substitute check Bank creates from the Electronic Item may be returned to Bank because, among other reasons, the Paying Bank determines that it is illegible or missing an image. Bank's failure to identify an Exception Item will not limit Company's obligations to Bank under Section 9, below.
7. **Deposits to Company's Account.** Subject to Bank's right to identify and reject Exception Items, Bank will be deemed to have accepted each Electronic Item that is not an Exception Item for deposit to Company's Account on the Business Day that Bank processes the Electronic Item. In addition, an Electronic Item will be deemed to have been deposited at the Bank office where Company's Account is maintained. Funds from accepted Electronic Items will be deemed to be collected in accordance with Bank's Electronic Deposit Collected Funds Schedule that Bank will provide to Company upon request and may amend from time to time.
8. **Company's Representations and Warranties.** Company represents and warrants to Bank that Company will:
  - 8.1. use the Service only for Paper Items payable to or endorsed for deposit by Company;
  - 8.2. transmit to Bank only Electronic Items that are suitable for processing, including, but not limited to, Electronic Items that are legible and contain machine-readable MICR data;
  - 8.3. maintain control over and responsibility for retention and destruction of original Paper Items for which Company has created an Electronic Item; and
  - 8.4. not transmit to Bank, deposit to Company's Account, or otherwise negotiate any original Paper Item with respect to which Company has transmitted an Electronic

Item to Bank, unless Bank has notified Company that the Electronic Item is an Exception Item.

9. **Company's Agreement to Indemnify Bank.** Company will indemnify, defend, and save harmless Bank, its parent company, and its affiliates and each of their respective directors, officers, employees, and agents (collectively in this Section 9, "Indemnitees") from and against all liabilities, losses, damages, claims, obligations, demands, charges, costs, or expenses (including reasonable fees and disbursements of legal counsel and accountants) awarded against or incurred or suffered (collectively, "Losses and Liabilities") by Indemnitees arising directly or indirectly from or related to:
  - 9.1. Any negligent or intentional act or omission by Company in the performance of its obligations under this Service Description including without limitation failing to maintain control over and properly dispose of original Paper Items, in which event Losses and Liabilities will include without limitation consequential damages;
  - 9.2. Any material breach in a representation, warranty, covenant, or obligation of Company contained in this Service Description;
  - 9.3. The violation by Company of any applicable law, statute, or regulation in the performance of its obligations under this Service Description;
  - 9.4. Bank acting as a "reconverting bank" under the Check Clearing for the 21st Century Act through the creation of "substitute checks" or purported substitute checks using an Electronic Item, an Exception Item or an Electronic File, in which event Losses and Liabilities will include without limitation consequential damages; and
  - 9.5. Bank presenting an Electronic Item to the Paying Bank for payment.
10. **Termination.** Bank may discontinue providing the Service to Company immediately upon notice if Bank determines in its sole discretion that Company has breached any of Company's obligations under Sections 8 or 9, above.
11. **Survival.** Sections 8.3 and 9 of this Service Description will survive termination of the Service.



## IMAGE FILE IMPORT 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 Image File Import Service (the "Service").
2. **Description of the Service.** The Service enables Company to receive files containing images of and data regarding (each, a "File") specified transactions on each account at Bank that Company enrolls in the Service (each, an "Account"). The transactions 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 (each, a "Deposited Item"); and (c) returned unpaid to Company's Account (each, a "Returned Deposited Item"). The data Bank provides will include an index and images of each Item, Deposited Item and Returned Deposited Item together with, in the case of Deposited Items, images of coupons and other information that are received and processed by Bank along with the Deposited Item. Company may retrieve Files through the delivery channels Bank makes available.
3. **Conditions 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; (b) subscribe to the applicable Treasury Management Services for which images and data are provided through the Service; and (c) agree to the terms of the software sublicense (see Section 7) if Company has elected to use the Wellsimage<sup>®</sup> Viewer Software (the "Software") to view certain Items or Deposited Items.
4. **Rules Applicable to the Service.** Bank will provide the Service to Company in accordance with (a) the Service Documentation; and (b) state and federal laws and regulations, including the National Automated Clearing House Association Rules ("NACHA Rules") applicable to Paper Item conversion.
5. **Paper Item Conversion.** NACHA Rules allow for the conversion of certain Items into ACH items. Images of posted Items that have been converted pursuant to the NACHA Rules may not be available through the Service.
6. **Software Sublicense.** Company will use the Software in accordance with the terms of a non-exclusive, non-assignable sublicense ("Software Sublicense") from Bank. The Software Sublicense will be presented to Company during installation, and Company will be required to accept it before being allowed to use the Software. This Section will survive termination of this Service.
7. **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.

# Information Reporting 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 Information Reporting Service.**

- 1. The Service.** Company may, using a computer or a computer and a browser acceptable to Bank, receive account balance and certain other types of account information related to Customer's deposit account(s) or its accounts with other financial institutions.
- 2. Terminology.** Unless specifically defined in this Service Description, terms used in this Service Description have the meanings, if any, provided in the Agreement and the other Service Documentation, as each may be amended from time to time.



## MASTER AGREEMENT FOR TREASURY MANAGEMENT SERVICES

The Service Documentation described below contains the terms under which Wells Fargo provides treasury management services ("Services"). The Wells Fargo bank through which the Services will be provided ("Bank") and the Company to which the Services will be provided are identified in the Acceptance of Services ("Acceptance").

Bank and Company agree:

1. **Service Documentation.** The Service Documentation includes:
  - 1.1 The Service Description for each Service.
  - 1.2 The Acceptance.
  - 1.3 This Master Agreement for Treasury Management Services ("Master Agreement").
  - 1.4 The account agreement for the business or commercial 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. The account agreement includes the Dispute Resolution Program that Company and Bank agree to use to resolve any disagreements between Company and Bank regarding accounts and Services governed by the Service Documentation.
  - 1.5 User Guides which include software, software licenses, reset diskettes, price schedules, specifications, instructions, and notices.
  - 1.6 The set-up form(s) for each Service.

The Service Documentation also applies to any Service that is provided by an affiliate of Bank and any 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. All terms defined in this Master Agreement shall have the same meaning when used in the Service Documentation. 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 it requested when it entered into this Master Agreement.

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. 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 Service Documentation, this Master Agreement and all Services will continue in effect until terminated by either party upon thirty (30) days prior written notice to the other party (unless a Service is terminated sooner in accordance with the Service Documentation). Bank may terminate any Service following notice to Company of a breach of any provision of the Service Documentation and Company's failure to cure the breach within fifteen (15) days of the date of such notice. Bank may also terminate any Service without notice to Company if Company is subject to a petition under the U. S. Bankruptcy Code or if Bank determines, in its sole discretion, that a material adverse change has occurred in Company's ability to perform its obligations under the Service Documentation. The termination of a Service will not affect Company's or Bank's rights with respect to transactions which occurred before termination. Bank shall 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 shall pay Bank the fees described in the Service Documentation and any taxes applicable to each Service, however designated, exclusive of taxes based on Bank's net income. Bank may debit Company's account(s) with Bank for any fees not covered by earnings credits and any taxes that are due, or it may send an invoice to Company for such amounts, which Company shall promptly pay. Bank may assess finance charges at a rate of 1.5% per month (18% per annum) or the highest rate permitted by law, whichever is less, on any invoiced fees or taxes that are not paid within thirty (30) days of the due date and shall apply payments and other reductions of amounts owed first to unpaid interest and then to other fees and charges.

6. **Confidential Information.** Unless otherwise provided in the Service Documentation, all User Guides and computer programs provided pursuant to this Master Agreement constitute Bank's or its vendor's confidential information ("Confidential Information"). Bank or its vendor will remain the sole owner of all such Confidential Information, and Company will not acquire any interest in or rights to it as a result of Company's use of any Service except as set forth in the Service Documentation. Company will maintain the confidentiality of the Confidential Information and will 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 its employees who have a need to use the Confidential Information in connection with the applicable Service. Company shall notify Bank immediately if it knows or suspects that there has been any unauthorized disclosure, possession, use or knowledge (each, an "Unauthorized Use") of any Confidential Information, and if it is responsible for the Unauthorized Use, it will, at its expense, promptly take all actions, including without limitation initiating court proceedings to recover possession or prevent further Unauthorized Use of the Confidential Information and obtain redress for any injury caused to Bank as a result of such Unauthorized Use. In addition, except as permitted by applicable law, Company may not decompile, reverse engineer, disassemble, modify, or create derivative works of any computer program provided pursuant to this Master Agreement.
7. **Third Party Networks; Data Transmission; Use of Required Software.**
  - 7.1 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.
  - 7.2 If Company transmits data, information or instructions (collectively "Data") to Bank, or requires Bank to deliver Data to Company, using a leased line, or Value Added Network ("VAN") or any other third party provider (collectively, "Third Party Provider"), Company agrees that Bank shall have no responsibility for the accuracy, completeness, security or authenticity (collectively "Integrity") of the Data sent through such Third Party Provider, and Company agrees that Bank may rely upon the Data delivered to Bank by the Third Party Provider and that Bank shall have no independent obligation to verify the Integrity of such Data before receiving, or acting upon, any such Data.
  - 7.3 If Company transmits data to Bank using a leased line or Value Added Network ("VAN"), Bank strongly recommends that Company secure a back-up means of transmission such as Secure File Transport for use in the event of a communications disruption.
  - 7.4 Company shall use and maintain in good working order (and at its own expense) software, hardware and other equipment necessary for Company to use the Service(s) in accordance with the Service Documentation.
8. **No Representations or Warranties of Bank or Software Vendor.** 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.
9. **Liability and Indemnification.**
  - 9.1 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.
  - 9.2 Bank is under no obligation to honor, in whole or in part, any entry, file, batch release, payment order, transaction or instruction (each, an "Order"), which a) exceeds Company's available funds on deposit in an Account with Bank related to the Order, 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 Bank may from time to time establish and make available to Company; c) Bank has reason to believe may not 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 that prevents their withdrawal; 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 risk control program or guidelines such as the limitations on Bank's intra-day net funds position.
  - 9.3 Company shall 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 shall cooperate fully (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.

- 9.4 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 one (1) year from the date of the act or omission or in the case of a check from the date the check was first paid or returned by Bank.
- 9.5 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.
- 9.6 Except in the case of Bank's gross negligence or intentional misconduct, Company shall indemnify and hold Bank, its directors, officers, employees and agents harmless from all losses or damages that arise out of a) the performance of a Service in accordance with the Service Documentation including without limitation any warranty Bank is required to make to a third party in connection with a Service; b) an act or omission of any agent, courier or authorized representative of Company; c) if the Service includes a license or sublicense of any software to Company, the use or distribution of the software by Company or any person gaining access to the software through Company that is inconsistent with the license or sublicense; and d) Company's failure to secure a back-up means of transmission for data transmissions using leased lines or VANs as set forth in Subsection 7.3 above
- 9.7 Bank will only be liable to Company for its direct monetary losses or damages due to Bank's negligence or breach of this Master Agreement. 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). In no event will either party to this Master Agreement 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.

**10. General.**

- 10.1 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 in which the principal office of the Bank identified on the Acceptance is located, 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 or invalid, it will not otherwise affect the enforceability or validity of the Service Documentation.
- 10.2 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 on one occasion will constitute a modification of the Service Documentation or be a waiver of that right on a subsequent occasion.
- 10.3 Company agrees to provide Bank 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.
- 10.4 Company expressly warrants that a Service will not be used 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.
- 10.5 Sections 4, 5, 6, 8, 9, 10.4 and 10.5 of this Master Agreement will survive termination of this Master Agreement.
- 10.6 Either party may provide notice to the other party by mail, personal delivery, or electronic transmission. Bank shall use the most recent address for Company in Bank's records, and any notice from Bank will be effective when sent. Company shall 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 from Company will be effective when actually received by Bank. 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, shall 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.



- 10.7 All uses of the 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. Unencrypted electronic transmissions are not secure and Company assumes the entire risk for unauthorized use of Codes and any unencrypted electronic transmissions.
- 10.8 Company may not assign or transfer its rights or obligations with respect to the Service Documentation without Bank's prior written consent. Bank may assign its rights and obligations with respect to the Service Documentation to any successor by merger, consolidation or corporate reorganization.
- 10.9 Unless otherwise provided in the Service Documentation, the term "Banking Day" means that part of a business day occurring prior to the cutoff time determined in accordance with Bank's applicable funds availability policy.

# Payment Authorization Service Description



**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, (i) 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, (ii) 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, (iii) 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 (iv) 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.



## PERFECT RECEIVABLES<sup>SM</sup> SERVICE SERVICE DESCRIPTION

- 1. Introduction.** This Service Description together with 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 Perfect Receivables Service ("Service").
- 2. Description of the Service.** Bank's Service enables Company to elect options for posting, and to receive information about, automated clearing house ("ACH") entries and wire transfers (each, a "Remittance") that Bank posts each Business Day to one or more deposit accounts Company maintains at Bank or Bank's affiliate (each, an "Account"), all as detailed in the Bank's Reference Guide for the Service Bank provided to Company prior to commencing the Service..
- 3. Conditions to Provision of the Service.** As condition to Bank's provision of the Service, Company shall (a) complete Bank's set-up process for the Service; (b) comply with Bank's Reference Guide for the Service and, with respect to each ACH entry, comply with the then-current National Automated Clearinghouse Association Operating Rules (the "ACH Rules") and any local ACH rules applicable to Bank's Service including without limitation Company's obligation to return to Bank each ACH entry posted erroneously to Company's Account; (c) maintain Company's Account(s) in good standing; (d) in the case of Service options requiring use of Bank's Commercial Electronic Office Service ("CEO"), subscribe to Bank's CEO; and (e) comply with such requirements regarding hardware and software as Bank may from time to time communicate to Company.
- 4. Bank's Processing of Remittances.** Each Business day, Bank will post to Company's Account all Remittances Bank receives prior to the cut off time Bank separately discloses to Company, other than Remittances that Bank rejects. Any credit to Company's Account for any Remittance is provisional until Bank receives final settlement for the Remittance. If Bank does not receive final settlement, Bank is entitled to charge Company's Account or any other accounts Company owns, in whole or in part, at Bank or any affiliate of Bank for the amount of the Remittance. Company shall pay any shortfall remaining after such chargeback to Bank immediately upon demand.
- 5. Rejected Remittances.** Bank may, but will not be obligated to, reject a Remittance: (a) that does not contain all of the required information specified by Bank; (b) if Bank suspects that Company is not entitled to the Remittance; (c) if at the time Bank received the Remittance, Company does not maintain an Account with Bank or the Service has been terminated; (iv) if at the time Bank received the Remittance, Bank is not permitted by law to accept credits to any of Company's Accounts; or (v) if Company is in default under this Service Description or any other Service Documentation.
- 6. Bank's Reporting to Company.** Each Business Day, Bank will provide Company with the information about Remittances posted to Company's Account(s) through the communications channel(s), all as Company specifies during the set up process for the Service and from time to time thereafter.



## POSITIVE PAY – RETURN DEFAULT SERVICE DESCRIPTION

1. **Introduction.** This Service Description together with the other Service Documentation as defined in the Master Agreement for Treasury Management Services and Acceptance of Services (collectively, the "Master Agreement") between Bank and Company govern Bank's Positive Pay – Return Default Service (the "Service").
2. **Description of Service.** Bank's Positive Pay – Return Default check fraud reduction program (the "Service") will enable Company to instruct Bank to return counterfeit checks, checks otherwise not validly issued and certain altered checks presented to Bank for payment on the demand deposit account(s) Company has enrolled in the Service (each, an "Account"). Each such counterfeit, not validly issued or altered check and each check that Company issues on each such Account is referred to in this Service Description as a "Check."
3. **Other Required Bank Services.** In order for Bank to be able to provide the Service to Company, Company agrees to subscribe to (i) Bank's Account Reconciliation Plan Service and (ii) Bank's Commercial Electronic Office ("CEO").
4. **Service Elections.** Company may select from three types of Positive Pay Service and, except as provided in Paragraph 4.4, elect the Payee Validation Option with any type of Positive Pay Service:
  - 4.1 **Perfect Presentment Positive Pay<sup>®</sup>.** Each Business Day, Bank compares each Check presented to Bank on that Business Day to Company's Check Issue Data (see Paragraph 5) prior to posting such Checks to Company's Account. Checks with errors that Bank can correct, such as encoding errors, will be corrected, so that only unresolved exceptions are reported to Company. Bank offers this service through its Greenville or Van Wert controlled disbursement endpoints only.
  - 4.2 **Positive Pay.** Each Business Day, Bank compares each Check presented to Bank on that Business Day to Company's Check Issue Data (see Paragraph 5) after such Checks have posted to Company's Account. All exception items will be reviewed, and Checks with errors that Bank can correct, such as encoding errors, will be reversed and reposted, so that only unresolved exceptions are reported to Company.
  - 4.3 **Basic Positive Pay.** Each Business Day, Bank compares each Check presented to Bank on that Business Day to Company's Check Issue Data (see Paragraph 5) and provides Company with an Exception Report that contains all exception items, including Checks with encoding errors.
  - 4.4 **Payee Validation.** Bank validates the payee's name on each Check presented that exceeds the dollar threshold applicable to the Payee Validation Option Company has elected on Company's Positive Pay Service Set-up Form. Bank performs this validation by comparing the payee's name on a Check that is subject to validation to the payee's name contained in Company's Check Issue Data for that Check. If there is a discrepancy between the payee's name on the Check and the payee's name in

Company's Check Issue Data that is not within parameters Bank establishes from time to time in its sole discretion, Bank will return the Check unpaid. There are two Payee Validation Options:

**4.4.1 Standard Payee Validation Option.** Bank validates the payee's name on each Check exceeding the dollar threshold determined by Bank from time to time without notice to Company. Bank will indemnify Company against actual direct money losses incurred by Company as a result of an unauthorized alteration of the payee on such a Check, provided (i) Company included the payee's name with the information about the Check in Company's Check Issue Data and (ii) Bank received Company's Check Issue Data on a Business Day prior to the Business Day on which the Check was presented.

**4.4.2 Customized Payee Validation Option.** Bank validates the payee name on each Check exceeding the dollar threshold defined by Company in writing to Bank. Company will indemnify Bank against actual direct money losses Bank incurs as a result of an unauthorized alteration of the payee on a Check below Company's defined dollar threshold, and Bank will indemnify Company against actual losses directly incurred as a result of an unauthorized alteration of the payee on a Check equal to or greater than Company's defined dollar threshold, provided (i) Company included the payee's name with the information about the Check in Company's Check Issue Data and (ii) Company's Check Issue Data was received by Bank on a Business Day prior to the Business Day on which the Check was presented for payment.

Company acknowledges that if Company fails to include the payee's name with the information about the Check in Company's Check Issue Data, or if Company requests Bank to manually add Check registers on its behalf, Bank will not be able to perform the Payee Validation Option with respect to such Checks. Company further acknowledges that it must submit its Check Issue Data to Bank by 10:30 p.m. Pacific Time in order for payee validation to occur on Checks, other than those cashed at a Bank branch, presented for payment on the following Business Day. The Payee Validation Option will not begin until the Business Day after the Business Day on which it has been set up on Bank's data processing system.

If Company selects the Perfect Presentment Positive Pay Service offered through Bank's Greenville endpoint, the Payee Validation Option will be limited to those Checks presented at a Bank store for encashment.

**5. Check Issue Data.** On each Business Day prior to the cutoff time Bank separately discloses to Company from time to time, Company will provide Bank with the complete issue date, serial number, amount and, if Company has selected a Payee Validation Option, the payee name (collectively, the "Check Issue Data") for each Check Company has issued on Company's Account(s). The Check Issue Data will be provided to Bank in the format and medium, by the deadline(s), and at the place(s) specified by Bank in the Positive Pay Service Set-up Form or otherwise in writing to Company. In performing the Service, Bank will use only the Check Issue Data that Company has provided to Bank. Company assumes full responsibility for providing timely, accurate and complete Check Issue Data to Bank. Company acknowledges that if Company's Check Issue Data includes issue dates in the future, Bank will be unable to match Company's Check Issue Data in the future-dated Check register against the serial number, amount and payee name for Checks presented against the Account until the issue date contained on the future-dated Check register matches the

current day's calendar date. Bank will not accept Check Issue Data that contains an issue date which is more than fourteen (14) calendar days in the future.

6. **Payment of Matching Checks.** If a Check presented to Bank matches the Check Issue Data Company has given Bank (a "Matching Check"), Bank will make final payment on the Check and charge the Check to Company's Account.
7. **Exceptions Report.** Each Business Day, Bank will notify Company of the Check number and amount of each Check which is not a Matching Check in the Image Positive Pay Exceptions Report (the "Exception Report") which Company shall access through Bank's CEO. Bank shall have no responsibility for validating a payee's name on a Check included in an Exception Report. If Company is receiving the Basic Positive Pay Service, the Exception Report will also include Checks which are not matching Checks because of encoding errors.
8. **Company's Pay or Return Instructions.** If, prior to the deadline specified by Bank on the Exception Report (the "Decision Deadline"), Company (i) identifies a Check by complete serial number and amount and (ii) instructs Bank through Bank's CEO to pay or return such Check Bank will follow Company's instructions. Company will make its pay or return decision based on the Magnetic Ink Character Recognition or, if applicable, payee information provided in the Exception Report. If requested by Company, Bank will use reasonable efforts to provide an image of a Check to Company, but will have no liability if it is unable to do so prior to the Decision Deadline. If Company elects the Payee Validation Option, on the Business Day on which Bank identifies a payee name discrepancy, Bank will make one attempt to notify Company by telephone at the telephone number Bank has for Company in its files, of each Check that is not a Matching Check. Company will contact Bank at Bank's phone number left in the telephone message prior to the cutoff time Bank separately discloses to Company from time to time if Company does not want such a Check returned.

If Company selects the Perfect Presentment Positive Pay Service offered through Bank's Van Wert endpoint, when the Decision Deadline has passed (i) if Company has instructed Bank to pay a Check, Bank will verify that a stop payment order has not been placed with respect to the Check, and (ii) if Company misses the Decision Deadline, Bank will verify that matching Check Issue Data has not been provided with respect to the Check between the time it was listed in the Exception Report and the Decision Deadline. If Matching Check Issue Data was provided, Bank will pay the Check and charge it to Company's Account. If Company selects the Perfect Presentment Positive Pay Service offered through Bank's Van Wert endpoint, the Decision Deadline will expire on the Business Day following the Business Day on which the Check was presented at the time specified by Bank on the Exception Report.

9. **Return of Checks Listed in Exception Report.** Except as provided in Paragraph 4.4 and 8, if Company misses the Decision Deadline for a Check listed in the Exception Report, Bank will return the Check unpaid marked "Refer to Maker".
10. **Greenville Holdover Exceptions.** If Company is receiving the Perfect Presentment Positive Pay Service with Controlled Disbursement through Bank's Greenville endpoint and a Check is processed by Greenville in the normal course of business for provisional settlement after the cutoff time for preparation of Greenville's Final Presentment Detail File but before the end of Greenville's Business Day, Greenville will transmit a holdover file (the "Holdover File") to Bank on the morning of Greenville's next Business Day. Each Business

Day, Company's Check Issue Data, as Bank has recorded it up to and including that Business Day, will be electronically matched to Checks presented to Bank in Company's Holdover File. Bank will pay each Check that is not a matching Check if it is for an amount less than Bank's then current applicable dollar threshold. Bank will make one attempt to notify Company by telephone at the telephone number Bank has for Company in its files, of each Check that is not a Matching Check. Company will contact Bank at Bank's phone number left in the telephone message prior to the cutoff time Bank separately discloses to Company from time to time if Company does not want such a Check returned.

11. **Limitation of Liability and Indemnification.** Each Check Bank pays in accordance with this Service Description will be deemed to be properly payable. Except as otherwise provided in this Service Description, each Matching Check or other Check Company has authorized Bank to pay in accordance with this Service Description will be paid without Bank performing its customary (or any other) Check verification procedures, and Bank will have no liability whatsoever for paying a Check if its serial number, amount, or, if the Payee Validation Option has been selected, payee's name, is altered, or if it is counterfeit, bears a forged or unauthorized signature or was otherwise not validly issued. Company (i) agrees to indemnify and hold Bank harmless from any losses or liabilities Bank may suffer or incur as a result of Bank's payment of a Matching Check or other Check at Company's instruction, and (ii) releases and forever discharges Bank, and its parent, subsidiaries, affiliates, successors, officers, directors, employees and agents, from any and all manner of action or actions, suits, claims, damages, judgments, levies, executions, expenses, costs, interest, attorney's fees and legal expenses, whether known or unknown, liquidated or unliquidated, fixed, contingent, direct or indirect, which Company has, or ever can, may or shall have or claim to have against Bank regarding or relating to the payment or return of any Check in accordance with this Service Description.
12. **Stop Payment and Return Decisions.** The Service will not be used as a substitute for Bank's stop payment service. Company will follow Bank's standard stop payment procedures if it desires to return a Matching Check or other Check that was validly issued. Nothing in this Service Description will limit Company's right to stop payment on any matching or other check or Bank's right to return any Matching Check or other Check that Company has authorized Bank to pay in accordance with this Service Description if Bank determines in its sole discretion that (i) the Check is not properly payable for any reason (without Bank's agreeing to, or being required to, make such determination in any circumstance) or (ii) there are insufficient collected and available funds in the Account to pay such Check.
13. **Cancel and Void Instructions.** Company agrees to use (i) a cancel instruction only to delete an outstanding Check included in its Check Issue Data and (ii) a void instruction only to notify Bank that a Check included in Company's Check Issue Data has been destroyed and will not be re-issued. Company acknowledges that cancel and void instructions will be retained and appear on statements for Company's Account for two statement cycles or two months, whichever occurs first following Bank's receipt of Company's instruction.
14. **Termination.** The Service will automatically terminate if Company's Account is closed for any reason. Termination of the Service will not terminate Company's or Bank's rights or obligations under this Service Description or the Service Documentation with respect to events or actions which occurred before such termination.
15. **Survival.** Section 11 will survive termination of the Service.



## RECEIVABLES MANAGER SERVICE DESCRIPTION

### 1. The Receivables Manager Service ( the "Service").

1.1. Description. The Service will enable Company to send and receive Remittance Information (as defined below) and related data through various channels including paper advices, E\*Fax, Electronic Data File, and the *Commercial Electronic Office*<sup>®</sup> (*CEO*<sup>®</sup>) internet business portal in a format compatible with its accounts receivable system, and subject to the provisions in Section 2. If Company elects, Bank will consolidate all Remittance Information into a single transmission to enable Company to update Company's accounts receivable system, whether Company requires an ANSI or proprietary format. Bank can also send Remittance Information in several transmissions throughout the day depending on the payment type chosen.

1.1.1. Internet Bill Pay Feature of the Service. The Internet Bill Pay feature of the Service will enable Company to have its consumer Bill Payments, including those made through Internet bill payment and consumer credit counseling services, received and processed by Bank and credited to Company's Account (see Section 3). Bank will transmit to Company's accounts receivable system electronic Remittance Information consolidated from various consumer bill payment service providers. Bank will gather this Remittance Information from certain electronic networks ("Networks") with which Bank has agreements ("Networks Agreements") providing for receivables manager services, including the routing of remittance data, funds settlement and related services. Bank provides the Service in accordance with the provisions in Section 2 and subject to the Networks' rules and procedures and the Networks Agreements (collectively, the "Networks Documentation"). The Service will screen for proper formats to assist in eliminating "unidentified" payments. Debt management proposals may be received electronically when Bill Payments from consumer credit counseling services are received electronically Company is responsible for researching Internet Bill Pay feature items and returning them through the Bill Pay Receivables Service using the CEO internet business portal.

1.2. Instructions/Information Sent or Received. Company is solely responsible for implementing any programs and procedures it determines are necessary or appropriate to ensure the integrity, validity and accuracy of instructions sent and information received through the Service. Bank has no responsibility for reviewing the content of any instructions or information sent or received through the Service. Bank makes no representation regarding the validity or legal enforceability of any contract that is formed, or attempted to be formed, through the use of the Service. Company, and not Bank, is responsible for determining the legal effect of any instructions or information sent or received through the Service. Bank may reformat Company's instructions to the extent that Bank determines such action to be necessary or appropriate in order to execute them. Bank will not send an acknowledgment that instructions or other information has been received by Bank to Company unless Bank has otherwise agreed to do so in writing. Nothing contained in any instructions or information sent or received through the Service will be considered confidential, except to the extent specifically identified and expressly agreed to in a separate writing signed by Bank and Company.

2. **Receipt of Payments and Related Information.** The following provisions apply when Bank receives remittances and related information as part of the Receivables Manager Service.



2.1. Definitions. As used in this Service Description, the following terms have the definitions set forth below:

- **Account** means each of Company's deposit accounts maintained at Bank and approved by Bank for use with the Receivables Manager Service.
- **Bill Payment** means a bill payment from a Customer to Company effected through the Receivables Manager Service.
- **Customer** means an individual or entity that sends a Bill Payment to Company pursuant to an agreement with a Customer Financial Institution.
- **Customer Financial Institution** means a financial institution that provides bill payment services to a Customer and utilizes either the VISA ePay Service, MasterCard RPPS or other remittance processing service supported through the Receivables Manager Services.
- **E\*Fax** means the Bank's automated fax service.
- **Electronic Data File** means a collection of data or information created and stored in an electronic format.
- **Returned Item** means a payment that cannot be posted or a Bill Payment that Company returns in accordance with this Service Description.
- **Remittance Information** means the information Bank provides to Company concerning Bill Payments that Bank receives that are directed to Company. Remittance Information will be provided in the manner and format, described in the Receivables Manager Service Set-up Form or as otherwise specified by Bank in writing from time to time.
- **Settlement Date** means the date on which an exchange of funds in settlement of a Bill Payment occurs.
- A **Third Party Service Provider** is a third party that provides remittance processing services in support of the Receivables Manager Service. Such service providers may include, but may not be limited to, MasterCard International, Incorporated.

2.2. Transmission of Remittance Information And Other Data. Each Business Day, no later than the cutoff time specified by Bank in writing from time to time, Bank will provide Company Remittance Information regarding Bill Payments directed to it, provided Company can be identified by Bank as the intended recipient.

2.3. Receipt of Receivables Manager Bill Payments; Credits to the Account. The Account will be credited for each Bill Payment received by Bank that is directed to Company, provided such payment is not rejected as provided in Subsection 2.4. If the Settlement Date is a Business Day, the Account will be credited on that day, otherwise the Account will be credited on the next Business Day following the Settlement Date. Any credit to the Account is provisional until Bank receives final settlement or payment for that credit. Consequently, if settlement or payment is not received in connection with a Bill Payment that Bank has credited to the Account, Bank is entitled to reverse the credit given and Company will repay upon demand any funds withdrawn. Notwithstanding anything in this subsection to the contrary, if Bank concludes or suspects that Company is not entitled to a Bill Payment that has been directed to it, Bank may, to the extent not prohibited under applicable law, either (i) delay crediting the Account for the Bill Payment, (ii) delay the availability of funds credited to the Account for the Bill Payment, or (iii) place a hold on funds in the amount of the Bill Payment maintained in the Account or any other account Company maintains with Bank or a Bank affiliate.

2.4. Rejection of Bill Payments. Bank may, but will not be obligated to, reject a Bill Payment: (i) that does not contain all of the required information specified by Bank; (ii) if Bank suspects that Company is not entitled to the Bill Payment; (iii) if at the time of receipt Company does not maintain

an Account with Bank; (iv) if at the time of receipt Bank is not permitted by law to accept credits to any of Company's accounts; or (v) if Company is in default under this Service Description or the other Service Documentation. Bank will reject any Bill Payment or Remittance Information directed to Company received after the Receivables Manager Service has been terminated.

2.5. Company Responsibilities.

2.5.1. Billers Address. Company will provide Bank with an address to which bill payments are to be sent. Bank may provide this address information to third party service providers. Company will provide Bank with at least sixty (60) days' prior written notice of any change in the address to which Bill Payments are to be sent.

2.5.2. No Discrimination. Company will not discriminate in any way against or discourage any Customer who elects to make a payment through the Receivables Manager Service. For example, Company may not increase the purchase price of any good or service, or assess any special charge, with respect to a Customer who elects to make payment through the Receivables Manager Service rather than through cash or check.

2.5.3. Processing and Posting of Bill Payments to Customer Accounts. Company will process and post to the account of its Customer each Bill Payment received through the Receivables Manager Service in accordance with its then current applicable billing policies and this Subsection 2.5. Each Bill Payment will be credited to Customer's account no later than the close of business of the next Business Day next following the payment's Settlement Date. In the event that Company is unable to process and post the Bill Payment within the time period prescribed in this Paragraph 2.5.3. and it is postable in accordance with Company's then current applicable billing policies, Company will treat the Bill Payment as if it had posted it to Customer's account in accordance with this Subsection 2.5. Company's obligations as provided in this Subsection 2.5. are unaffected by any delay that may have occurred in the crediting of the Account, the availability of funds credited to the Account, or Bank's exercise of any of its rights as provided in this Service Description or the other Service Documentation.

2.5.3.1. Consumer Notification. Within twelve (12) months of the date on which the Receivables Manager Service commences, Company will communicate to its customers that it is accepting electronic payments.

2.5.4. Returned Items. Company must return to Bank any Bill Payment that cannot be posted to a Customer's account within two (2) Business Days of the applicable settlement date. Company will comply with the procedure for returning items through the CEO internet business portal Bill Pay Receivables Service. Bank is authorized to act on any Returned Item or any instruction to effect a Returned Item received in the name of Company

2.5.5. Dispute Resolution. If a payment cannot be posted to Company's records, Company, within five (5) Business Days of being contacted by the Bank, will determine the source of the error and communicate it to Bank. Company must correct any error within one (1) Business Day of discovery. Resolution of such errors may require Company to remit payment to the proper payee or return funds to the sender.

2.5.6. Information Requests. Company will upon request provide research on a payment in question and respond back within five (5) Business Days of being contacted by Bank, including without limitation, that pertaining to: (i) resolving disputes, (ii) tracing or processing inquiries about Bill Payments, (iii) complying with applicable law, or (iv) determining Company's creditworthiness or liability as provided in this Service Description.

2.6. Adjustments. Bill Payments cannot be canceled or amended by Customer or Customer Financial Institution, unless permitted under the operating rules and regulations of the applicable third party service provider. Unless Customer has been previously reimbursed by Company, Company will

repay to Bank any amounts improperly or erroneously credited to the Account, including without limitation any credits that reflect duplicative Bill Payments. Company will also promptly pay or repay to Bank any other sums (including sums in excess of the amount of the related Bill Payment(s)) that Bank is required to pay or refund to a Customer Financial Institution or Customer pursuant to the rules applicable to the Receivables Manager Service (including the rules of any third party service provider utilized in connection with the Service, to which Bank is subject, or by any other applicable law, rule or regulation). In the event Bank determines that an amount has been improperly or erroneously credited to the Account or if Bank concludes that it is required to pay or refund to a Customer Financial Institution or Customer as provided in this Subsection 2.6., to satisfy Company's obligation to Bank arising under this Service Description, Bank may (i) reduce any subsequent payment(s) Bank owes to Company under this Service Description or the other Service Documentation and/or (ii) debit any account Company maintains with Bank or a Bank affiliate. If Bank elects not to exercise any of its rights under this Subsection 2.6., or if after exercising any or all of its rights under this Service Description, Company's obligation to Bank is not fully satisfied, Company will pay the amount of any remaining unsatisfied obligation to Bank within five (5) Business Days of receiving written demand.

- 2.7. Right Of Set-Off; Net Settlement; Hold Bank Balances. Bank may set-off, withdraw, retain or hold for a reasonable time, to the extent permitted under applicable law, any funds received as a result of a Bill Payment directed to Company, or any funds in any account Company maintains with Bank or an affiliate of Bank, and/or Bank may reduce any subsequent payment(s) owed Company under this Service Description or the other Service Documentation, that Bank deems necessary because of any adjustment, error, termination of the Service, fees owed, any acts or omissions in breach of this Service Description or the other Service Documentation by Company, or any other obligation arising under this Service Description or the other Service Documentation.
- 2.8. Representations and Warranties. Company represents and warrants to Bank, any third party service provider and each Customer Financial Institution (which representations and warranties will be deemed to be continuing and reaffirmed upon each Bill Payment Bank receives for Company's credit) that:
- all information provided and statements made by Company in connection with Bank's approval of Company's participation in the Receivables Manager Service were accurate and complete in all material respects at the time they were made;
  - each bill Company sends to a Customer with respect to which a Bill Payment is received will, at the time the bill is sent, be in the correct amount of a valid and enforceable obligation of Customer that is due and owing to Company;
  - Company will process and post to Customer's account each Bill Payment received in accordance with the requirements of this Service Description; and
  - all information provided and statements made by Company in connection with (i) its use of the Receivables Manager Service, including without limitation any address to which Bill Payments are to be sent, (ii) a Corrective Message and (iii) a Returned Item, will be accurate and complete in all material respects at the time they were made.
- 2.9. Third Party Beneficiaries. For purposes of the warranties in Subsection 2.8. of this Service Description and the Indemnification in Section 11 of the Agreement, any third party service provider, each Customer Financial Institution, and their respective directors, officers, employees and agents will be deemed to be third party beneficiaries.
- 2.10. No Liability of Third Party Service Provider or Customer Financial Institution. Notwithstanding anything in this Service Description to the contrary, neither any third party service provider nor any Customer Financial Institution will have any liability or responsibility to Company under this Service Description or otherwise for any loss, injury or damage arising out of, resulting from, or in connection with the Receivables Manager Service.

- 2.11. Authorization To Obtain Information. Company authorizes Bank to obtain and review Company's credit report or other information about it from an authorized credit bureau or from any other person.
- 2.12. Record-Keeping Obligations. Company will maintain records reflecting the transaction(s) giving rise to each Bill Payment for a period of at least two (2) years from the date of the transaction. Such records will be made available to assist in the resolution of any Customer disputes that may arise in connection with the Bill Payment. Bank will maintain records evidencing the Bill Payment for a period of at least two (2) years from the date of the transaction. In the event of any inconsistency between Company's and Bank's records, Bank's records will be deemed to control.
- 2.13. Confidentiality Of Customer Information. All information concerning the affairs and the accounts of Customers that come into Bank's possession through the Receivables Manager Service will be treated in the same confidential manner as is information relating to the accounts of Bank's depositors.
- 2.14. Rights of Third Party Service Provider to Terminate or Limit Its Relationship with Bank. Company acknowledges the right of any third party service provider used in connection with the Receivables Manager Service to terminate or limit its agreement with Bank. Upon termination, if termination thereafter prevents or restricts Bank's ability to provide the Service to Company, Bank may upon prior written notice terminate the Service, effective with the termination of the agreement between Bank and such third party service provider.
3. **Account.** Company will maintain at least one deposit account with Bank, which will be identified in the Receivables Manager Set-up Form or otherwise in writing by Company and approved by Bank from time to time (the "Account").
4. **Identify Authorized Persons.** Any person identified by Company in the Receivables Manager Service Set-up Form or any certification, notice or other communication delivered to Bank may receive information, communications and notices regarding the Service, and is authorized to transact all business, make all agreements and sign and deliver all documents in connection with the Service. If the identity of such a person changes Company will promptly notify Bank in writing. Bank will have a reasonable time after receipt of a certification, notice or other communication to act on it.
5. **Agents.**
  - 5.1. Company. If Company elects to use an agent with respect to the Service, Company, and not Bank, will be solely responsible for the acts and omissions of Company's agent, and its agent will, without limitation, be authorized to initiate, originate, receive, return, adjust, correct, cancel, amend and transmit ACH transactions, wire transfers, Remittance Information and related information and instructions and select any related security procedure. Company agrees that any security procedure selected by its agent will be treated as commercially reasonable for all purposes. Bank may rely on instructions it receives from Company's agent and need not make any inquiries to verify or confirm that instructions are within the scope of the agency. Company will certify each agent's identity and any changes to Bank in writing. Bank will be fully protected in relying on each certificate and on the obligation of Company to promptly certify any change in the agents so certified. Bank will have a reasonable time after receipt of a certification or change to act on it.
  - 5.2. Bank. Bank may at any time use agents and/or independent contractors to provide all or any portion of the Service, and will be solely responsible for the acts and omissions of those agents and independent contractors. However, Bank will not be deemed to be the agent of, nor responsible for the acts or omissions of any other person, including without

limitation any Federal Reserve Bank, collecting or depository bank, payee or endorsee, ACH or wire transmission or communications facility, any receiver or receiving depository financial institution or gateway operator (including without limitation the return of any funds by such receiver or receiving depository financial institution or gateway operator), and no such person will be deemed Bank's agent.

6. **Software, Hardware and Backup Requirements.** Company will, at its own cost and expense, obtain, install and, at all times during its utilization of the Service, maintain in good working order all software, hardware and other equipment necessary for it to perform in accordance with this Service Description and the other Service Documentation. Company agrees to implement, on a periodic basis not less than weekly, backup-measures, including, among other things, copying onto a diskette(s) each week's current data base files related to the Service. In the event of any failure of such software, hardware or other equipment, Company will deliver to Bank all data which it would otherwise have provided that is necessary for Bank to perform Bank's obligations in connection with the Service.
7. **Survival.** The portions of this Service Description designated 2.5.5.; 2.5.6.; 2.6.; 2.7.; 2.8.; 2.9.; 2.12; and 7 will survive termination of the Service.
8. **Terminology.** Unless specifically defined in this Service Description, terms used in this Service Description have the meanings, if any, provided in the Agreement and the other Service Documentation, as each may be amended from time to time



## RETURNED ITEM DECISIONING 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 Returned Item Decisioning Service (the "Service").

1. **The Service.** Using the *Commercial Electronic Office*<sup>®</sup> (CEO<sup>®</sup>) portal, Bank will notify Company of returned items to its account(s) during the period specified by Bank on each Banking Day. Returned items will be listed by the default disposition (redeposit or chargeback) selected by Company. Company will review items and accept or change each item's disposition prior to the daily deadline specified by Bank. Returned items not accepted or changed by this deadline will be processed according to their default disposition.
2. **Requirement for Service.** Company shall have met requirements for receiving services offered through the CEO<sup>®</sup> portal, including the execution of any necessary documentation.

## 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. 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. In Texas, Company must confirm an oral stop payment order in writing.
3. **Survival.** The provisions of this Service Description designated as Sections 2 and 3 will survive termination of the Service.

# Target Balance Account Service Description



**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) agree to the terms of 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 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 must use the Software in accordance with the terms of a non-exclusive, non-assignable sublicense ("Software Sublicense") from Bank. The Software Sublicense will be presented to Company during installation and Company will be required to accept it before being allowed to use the Software. 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.

## WIRE TRANSFER SERVICES DESCRIPTION



1. **Description of the Wire Transfer Services (the "Services").** The Services will enable Company to give instructions ("Orders") to Bank to (i) transfer funds by wire from the account(s) designated in the Wire Transfer Services Set-up Forms (the "Account"), and (ii) instruct another depository institution to debit an account at that institution and transfer the funds to Bank or debit the Account at Bank and transfer the funds to that institution ("Drawdown Requests"). In this Service Description, the term "Transfer Instruction" refers to both Orders and Drawdown Requests. This Service Description is in addition to, and not in place of, any other agreement which Company may have entered into with Bank regarding Wire Transfer Instructions.
2. **Security Procedure.** Company agrees that Bank may verify that Company has authorized a Transfer Instruction solely in accordance with the Wire Transfer Services Security Procedure Agreement then in effect (the "Security Procedure"). The Security Procedure will not apply to Transfer Instructions delivered to Bank in person by Company or its authorized representative. The Security Procedure will not be used to detect erroneous Transfer Instructions. Company agrees that the Security Procedure it selected is commercially reasonable and is the Security Procedure that best meets its requirements given the size, type and frequency of the Transfer Instructions Company will issue to Bank. Company further agrees to safeguard any number, code, password, test key, or other identifier assigned to it from discovery by any unauthorized person. If Company has chosen the telephone verification option and the individual contacted by Bank identifies himself or herself as an individual designated by Company and confirms that the Transfer Instruction was sent to Bank by Company, Bank will be conclusively deemed to have complied with the telephone security procedure. If Company becomes aware of a breach of the Security Procedure, or suspects that a breach may occur, it will immediately notify Bank in a time and manner that gives Bank a reasonable opportunity to act on it.
3. **Identify Authorized Persons.** Company will notify Bank in writing of the identity of each individual authorized to receive information regarding the Security Procedure. Company will promptly notify Bank in writing of any change in an authorized individual. Company's notice will be binding on Bank if it is received in a time and manner that gives Bank a reasonable opportunity to act on it. Bank will be fully protected in relying on Company's notices. Bank may, but will not be required to, electronically record any oral communication that it receives from Company.
4. **Authorization to Pay.** Company authorizes and instructs Bank to pay any Order that complies with the Security Procedure. For each Transfer Instruction executed by Bank in accordance with the terms of this Service Description, Company authorizes Bank to debit or credit, as applicable, the account specified in the Transfer Instruction (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. Company agrees to have sufficient available funds in the account specified in the Transfer Instruction (and if no account is specified, the Account) at the time of each debit.
5. **Finality of Transfer Instructions.** A Transfer Instruction will be final and will not be subject to stop payment or recall, except that Bank may, at Company's request, make an effort to effect such stop payment or recall. In that case, Bank will incur no liability for its failure or inability to do so.

6. **Inconsistency of Name and Number.** If a Transfer Instruction describes the person to receive payment inconsistently by name and account number (i) payment may be made on the basis of the account number even if the account number identifies a person different from the named person or (ii) Bank may in its sole discretion refuse to accept or may return the Transfer Instruction. 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. If a Transfer Instruction identifies a nonexistent or unidentifiable person or account as the beneficiary or beneficiary's account, Bank may in its sole discretion refuse to accept or may return the Transfer Instruction.
7. **Company's Duty to Exercise Ordinary Care.** Company will exercise ordinary care to determine whether a Transfer Instruction accepted by Bank was either erroneous or not authorized and to notify Bank of the facts within a reasonable time not exceeding fourteen (14) days after Company has received notification from Bank that the Transfer Instruction was accepted or that the Account was debited or credited with respect to the Transfer Instruction, whichever is earlier. Company will be precluded from asserting that Bank is not entitled to retain payment for a Transfer Instruction unless Company objects within the fourteen (14) day period.
8. **Information Requests.** Company may request the issuance of tracer messages concerning uncompleted transfers. Company will provide Bank with any transaction information it considers necessary to process Company's inquiry. In addition to Bank's fees for this service, Company will reimburse Bank for any charges it incurs from third parties in connection with Company's requested tracer messages.
9. **International Wire Transfers.** A Transfer Instruction expressed in U.S. Dollars will be sent in U.S. Dollars. Company may request that prior to executing an Order or outgoing Drawdown Request, Bank converts 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 selling rate for exchange in effect on the date the Order or outgoing Drawdown Request is executed by Bank. If the financial institution designated to receive the funds does not pay the beneficiary specified in the Order or outgoing Drawdown Request and it is payable in Foreign Currency, Bank will not be liable for a sum in excess of the value of the Order or outgoing Drawdown Request after it has been converted from Foreign Currency to U.S. Dollars at Bank's buying rate for exchange at the time the cancellation of the Order or outgoing Drawdown Request is confirmed by Bank.
10. **Responsibility of Bank.** Bank is only responsible for making a good faith effort to execute Company's Transfer Instructions. Transfer Instructions may be sent by wire, telegraph, telephone, cable or whatever other transmission method Bank considers to be reasonable. Orders and outgoing Drawdown Requests may be transmitted directly to the beneficiary's financial institution, or indirectly to the beneficiary's financial institution through another financial institution, government agency or other third party that Bank considers to be reasonable. Bank may execute an incoming Drawdown Request that conforms with instructions it receives through Fed Wire, SWIFT or any other funds transfer system, provided such instructions are not inconsistent with instructions contained in an applicable Set-up Form. The authority to execute the incoming Drawdown Request shall continue until Bank receives express written notice from Company that such authority is revoked. Bank will not be liable for any third party's failure to or delay or error in processing a Transfer Instruction. If the beneficiary bank does not pay the beneficiary specified in the Transfer Instruction, a refund will be made only after Bank has received confirmation of the effective cancellation of the Transfer Instruction and Bank is in free possession of the funds debited or earmarked in connection with the Transfer Instruction. If

Bank is notified that it did not transfer the full amount stated in a Transfer Instruction, Bank's sole obligation will be to promptly execute a second Transfer Instruction in the amount of the stated deficiency. If Bank executes a Transfer Instruction in excess of the amount stated in the Transfer Instruction, to the extent that the originator does not receive the benefit of the Transfer Instruction, Bank will only be liable for any loss of the principal amount transferred in excess of the amount stated in the Transfer Instruction. Additionally, Bank will be liable for the amount of interest the originator 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 day's interest. This section sets forth Bank's complete liability for a Transfer Instruction issued or received under this Service Description.

IN NO EVENT WILL BANK BE LIABLE FOR DAMAGES ARISING DIRECTLY OR INDIRECTLY IF THE TRANSFER INSTRUCTION IS EXECUTED BY BANK IN GOOD FAITH AND IN ACCORDANCE WITH THE TERMS OF THIS SERVICE DESCRIPTION.

As used in the Master Agreement for Treasury Management Services (the "Agreement"), with respect to the Services, "negligence" means a material failure to use the degree of care used under similar circumstances by a national bank having a similar volume of funds transfers and similar number, size and diversity of funds transfer customers.

11. **Governing Law; Rules and Regulations.** Bank's and Company's rights and obligations regarding Transfer Instructions will be governed solely by this Service Description and the other Service Documentation and, to the extent applicable, federal law and the law of the state in which Bank's principal office is located, as amended from time to time. Article 4A of the Uniform Commercial Code will, to the extent possible, be applied by analogy to any Drawdown Requests. All Transfer Instructions will also be subject to the rules and regulations of any funds transfer system used by Bank as amended from time to time. If a Transfer Instruction is to be processed in accordance with a statute, rule, regulation or license of the United States, or any federal agency, the Transfer Instruction will be governed by that statute, rule, regulation or license.
12. **Notices; Receipt of Confirmations.** In addition to the notice provision set forth in Section 10.6 of the Agreement, the following will apply: A bank statement showing a Transfer Instruction sent by first class mail to Company's last address as shown in Bank's records and not returned will be conclusively presumed to have been received by Company seven (7) days after it is sent.
13. **Agents.** Bank may use agents of its choice to perform any of its obligations.
14. **Survival.** Sections 4, 7, 9, 10 and 14 will survive termination of the Services.
15. **Terminology.** Unless specifically defined in this Service Description, terms used in this Service Description have the meanings, if any, provided in Article 4A of the Uniform Commercial Code, as amended from time to time. Each Bank request, instruction and set-up form completed by or on behalf of Company in connection with the Services will be deemed to be a "Set-up Form" as that term is used in the Service Documentation.

**Exhibit E**

**Merchant Services Agreement**

**EXHIBIT E**

**MERCHANT SERVICES AGREEMENT**

Please read the foregoing merchant processing Program Guide in its entirety. It describes the terms under which we will provide merchant processing services to you.

From time to time you may have questions regarding the contents of your Agreement (which includes your Merchant Processing Application, the foregoing Program Guide, and the schedules thereto and documents incorporated herein) with us. The following information summarizes portions of your Agreement in order to assist you in answering some of the questions we are most commonly asked.

1. Your discount rates are assessed on transactions that qualify for certain reduced interchange rates imposed by MasterCard, Visa and Discover. Any transactions that fail to qualify for these reduced rates will be charged an additional fee (see Section 18).
2. We may debit your bank account from time to time for amounts owed to us under the Agreement.
3. There are many reasons why a Chargeback may occur. When they occur we will debit your settlement funds or settlement account. For a more detailed discussion regarding Chargebacks, see Section 10.
4. If you dispute any charge or funding, you must notify us within 45 days of the date of the statement where the charge or funding appears or should have appeared.
5. The Agreement limits our liability to you. For a detailed description of the limitation of liability, see Section 20.
6. We have assumed certain risks by agreeing to provide you with Card processing. Accordingly, we may take certain actions to mitigate our risk, including termination of the Agreement, and/or hold monies otherwise payable to you (see Section 23, Term; Events of Default and Section 24, Reserve Account; Security Interest), under certain circumstances.
7. By executing this Agreement with us you are authorizing us to obtain financial and credit information regarding your business and the signer and guarantor of the Agreement until all your obligations to us are satisfied.
8. The Agreement contains a provision that in the event you terminate the Agreement early, you may be responsible for the payment of an early termination fee as set forth in Section 37.3 under "Additional Important Information."
9. If you lease equipment from Processor, it is important that you review Section 32. This lease is a non-cancelable lease for the full term indicated.

#### 10. Association Disclosure

##### Member Bank Information: Wells Fargo Bank

The Bank's mailing address is Wells Fargo Bank, 1200 Montego Way, Walnut Creek, CA 94598 and its phone number is 1-800-451-5817.

##### Important Member Bank Responsibilities:

- (a) The Bank is the only entity approved to extend acceptance of Association products directly to a Merchant.
- (b) The Bank must be a principal (signer) to the Merchant Agreement.
- (c) The Bank is responsible for educating Merchants on pertinent Visa and MasterCard Rules with which Merchants must comply; but this information may be provided to you by Processor.
- (d) The Bank is responsible for and must provide settlement funds to the Merchant;
- (e) The Bank is responsible for all funds held in reserve that are derived from settlement.

##### Important Merchant Responsibilities:

- (a) Ensure compliance with cardholder data security and storage requirements.
- (b) Maintain fraud and chargebacks below Association thresholds.
- (c) Review and understand the terms of the Merchant Agreement.
- (d) Comply with Visa and MasterCard rules.

Print Client's Business Legal Name:

City of Los Angeles

By its signature below, Client acknowledges that it received (either in person, by facsimile, or by electronic transmission) and read the complete Program Guide (Version WFB1007) consisting of 42 pages (including this confirmation), which is incorporated into its Agreement, and agrees to comply with all terms set forth therein. Upon receipt of a signed original of this Confirmation Page by us, your Application for merchant processing services will be reviewed. Client understands that its Application is subject to approval by us. Client understands that a copy of the Program Guide is also available for downloading from the internet at:

[www.wellsfargo.com/downloads/pdf/biz/merchant/program\\_guide.pdf](http://www.wellsfargo.com/downloads/pdf/biz/merchant/program_guide.pdf)

#### CLIENT'S BUSINESS PRINCIPAL:

Signature (Please sign below):

X Joya C. De Foer  
JOYA C. De Foer

Please Print Name of Signer

CITY TREASURER  
Title

11/17/2008  
Date

