

**BOARD OF COUNTY COMMISSIONERS**

**DATE:** February 24, 2015

**AGENDA ITEM NO.** 25

**Consent Agenda** ☐

**Regular Agenda** ☐

**Public Hearing** ☐

 **County Administrator's Signature:**

**Subject:**

Approval of Ranking of Firms and Final Negotiated Agreement – Banking Services  
Contract No. 134-0117-P(RM)

**Department:**

Clerk of the Circuit Court and Comptroller /Purchasing

**Staff Member Responsible:**

Claretha Harris /Joe Lauro

**Recommended Action:**

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS (BOARD) APPROVE THE RANKING OF FIRMS AND FINAL NEGOTIATED AGREEMENT FOR BANKING SERVICES WITH THE NUMBER ONE RANKED FIRM, WELLS FARGO BANK N.A. (WELLS FARGO), TAMPA, FLORIDA.

IT IS FURTHER RECOMMENDED THE CHAIRMAN SIGN THE MASTER BANKING SERVICES AGREEMENT AND THE CLERK ATTEST.

**Summary Explanation/Background:**

Approval of the Master Banking Services Agreement with Wells Fargo Bank, N.A. will provide the Board with a full service bank that can offer the highest quality comprehensive banking and treasury management services at the lowest cost. Services to be provided include, but are not limited to: lock box services, credit card processing, overdraft processing, web based banking and investment services.

On April 30, 2014, the Purchasing Department on behalf of the Board and the Clerk of the Circuit Court and Comptroller (Clerk), released a Request for Proposal (RFP) which was evaluated by a committee on July 29, 2014; negotiations began in August 2014 with the highest ranked firm, Wells Fargo.

The RFP contained requirements for both the Clerk and the Board. Historically, the Clerk's Finance Division has negotiated this contract on behalf of the Board due to their expertise in this area. Due to the complexity of the banking and treasury services Wells Fargo will be providing, additional time was required to review and negotiate outstanding terms, conditions and pricing.

The negotiated agreement provides for Earning Credit Rate (ECR). ECR is a daily calculation of interest paid on idle funds that reduce bank service fees. Customers, such as the County, with larger deposits and balances, pay lower bank fees for their accounts; the rate paid through ECR is tied to the US Treasury Bill Rate and should offset all costs for banking services. The Clerk will have its own agreement that is mirrored after the Board contract and will be approved separately through their administrative process.

Wells Fargo is the County's current banking institution and has demonstrated over time the ability to meet all of the County's banking service requirements.

The contract term will be for a period of sixty (60) months, commencing on March 1, 2015 and continuing through February 29, 2020.

**Fiscal Impact/Cost/Revenue Summary:**

It is anticipated that ECR will provide for all annual service fees and there will be no cost to the Board or the Clerk. The agreement as attached, for Board services, includes a not to exceed amount of \$633,420.00, which is reflective of what the potential fees would be should ECR not exist in the contract.

If the ECR is not as robust as anticipated, contract funding sources will be from Enterprise, General, Special Revenue, Internal Service and Capital Funds accordingly.

**Exhibits/Attachments:**

Contract Review

Master Banking Services Agreement

Commercial Account Agreement

Ranking Spreadsheet



**PURCHASING DEPARTMENT  
CONTRACT REVIEW TRANSMITTAL**

**CATS  
NO.:46507**

**PROJECT: Banking Services**

**BID NUMBER: 134-0117-P Final Negotiated Contract**

**TYPE:** ☒ **Purchase Contract** ☐ **Other:** ☐ **Construction-Less than \$100,000** ☐ **One Time**

In accordance with the policy guide for Contract Administration, the attached documents are submitted for review and comment.

Upon completion of review, complete Contract Review Transmittal and forward to next Review Authority listed. Please indicate suggested changes by revising, in RED, the appropriate section of the document reflecting the exact wording of the change.

**RISK MANAGEMENT:** Please enter required liability coverage on pages: N/A **PRODUCT ONLY** ☐

This is a 60 month contract. Estimated Annual Expenditure: \$ Not to exceed \$633,420.00

REVIEW SEQUENCE	REVIEW AUTHORITY	REVIEW DATE	REVIEW SIGNATURE	COMMENTS (Attach Separate page if necessary)	COMMENTS INCORPORATED
1.	<u>Purchasing Dept.</u> J. Lauro, Director C. Mancuso, Ass't. Director	2/2/15			
2.	<u>Requesting Dept.</u> Claretha Harris, Chief Deputy Director Fred Dean, Director, Finance Division	2/3/15	via email		

**Using Dept please provide below information:**

- A. ☐ Yes, funding for this project is using grant funding. ☐ No, funding for this project is not using grant funding.  
If grant funding is being used you must provide Purchasing with the exact clauses that need to be on attached document.
- B. \_\_\_\_\_ Initial and Date Funding is available for this project.  
Provide title of funding source \_\_\_\_\_
- C. Please check attached vendor list. Circle vendors you want bids mailed to. Add additional vendors with complete information (Name, Address, Phone and Email)

3.	<u>Risk Management Director</u> Attn: Virginia E. Holscher (Check applicable box at right)	2/2/15	via email		<input type="checkbox"/> HIGH RISK <input type="checkbox"/> NOT HIGH RISK
4.	<u>BCC Finance</u> Attn: Cassandra Williams	2/30/15	via email		
5.	<u>Legal</u> Attn: Miles Belknap	2/26/15	via email		
6.	<u>Asst. County Administrator</u> (Name, if applicable)				
7.	<u>County Administrator's Office</u> Paul Sacco	2/5/15			

8. OMB  
Bill Berger

**RETURN ALL DOCUMENTS TO PURCHASING**

Make all inquiries to: Ruby McKenzie at Extension 4-3795  
In order to meet the following schedule, please return your requirements to Purchasing by: **NOW**

TENTATIVE DATES	
Advertisement:	Opening:

## McKenzie, Ruby M

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**From:** Dean, Fred L  
**Sent:** Friday, January 30, 2015 9:36 AM  
**To:** McKenzie, Ruby M  
**Subject:** RE: 134-0117-P Banking Services Final Negotiated Agreement CATS 46507

Ruby:

I have completed my review of the documents in CATS on this subject.

Thanks.

Fred  
**Fred Dean, CPA, CGFO**  
Director, Finance Division  
**Office of Ken Burke, Clerk of the Circuit Court and Comptroller**  
**Pinellas County, Florida**  
14 S. Fort Harrison Ave, 3rd Floor, Clearwater, FL 33756  
(727) 464-8301 | Mobile (727) 743-1591  
[fdean@pinellascounty.org](mailto:fdean@pinellascounty.org)

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**From:** McKenzie, Ruby M  
**Sent:** Thursday, January 29, 2015 2:10 PM  
**To:** Dean, Fred L  
**Subject:** FW: 134-0117-P Banking Services Final Negotiated Agreement CATS 46507

Fred,

Would you please send email as Miles did when you have finished reviewing the banking services review.

Thank you.

ruby

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**From:** Belknap, Miles S  
**Sent:** Thursday, January 29, 2015 8:50 AM  
**To:** McKenzie, Ruby M  
**Subject:** RE: 134-0117-P Banking Services Final Negotiated Agreement CATS 46507

I have reviewed all the documentation for this item, for completeness purposes, the MBSA makes the proposal as well as the RFP part of the contract documents

Miles Belknap  
Assistant County Attorney  
Pinellas County Attorney's Office

## McKenzie, Ruby M

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**From:** Harris, Claretha N  
**Sent:** Monday, February 02, 2015 2:39 PM  
**To:** McKenzie, Ruby M  
**Cc:** Dean, Fred L  
**Subject:** FW: Agenda Memo -134-0117-P(RM) Banking Services final.docx  
**Attachments:** Agenda Memo -134-0117-P(RM) Banking Services final.docx

Ruby,

Fred and I agreed on a few updates to the memo you sent us earlier. The attached memo has the updated language as noted.

Thanks for your work on this.

Claretha

Claretha N. Harris, CPA  
Chief Deputy Director, Finance Division  
Office of Ken Burke, Clerk of the Circuit Court and Comptroller  
Pinellas County, Florida  
14 S. Ft Harrison Ave, 3rd Floor  
Clearwater, Florida 33756  
Phone: 727-464-8300  
Fax: 727-464-8370  
[clharris@pinellascounty.org](mailto:clharris@pinellascounty.org)

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**From:** Dean, Fred L  
**Sent:** Monday, February 02, 2015 2:07 PM  
**To:** Harris, Claretha N  
**Subject:** FW: Agenda Memo -134-0117-P(RM) Banking Services final.docx

Claretha:

Please see the attached with revisions as discussed.

Thanks.

Fred  
**Fred Dean, CPA, CGFO**  
Director, Finance Division  
**Office of Ken Burke, Clerk of the Circuit Court and Comptroller**  
**Pinellas County, Florida**  
14 S. Fort Harrison Ave, 3rd Floor, Clearwater, FL 33756  
(727) 464-8301 | Mobile (727) 743-1591  
[fdean@pinellascounty.org](mailto:fdean@pinellascounty.org)

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## McKenzie, Ruby M

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**From:** Holscher, Virginia  
**Sent:** Monday, February 02, 2015 9:51 AM  
**To:** McKenzie, Ruby M  
**Cc:** White, Ginger  
**Subject:** RE: Banning Services 134-0117-P CATS 46507

Ruby,

I spoke with Ginger who has completed the CATS item and when I go into CATS this is no longer in my assignment list. I pulled it up and it appears to be completed. So I think Risk is good here, but let me know if you need anything further.

Thanks

**Virginia E. Holscher, CPCU**  
Bureau Director, Risk Management  
400 South Fort Harrison Avenue  
Clearwater, FL 33756  
Phone: 727-464-3559  
Fax: 727-464-4060  
Cell: 727-328-4756  
[vholscher@pinellascounty.org](mailto:vholscher@pinellascounty.org)

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**From:** McKenzie, Ruby M  
**Sent:** Monday, February 02, 2015 7:46 AM  
**To:** Holscher, Virginia  
**Cc:** White, Ginger  
**Subject:** Banning Services 134-0117-P CATS 46507  
**Importance:** High

Good morning Virginia.

May I ask you to please go into CATS 46507 and complete the review. I need to get this done today so we can schedule this item for the BCC 2/24/15 meeting.

As previously stated, Ginger worked with the Bank and Purchasing to finalize the insurance requirements. All I need is the CATS completed by you and an email stating that you completed your review. Due to the time frame, the contract review is being done electronically. An original Contract Review form will not be coming your way.

Your help is most appreciated.

Thank you.

## McKenzie, Ruby M

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**From:** Williams, Cassandra B  
**Sent:** Friday, January 30, 2015 8:36 AM  
**To:** McKenzie, Ruby M  
**Subject:** RE: 134-0117-P Banking Services

Finance has reviewed the Banking Services Agreements and has no changes.

**Cassandra B. Williams, CPA, MPA**  
*Finance Accountant II*  
*Finance Division*  
*Office of Ken Burke, Clerk of the Circuit Court and Comptroller*  
*Pinellas County, Florida*  
*(727) 464-8305 | Fax: (727) 464-8370*  
[cbwilliams@pinellascounty.org](mailto:cbwilliams@pinellascounty.org) | [www.pinellasclerk.org](http://www.pinellasclerk.org)

*You must be the change you want to see in the world. Mahatma Gandhi*

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**From:** McKenzie, Ruby M  
**Sent:** Thursday, January 29, 2015 5:54 PM  
**To:** Williams, Cassandra B  
**Subject:** 134-0117-P Banking Services

Cassandra,

Please respond to this email stating that you have completed the contract review of the Banking Services 134-0117-P and have no changes to make.

Thank you.

ruby

Ruby M. McKenzie, CPPB  
Purchasing Operations Manager  
Pinellas County Purchasing Dept  
400 S. Ft. Harrison Ave 6th Fl  
Annex Bldg  
Clearwater, FL 33756  
Phone: 727 464-3795  
email: [rmmckenz@pinellascounty.org](mailto:rmmckenz@pinellascounty.org)

## McKenzie, Ruby M

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**From:** Belknap, Miles S  
**Sent:** Thursday, January 29, 2015 8:50 AM  
**To:** McKenzie, Ruby M  
**Subject:** RE: 134-0117-P Banking Services Final Negotiated Agreement CATS 46507

I have reviewed all the documentation for this item, for completeness purposes, the MBSA makes the proposal as well as the RFP part of the contract documents

Miles Belknap  
Assistant County Attorney  
Pinellas County Attorney's Office  
315 Court Street, 6th Floor  
Clearwater, FL 33756  
Phone: (727) 464-3354  
Fax: (727) 464-4147  
[mbelknap@pinellascounty.org](mailto:mbelknap@pinellascounty.org)

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**From:** McKenzie, Ruby M  
**Sent:** Wednesday, January 28, 2015 7:02 PM  
**To:** Dean, Fred L; Harris, Claretha N; Holscher, Virginia; Williams, Cassandra B; Belknap, Miles S; Sacco, Paul S  
**Cc:** Lauro, Joseph; McKenzie, Ruby M  
**Subject:** 134-0117-P Banking Services Final Negotiated Agreement CATS 46507  
**Importance:** High

Greetings:

Due to the time frame to get the Banking Services final negotiated agreement to the Board for the February 24, 2015 meeting, I need your assistance to complete this contract review electronically. Please go to CATS item 46507 Banking Services (see below) and review this item. There are 9 related documents. One of the documents (Pinellas County Clerk of Circuit Court.msg file) is not valid. All others are directly related to the BOCC and Clerks documents. The Master Banking Services Agreement is not attached for the Clerk. It is a mirror of the one for the BCC. Only the name and service fee will be changed.

Joe Lauro and Candy Mancuso will sign the original Contract Review Transmittal form. Once you have reviewed the documents, please sign off in CATS and respond to this email to my attention that you have reviewed the documents. If you have any changes or comments, please note that in the email and copy all parties so any concerns may be addressed immediately. It is important that you provide a response no later than 1/30/15. I apologize for the short notice but the final details were just worked out today. If you have any questions, please call me. Your cooperation is most appreciated.



## McKenzie, Ruby M

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**From:** Berger, William M  
**Sent:** Tuesday, February 03, 2015 4:27 PM  
**To:** McKenzie, Ruby M  
**Cc:** Sullivan, Lori; Benoit, Linda D; Mancuso, Candis L  
**Subject:** FW: 134-0117-P Banking Services

See below for notes from OMB. As indicated by Lori, additional analysis on the items noted will take more time. I recommend moving forward and we will follow-up on the items noted as part of FY16 budget development.

### Bill Berger

Pinellas County Office of Management & Budget  
(727) 453-3437

[bberger@pinellascounty.org](mailto:bberger@pinellascounty.org)

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**From:** Sullivan, Lori  
**Sent:** Tuesday, February 03, 2015 3:49 PM  
**To:** Berger, William M  
**Subject:** RE: 134-0117-P Banking Services

Bill, I have reviewed the attached documents and compared to the proposal received by Wells Fargo. I did not see anything that stands out but did notice that the Service Fee quoted on the Master Banking Services Agreement ties to the proposed amount for the BCC and does not include the amount for the Clerk of Circuit Court accounts that was quoted on the original proposal.

As far as comparing budget numbers to actuals, I am now looking at that. I spoke with Lauren Sroda in Clerk Finance and found out that the service fees are booked to a revenue account as debits, offsetting the earnings allowance we receive on account balances, with the exception of EMS, which are charged to an expenditure line. I don't know exactly how these are handled as far as budget is concerned but do know that with Water & Sewer we do not take this into account when budgeting interest, instead looking at prior year trends.

Lockbox charges are charged to an expenditure line for Water/Sewer/EMS/Animal Control. These are budgeted in Water & Sewer and YTD for FY15 are slightly under budget. I will need to get with the analysts for EMS and Animal Control to see how they are budgeted.

After speaking with Linda Benoit, I am looking at individual fee lines from a Wells Fargo FY14 analysis statement and comparing to what they proposed for these same fee lines in their new proposal. This will take some time as there are quite a few lines to be evaluated.

Please let me know if you think there is a better path to follow with this - I am definitely open to suggestions.

Thanks.

### Lori Sullivan

**Financial Management & Budget Analyst**  
Pinellas County Office of Management and Budget  
14 S. Ft. Harrison Ave., 5th Floor, Clearwater, FL 33756  
Phone (727) 453-3277

[losullivan@pinellascounty.org](mailto:losullivan@pinellascounty.org)

## MASTER BANKING SERVICES AGREEMENT

**THIS AGREEMENT** is made as of this \_\_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date"), by and between Pinellas County, a political subdivision of the State of Florida ("County"), and Wells Fargo Bank, N.A. ("Contractor") (individually, "Party," collectively, "Parties").

### WITNESSETH:

**WHEREAS**, the County requested proposals pursuant to its Request for Proposal Number 134-0117-P (KR) issued April 30, 2014 ("RFP") for banking services; and

**WHEREAS**, Contractor submitted a Proposal dated June 12, 2014 (including all agreements, service descriptions, and other documents included therewith and appended thereto, "Proposal") in response to the RFP; and

**WHEREAS**, based upon the County's assessment of Contractor's Proposal, the County selected the Contractor to provide the Services as defined herein; and

**WHEREAS**, Contractor represents that it has the experience and expertise to perform the Services as set forth in this Agreement.

In consideration of the mutual covenants, agreements, terms and conditions herein contained, along with other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties hereby agree as follows:

#### 1. Definitions.

**A. "Agreement"** means this Master Banking Services Agreement, including the other Service Documentation and all Exhibits, which are expressly incorporated herein by reference, and any amendments thereto.

**B. "Contractor"** means Wells Fargo Bank, N.A. to the extent such term is used in the Agreement.

**C. "County"** means Pinellas County, a political subdivision of the State of Florida.

**D. "County Confidential Information"** means any County information deemed confidential and/or exempt from §119.07, Florida Statutes, and Section 24(a), Article 1 of the Florida Constitution, or other applicable law, including, but not limited to, any information designated in writing by the County as County Confidential Information.

**E. "Contractor Confidential Information"** means any Contractor information that constitutes a trade secret pursuant to Chapter 688, Florida Statutes, and is designated in this Agreement or in writing as a trade secret by Contractor (unless otherwise determined to be a public record by applicable Florida law). Notwithstanding the foregoing, Contractor Confidential Information does not include information that: (a) becomes public other than as a result of a disclosure by the County in breach of the Agreement; (b) becomes available to the County on a non-confidential basis from a source other than Contractor, which is not prohibited from disclosing such information by obligation to Contractor; (c) is known by the County prior to its receipt from Contractor without any obligation or confidentiality with respect thereto; or (d) is developed by the County independently of any disclosures made by Contractor.

**F. "Contractor Personnel"** means all employees of Contractor, and all employees of subcontractors of Contractor, who are providing the Services at any time during the project term.

**G. "Services"** means the work, duties and obligations to be carried out and performed by Contractor under this Agreement, as described in Section 2 of this Agreement and any component task, subtask, service, or function inherent, necessary, or a customary part of the Services, but is not specifically described in this Agreement, or any Exhibit, which such task, subtask, service or function shall be deemed to be part of the Services.

**2. Service Documentation; Services.**

**A. Service Documentation.** The terms and scope of Services to be provided by Contractor to the County shall be governed by the following "**Service Documentation**":

1. This Master Banking Services Agreement and any mutually agreed revisions of the parties contained in Exhibits hereto;
2. Contractor's Proposal, which includes the appendix thereto and all tabs thereof,;
3. The RFP;
4. Contractor User Guides;
5. The set-up form(s) for each Service.

If there is a conflict or inconsistency among the documents that make up the Service Documentation (including, without limitation, with respect to forms of master repurchase or business associate agreements, to the extent applicable), the documents will govern in the order set forth above.

**B. Services.** The County retains Contractor, and Contractor agrees to furnish all standard day-to-day administrative, overhead, and internal expenses, including labor, materials, equipment, products, office supplies, consumables, tools, postage, computer hardware/software, telephone charges, copier usage, fax charges, travel, lodging, per diem, and all other costs required to perform Services except as otherwise specifically provided in the Service Documentation, and all of its obligations related thereto, in accordance with the terms of the Service Documentation

**C. Independent Contractor Status and Compliance with the Immigration Reform and Control Act.** Contractor is and shall remain an independent contractor and is neither agent, employee, partner, nor joint venturer of County. Contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 U.S.C. 1324, et. seq, and regulations relating thereto, as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach of the Agreement.

**D. Project Monitoring.** During the term of the Agreement, Contractor shall reasonably cooperate with the County, either directly or through its contractors, in monitoring Contractor's performance of this Agreement.

**3. Personnel.**

**A. Qualified Personnel.** Contractor agrees that each person performing Services in connection with this Agreement shall have the qualifications and shall fulfill the requirements set forth in this Agreement.

**B. Personnel.** The County, on a reasonable basis, shall have the right to request the removal and replacement of any of the Contractor Personnel performing Services, at any time during the term of the Agreement. The County will notify Contractor in writing in the event the County requests such action.

**4. Compensation of and Method of Payment.**

**A. Services Fee.** The County agrees to pay Contractor the annual sum of not-to-exceed \$633,420 ("NTE") as total compensation for the Services, pursuant to the terms and conditions as provided herein. The compensation paid to Contractor shall constitute full compensation for all Services that are actually performed

pursuant to this Agreement. Fees for the Services will be in accordance with the fee structure outlined in the Proposal. If, during a County fiscal year (October 1 – September 30), either party notifies the other party that the County's expenditures are likely to exceed the NTE, the parties will seek to conform usage to the NTE through mutual agreement, amendment, and the County may seek additional funding. If the parties are unable to make adequate adjustments to avoid a potential exhaustion of the NTE, either party may terminate this Agreement immediately upon written notice as provided in Section 6.C. herein.

**B. Tax Exempt Status.** It is understood that the County is a tax exempt entity and shall only be responsible for the payment of applicable taxes, if any, if and when it loses tax exempt status.

**C. Payments.** Contractor shall submit monthly invoices for fees related to the Services with documentation in accordance to what is currently being provided under Contract #056-0483-P, and all payments shall be made in accordance with the requirements of Section 218.70 et. seq., Florida Statutes, "The Local Government Prompt Payment Act." The County may dispute any payments invoiced by Contractor in accordance with the County's Invoice Payments Dispute Resolution Process established in accordance with Section 218.76, Florida Statutes, and any such disputes shall be resolved in accordance with the County's Dispute Resolution Process.

**5. Term of Agreement.** The term of this Agreement shall commence on the March 1, 2015 and shall continue and be in full force and effect for a period of sixty (60) months or through February 29, 2020, unless terminated in accordance with the provisions of this Agreement.

**6. Termination.**

**A. Contractor Default Provisions and Remedies of County.**

**1. Events of Default.** Any of the following shall constitute a "Contractor Event of Default" hereunder: (i) Contractor fails to maintain the staffing levels necessary to perform the Services as outlined in the Agreement, or perform the Services as specified in the Agreement; (ii) Contractor breaches Section 6 (Confidential Information); or (iii) Contractor fails to perform or observe any of the other material provisions of this Agreement.

**2. Cure Provisions.** Upon the occurrence of a Contractor Event of Default as set out above, the County shall provide written notice of such Contractor Event of Default to Contractor ("Notice to Cure"), and Contractor shall have thirty (30) calendar days after the date of a Notice to Cure to correct, cure, and/or remedy the Contractor Event of Default described in the written notice.

**3. Termination for Cause by the County.** In the event that Contractor fails to cure a Contractor Event of Default as authorized herein, the County may terminate this Agreement in whole or in part, effective upon receipt by Contractor of written notice of termination pursuant to this provision.

**B. County Default Provisions and Remedies of Contractor.**

**1. Events of Default.** Any of the following shall constitute a "County Event of Default" hereunder: (i) the County fails to make timely undisputed payments as described in this Agreement; (ii) the County breaches Section 6 (Confidential Information); or (iii) the County fails to perform any of the other material provisions of this Agreement.

**2. Cure Provisions.** Upon the occurrence of a County Event of Default as set out above, Contractor shall provide written notice of such County Event of Default to the County ("Notice to Cure"), and the County shall have thirty (30) calendar days after the date of a Notice to Cure to correct, cure, and/or remedy the County Event of Default described in the written notice.

**3. Termination for Cause by Contractor.** In the event the County fails to cure a County Event of Default as authorized herein, Contractor may terminate this Agreement in whole or in part effective on receipt by the County of written notice of termination pursuant to this provision.

**C. Termination for Insolvency or Bankruptcy.** Either party may terminate this Agreement immediately upon written notice to the other party without prejudice to any other right of action or remedy if the other party becomes (a) insolvent, (b) subject to a voluntary or involuntary petition under the U.S. Bankruptcy Code, or (c) if the County is unable to avoid an anticipated exhaustion of annual NTE funds for this Agreement as provided in section 4.A herein.

**D. Termination for Legal/Regulatory Compliance.** **Provided the party seeking termination first proposes in good faith to the other party an amendment to this Agreement that would enable that party's continued performance in the any of the conditions described in this paragraph, unless continued performance has become impossible,** either party may terminate this Agreement immediately upon written notice to the other party if such termination is required in order to comply with any applicable law, rule or regulation, or any policy, order or mandate of any judicial or governmental body having jurisdiction over such party.

**E. Termination for Convenience.** Notwithstanding any other provision herein, (i) the County may terminate this Agreement, without cause, by giving thirty (30) days advance written notice to the Contractor of its election to terminate this Agreement pursuant to this provision; and (ii) Contractor may terminate this Agreement, without cause, by giving one hundred eighty (180) days advance written notice to the County of its election to terminate this Agreement pursuant to this provision.

**F. Survival.** The following provisions shall survive the expiration or termination of the Term of this Agreement: 4 (with respect to Services performed prior to expiration or termination, but subject to Section 13), 6, 17, 18, 19 and 20.

**G. Rights.** Upon termination, either party may pursue such remedies at law or in equity as may be available to it as limited or defined in this Agreement or other Service Documentation.

**7. Time is of the Essence.** Time is of the essence with respect to all provisions of the Service Documentation that specify a time for performance; provided, however, that the foregoing shall not be construed to limit a party's grace period allowed in the Service Documentation.

**8. Confidential Information and Public Records.**

**A. County Confidential Information.** Contractor will hold the County Confidential Information in trust and confidence from the date of disclosure by the County, and shall not disclose to any third party County Confidential Information that Contractor, through its Contractor Personnel, has access to or has received from the County pursuant to its performance of Services pursuant to the Agreement, except for disclosures: (i) to Contractor's representatives (which include, without limitation, all other banks and companies affiliated with Wells Fargo & Company, and their and Contractor's legal counsel, auditors, and other professional advisors retained by Contractor or its affiliates who need to know the County Confidential Information for purposes of performing the Services or in connection with other matters related to this Agreement); (ii) to federal and state bank examiners, and other regulatory officials having jurisdiction over Contractor; (iii) as required by law or legal process in the opinion of Bank's or any Representative's counsel, as applicable, or (iv) approved in writing by the County Contract Manager.

**B. Contractor Confidential Information.** All Contractor Confidential Information received by the County from Contractor will be held in trust and confidence from the date of disclosure by Contractor and discussions involving such Contractor Confidential Information shall be limited to the members of the County's staff and the County's subcontractors who require such information in the performance of this Agreement. The County acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of Contractor in the Contractor Confidential Information during and after the term of the Agreement and shall at all times maintain the confidentiality of the Contractor Confidential Information provided to the County, subject to federal law and the laws of the State of Florida related to public records disclosure. Contractor shall be solely responsible for taking any and all action it deems necessary to protect its Contractor Confidential Information except as provided herein. Contractor acknowledges that the County is subject to public records legislation, including but not limited to Chapter 119, Florida Statutes, and the Florida Rules of Judicial

Administration, and that any of the County's obligations under this Section may be superseded by its obligations under and requirements of said laws.

**C. Public Records.** Contractor acknowledges that information and data it manages as part of the services may be public records in accordance with Chapter 119, Florida Statutes and Pinellas County public records policies. Contractor agrees that prior to providing services it will implement policies and procedures to maintain, produce, secure, and retain public records in accordance with applicable laws, regulations, and County policies, which are subject to approval by the County, including but not limited to the Sec. 119.0701, Florida Statutes. Notwithstanding any other provision of this Agreement relating to compensation, the Contractor agrees to charge the County, and/or any third parties requesting public records only such fees allowed by Section 119.07, Florida Statutes, and County policy for locating and producing public records during the term of this Agreement.

**9. Inspection of Records; Audit.** Contractor shall retain all records relating to this Agreement for a period of at least seven (7) years following the date of their creation. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, County reserves the right to audit contract and pricing records related to this Agreement. None of the foregoing shall provide a right for the County to conduct physical audits at Contractor's facilities.

**10. Compliance with Laws.** Contractor shall comply with all applicable federal, state, county and local laws, ordinances, rules and regulations in the performance of its obligations under this Agreement, including the procurement of permits and certificates where required, and including, but not limited to, laws related to Workers' Compensation, occupational safety and health and the environment, equal employment opportunity, and privacy of medical records or information.

**11. Public Entities Crimes.** Contractor is directed to the Florida Public Entities Crime Act, §287.133, Florida Statutes, and represents to County that Contractor is qualified to transact business with public entities in Florida.

**12. Liability and Insurance.**

**A. Insurance.** Contractor shall comply with the insurance requirements set forth in Exhibit B attached hereto. The term "Vendor/vendor" as that term is used in the Exhibit shall mean Contractor.

**B. Indemnification.** Contractor agrees to indemnify, pay the cost of defense, including attorney's fees, and hold harmless the County, its officers, employees and agents from all damages, suits, actions or claims, including reasonable attorney's fees incurred by the County, of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the breach of the Agreement, negligence or willful misconduct of Contractor; or by, or on account of, any claim or amounts recovered under the Workers' Compensation Law or of any other laws, regulations, ordinance, order or decree by personnel engaged by or on behalf of Contractor in connection with its performance of the Services; except to the extent any such suit, action, claim, injury or damages shall have been occasioned by the negligence or willful misconduct of the County or its staff or other agents.

In no event shall County indemnify, hold harmless or insure or assume liability for the acts, omissions to act or negligence of the Contractor or any employees, directors, officers, agents, subcontractors or any person or entity acting on Contractor's behalf regardless of what is set forth in this Agreement or the Service Documentation. Nothing stated in this Agreement shall be construed to be (i) a waiver of the County's sovereign immunity, as set out in Fla. Stat. 768.28, or (ii) an acknowledgement or agreement by Contractor that any claim or cause of action is subject to a sovereign immunity defense.

**C. Infringement Indemnification.** Contractor will defend or settle, at its own expense, any claim or suit against the County alleging that any item furnished by Contractor in connection with the Services provided hereunder infringes any patent, trademark or copyright of a third party. Contractor also will pay all damages and costs that by final judgment may be assessed against the County due to such infringement and all attorney fees and litigation expenses reasonably incurred by the County to defend against such a claim or suit. If any item furnished by Contractor in connection with the Services provided hereunder is, or in Contractor's opinion is likely to become, the subject of a third party claim of infringement, Contractor will, at its option: (1) procure

for the County the right to continue using the applicable item; (2) replace the item with a non-infringing product substantially complying with the item's specifications; or (3) modify the item so it becomes non-infringing and performs in a substantially similar manner to the original item.

**D. Liability.** Neither the County nor Contractor shall make any express or implied agreements, guaranties or representations, or incur any debt, in the name of or on behalf of the other Party. Neither the County nor Contractor shall be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized herein or under the other Service Documentation. The County shall have no liability or obligation for any damages to any person or property directly or indirectly arising out of the operation by Contractor of its business, whether caused by Contractor's negligence or willful action or failure to act. In no event (in connection with its indemnification obligations or otherwise) will either party be liable for any indirect, special, consequential or punitive damages, whether or not the likelihood of such damages was known to such party, and regardless of the form of the claim or action or the legal theory on which it is based.

In the event the County is required pursuant to this Agreement to reimburse the Bank for costs, expenses, claims, losses, or liabilities (collectively, "Losses"), the request for or notice of reimbursement must be detailed, itemized, and in writing (which may be provided electronically) and the amount of such reimbursement shall be limited to and shall not exceed \$ 500,000 annually ("Limit"); provided, however, that the foregoing Limit shall not apply to the County's obligation under the Service Documentation to reimburse Contractor for (i) items, entries or other amounts that have been credited to the County's account(s) with Contractor that are returned or dishonored or (ii) Losses resulting from the negligence of the County or its personnel in the use of the Services.

**E. Contractor's Taxes.** The County will have no liability for any sales, service, value added, use, excise, gross receipts, property, workers' compensation, unemployment compensation, withholding or other taxes, whether levied upon Contractor or Contractor's assets, or upon the County in connection with Services performed or business conducted by Contractor. Payment of all such taxes and liabilities shall be the responsibility of Contractor.

**13. County's Funding.** The Agreement is not a general obligation of the County. It is understood that neither this Agreement nor any representation by any County employee or officer creates any obligation to appropriate or make monies available for the purpose of the Agreement beyond the fiscal year in which this Agreement is executed. No liability shall be incurred by the County, or any department, beyond the monies budgeted and available for this purpose. If funds are not appropriated by the County for any or all of this Agreement for a new fiscal period, the County shall not be obligated to pay any sums provided pursuant to this Agreement beyond the portion for which funds are appropriated. The County agrees to promptly notify Contractor in writing of such failure of appropriation, and upon such notice, this Agreement shall terminate on the last day of the current fiscal period without penalty to the County.

**14. Assignment/Subcontracting.** Contractor shall provide and be responsible for the Services required by this Agreement directly or through its suppliers, and no assignment or subcontracting of the Services shall be allowed without the prior written consent of the County except as provided in the RFP and Proposal with respect to lockbox services provided by Intuition Systems, Inc./Bill2Pay, ; provided, however, that a contractual or other arrangement between Contractor and another person or entity relating to the outsourcing of services or functions which are not specific to those provided to the County under this Agreement (for example, services which Contractor makes available to applicable customers generally) will not be deemed a subcontract or assignment for any purpose under this Agreement, and the person or entity that is a party to such an arrangement with Contractor will not be deemed a subcontractor or assignee of Wells Fargo for any purpose under this Agreement. In the event of a corporate acquisition and/or merger involving the Contractor, the Contractor shall provide written notice to the County upon the occurrence of said action. In that event, the County may terminate this Agreement in those instances in which a corporate acquisition and/or merger creates a conflict of interest, such acquisition and/or merger results in a violation of any local, state or federal law, or the successor entity cannot perform the Services as determined in the sole discretion of the County.

**15. Notices.** All notices, authorizations, and requests in connection with this Agreement shall be deemed given on the day they are: (1) deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or

(2) sent by air express courier (e.g., Federal Express, Airborne, etc.), charges prepaid, return receipt requested; or  
(iii) sent via email and addressed as set forth below, which designated person(s) may be amended by either party by giving written notice to the other party:

For County:

Pinellas County Purchasing Department  
Attn: Purchasing Director  
400 South Fort Harrison Avenue  
Clearwater, FL 33756  
[jlauro@pinellascounty.org](mailto:jlauro@pinellascounty.org)  
with an additional  
cc: County Project Manager

For Contractor:

Wells Fargo Bank, N.A.  
Attn: Vicki Parker  
100 S. Ashley Dr. Suite 820  
Tampa, FL 33602  
[vicki.parker@wellsfargo.com](mailto:vicki.parker@wellsfargo.com)

**16. Amendment.** This Agreement may be amended by mutual written agreement of the Parties hereto.

**17. Severability.** The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the Agreement impossible to perform.

**18. Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without regard to principles of conflicts of laws). The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in or transfer or remove an action to federal court) courts located in or for Pinellas County, Florida. This choice of venue is intended by the parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this section. Each party waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this section.

**19. Waiver.** No waiver by either party of any breach or violation of any covenant, term, condition, or provision of this Agreement or of the provisions of any ordinance or law, shall be construed to waive any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same.

**20. Entire Agreement.** This Agreement, together with the other Service Documentation, constitutes the entire Agreement between the Parties and supersedes all prior negotiations, representations or agreements either oral or written.

(Signature Page Follows)



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first written.

**PINELLAS COUNTY, FLORIDA**

by and through its \_\_\_\_\_

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

**ATTEST:**

\_\_\_\_\_

**WELLS FARGO BANK, N.A.**

By: Victoria R. Parker

Name: Victoria R. Parker  
Senior Vice President

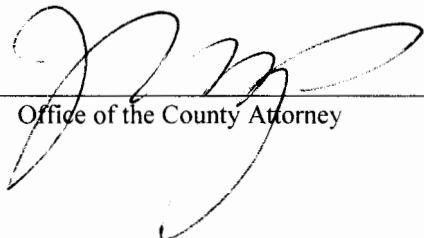
**ATTEST:**

By: Lynn Sams

Name: Lynn Sams

Title: Relationship Associate, Office

**APPROVED AS TO FORM**

By:   
Office of the County Attorney

**END OF DOCUMENT**

**Exhibit A**

**Master Banking Services Agreement**

**Mutually Agreed Revisions to Wells Fargo Bank, N.A. Proposal Documents**

In addition to the following mutually agreed revisions to the Commercial Account Agreement and various of the Service Descriptions included as part of the Wells Fargo Bank, N.A. ("Contractor") Proposal dated June 12, 2014 in response to Pinellas County ("County") RFP 134-0117-P(KR) dated April 30, 2014, Contractor and County agree that the following documents shall be deleted from the Proposal in their entirety:

- Master Repurchase Agreement and Annex I thereto;
- Receivables Manager Service Description;
- Wells Fargo Stagecoach Sweep® Service Description; and
- HIPAA Business Associate Agreement.

# Commercial Account Agreement

*Effective March 1, 2013*

*Modified for Pinellas County January 2015*

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

### **Introduction**

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

**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 forty-five (45) days after Bank mails or otherwise makes the statement or other Account-Related Information available to Company, Company will notify Bank of any claim for credit or refund due, for example, to an erroneous or unauthorized debit, a missing signature, an unauthorized signature, or an alteration (each, an "unauthorized transaction"). Within six (6) months after Bank mails or otherwise makes the statement or other Account-Related Information available to Company, Company will notify Bank of any claim for credit or refund resulting from a forged, unauthorized, or missing endorsement. Such notification is to be made by (i) calling the telephone number listed on the statement for Company's Account or in the other Account-Related Information for such purpose and (ii) submitting a written report to Bank as soon as possible, but, in any event, within the timeframes specified above. If Company fails to notify Bank within the timeframes specified above, the balance shown on the statement for Company's Account or other Account-Related Information will be conclusively presumed to be correct, and Company will be deemed to have released Bank from all liability for the Items charged to Company's Account and for all other transactions covered by the statement or other Account-Related Information. In addition, if Company fails to notify Bank of an

unauthorized transaction on Company's Account within thirty (30) days after Bank mails or otherwise makes the statement for Company's Account or other Account- Related Information describing the unauthorized transaction available to Company, Bank will not be liable to Company for any unauthorized transactions on Company's Account by the same person that could have been prevented if Company had complied with Company's obligations under this subsection. If Company notifies Bank of any claim for credit or refund later than required by this subsection, Bank may assert, at Company's request and on Company's behalf, any claim against a third party that Bank determines in Bank's sole discretion is permitted under the laws governing this Agreement or applicable rule.

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

Unless otherwise prohibited by the laws governing this Agreement, (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.

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

In order for Bank to service the Account or to collect any amounts Company owes to Bank, Bank may from time to time make calls and/or send text messages to Company at any telephone number(s) associated with Company's Account, including wireless telephone numbers that could result in charges to Company. The manner in which these calls or text messages are made to Company may include without

limitation prerecorded/artificial voice messages and/or an automatic telephone dialing system. In addition, in order for Bank to service the Account or to collect any amounts Company owes to Bank, Bank may send e-mails to Company at any e-mail address Company provides to Bank.

#### **Electronic Communications.**

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

#### **Fraud Prevention**

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

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

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

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

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

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

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

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

If any of Company's unissued Paper Items has been lost or stolen, or if Company learns that unauthorized Items are being issued on Company's Account, Company agrees to notify Bank as soon as reasonably possible. 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 this Agreement. A mere clerical error or an honest mistake will not be considered a failure of Bank to perform any of its obligations. If Bank waives any of its rights as to Company or Company's Account on one or more occasions, it will not be considered a waiver of Bank's rights on any other occasion.

### **Limitation of Liability.**

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

### **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 this Agreement.

#### **Force Majeure.**

Neither party to this Agreement shall be deemed to be in default of any of its obligations under this Agreement if its performance is delayed, hindered or becomes impossible because of any act of God or of any public enemy, hostilities, war (declared or undeclared), guerilla or terrorist activities, act of sabotage, blockade, earthquake, flood, landslide, avalanche, 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 use time and place of receipt, method of delivery, and status of set up to determine when Company's deposit is received. Bank may require that Company deposit an Item made payable to Company to Company's Account, instead of permitting Company to cash the Item. Bank is not responsible for a deposit until a Bank employee has received and verified it. The receipt received at the time of deposit is not evidence a deposit has been verified. Bank may reverse or otherwise adjust any credit Bank 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 this Agreement or rule with respect to any Item, Company shall not be released or otherwise discharged from any liability for such breach so long as Bank notifies Company of the breach within 120 days after Bank learns of the breach. If Bank fails to notify Company within this 120-day period, Company shall be released from liability and discharged only to the extent Bank's failure to notify Company within such time period caused a loss to Company.

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

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

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

Company's use of funds deposited to Company's Account will be governed by Bank's separately disclosed collection schedule and, if Company's Account is a checking account, funds availability policy. Bank's collection schedule describes when deposits of Items that satisfy certain criteria will be considered collected. A fee may be charged in connection with any use of uncollected funds permitted by Bank. The then-current rate will appear on the statement for Company's Account. Bank's funds availability policy describes when funds deposited to Company's checking Account will be available to be used for all purposes. Bank may change its collection schedule and funds availability policy from time to time 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, (i) Bank concludes that the Deposited Item has been returned in accordance with the laws governing this Agreement or a rule (including a clearing house rule); or (ii) Bank has received a breach of warranty claim in connection with the Deposited Item.

Bank has the right to pursue collection of such Deposited Item, even to the extent of allowing the payor bank to hold the Deposited Item beyond the midnight deadline in an attempt to recover payment. Bank may redeposit a returned Deposited Item and re-present it for payment by any means (including electronic means), unless Bank has received instructions from Company not to redeposit such Deposited Item. Bank will have no liability for taking or failing to take any action to recover payment of a returned Deposited Item.

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

**Direct Deposits Returned by Bank.**

If, in connection with a direct deposit plan funds are deposited to Company's Account and later returned to the originator, Bank may deduct the amount from that or any other Account Company maintains at Bank, without prior notice and at any time, except as prohibited by the laws governing this Agreement. Bank may also use any other legal remedy to recover the amount.

**Reconstructing Lost or Destroyed Deposited Items.**

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

**Withdrawals from Company's Account****Determining Company's Account's Balance; Debiting Company's Account.**

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

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

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

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

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

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

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

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

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

### **All states except Nevada**

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

### **Nevada only**

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



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

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

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

If a Paper Item drawn against Company's Account is presented over-the-counter for payment by a person who does not have a deposit account at Bank, Bank may charge a fee to the person presenting the Paper Item as a condition for payment of the Paper Item unless the person is a Company employee. 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 this Agreement, 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, other mechanical signature (including a stamp) to sign or endorse Paper Items or a Company logo or other mark in lieu of a signature, Bank may rely on that signature (or any signature that purports to be the facsimile, other mechanical signature of an Authorized Signer) or the Company logo or other mark as Company's authorized signature without regard to when or by whom or by what means or in what ink color such signature, Company logo or other mark may have been made or affixed to a Paper Item deposited to, drawn on or otherwise debited to Company's Account.

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

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

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

#### **General.**

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

**Content of Stop Payment Order.**

Bank requires the exact (i) name of the payee, (ii) number of Company's Account on which Paper Item is drawn, (iii) Paper Item amount and (iv) the Paper Item number or a range of Paper Item numbers. Bank may, at its sole discretion, use only a portion of the required information in order to identify a Paper Item. Failure to provide correct and complete information may make it impossible for Bank to stop payment of a Paper Item. To the extent permitted by law, Company will reimburse Bank for 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 placed at Company's request 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 this Agreement for the amount of that Item.

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

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

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

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

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

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

Company agrees to pay Bank's fee that may vary depending on the action Bank takes. Any Overdraft on Company's Account is immediately due and payable, unless Bank agrees otherwise in writing. To the extent permitted by applicable law, 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.

## **Bank Fees and Expenses**

### **General.**

Company agrees to pay Bank in accordance with the fee and information schedule.

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

Bank may either directly debit Company's Account or invoice Company for Bank fees and expenses incurred in connection with Company's Account and any agreed upon 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. 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 in accordance with the Local Government Prompt Payment Act, Fla. Stat. 218.70, et. seq. 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 day of each calendar month Bank separately discloses to Company, or if the disclosed 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 the applicable “Floor Rate”). The applicable “Floor Rate” is 35 basis points (0.35%). Subject to the Floor Rate, Bank reserves the right to change this rate at any time without notice to Company. If the account is an interest-bearing account other than a Government Advantage Interest Checking Account, the account is not eligible to earn an Earnings Allowance.

#### **Recoupment Fee.**

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

#### **Bank’s Use of Funds.**

Bank may benefit from having the use of funds in customers’ non-interest bearing accounts. Bank may use these funds to reduce its borrowing from other sources such as the Fed Funds market or invest them in short-term investments such as its Federal Reserve Account. This benefit may be referred to as “spread”. It is not possible to quantify the benefit to Bank that may be attributable to a particular customer’s funds because funds from all customers’ non-interest bearing accounts are aggregated both for purposes of reducing Bank’s borrowing costs and for investment and because Bank’s use of funds may vary depending on a number of factors including interest rates, Federal Funds rates, credit risks and Bank’s anticipated funding needs. Bank’s use of funds as described in this paragraph has no effect or impact on Company’s use of and access to funds in Company’s account.

#### **Checking Subaccounts**

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

## **Miscellaneous**

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

Company agrees to comply with Bank's specifications for Paper Items, including without limitation paper stock, dimensions, and other generally applicable industry standards for Paper Items. 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, to the extent permitted by applicable law, Company will reimburse Bank for 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, 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, resulting from the failure of a Paper Item to conform in any respect to Bank's Paper Item specifications.

### **Closing Company's Account.**

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

### **Contract Language.**

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

**Credit Reports.**

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

**Disclosure of Information.**

Generally, absent Company's consent, Bank will not disclose information about Company's Account, but may do so under the following circumstances: (i) to comply with the laws governing this Agreement; (ii) in connection with examinations by state and federal banking authorities; (iii) to comply with any legal process, including without limitation a subpoena, search warrant or other order of a government agency or court; (iv) when Bank determines that disclosure is necessary or appropriate in order to complete a transaction; (v) to verify the existence and condition of Company's Account for a third party, such as a merchant or credit bureau; (vi) to provide information to Company's legal representative or successor; (vii) when reporting the involuntary closure of Company's Account; (viii) when Bank concludes that disclosure is necessary to protect Company, Company's Account, or the interests of Bank; (ix) to agents, independent contractors, and other representatives of Bank in connection with the servicing or processing of Company's Account or Account transactions, Account analysis or similar purposes; (x) to Bank's Affiliates and affiliated companies; or (xi) if Company gives Company's permission.

**Dormant and Unclaimed Accounts.**

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

**Headings; No Third Party Beneficiary.**

Headings do not constitute a part of this Agreement. No person or entity will be deemed to be a third party beneficiary under this Agreement.

**Laws Governing this Agreement.**

The laws governing this Agreement include the laws and regulations of the United States and, to the extent applicable, the laws of the state of Florida, without regard to conflicts of laws principles. Any lawsuits, claims or other proceedings relating in any way to Company's Account and any Service or this Agreement shall be venued exclusively in the courts of the state whose laws govern this Agreement, 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 this Agreement, either in its entirety or with respect to a particular type of transaction or Item, will be deemed modified and applied in a manner consistent with the laws governing this Agreement. Any provision of this Agreement which a court of competent jurisdiction determines to be unenforceable or invalid, either in its entirety or with respect to a particular type of transaction or Item, will not affect the enforceability or validity of the remaining provisions of this Agreement.

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

**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 from time to time change this Agreement by adding new provisions or by modifying or deleting existing provisions upon prior written notice to Company if such change is required as a result of changes in applicable law or regulation. Each such addition, modification or deletion is referred to in this Agreement as a “required modification.” In addition, Bank may agree in writing to waive an obligation or requirement applicable to Customer under 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 required modification or revocation of any waiver will show Company’s consent to that required modification or revocation of waiver.

**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 this Agreement.

**No Fiduciary Relationship.**

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

**Reliance on Bank Records.**

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



**Reordering Checks.**

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

**Restricted transactions.**

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

**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 account bearing interest at the higher of (i) the Target Fed Funds Rate (located at <http://www.newyorkfed.org/markets/omo/dmm/fedfundsdata.cfm>) minus 10 basis points (0.10%) or (ii) the "Floor Rate" as defined above under the heading captioned "Earnings Allowance") 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, subject to the parameters set out in first sentence of this paragraph.

**Method Used to Calculate Earned Interest.**

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

**Interest Accrual.**

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

**Compounding and Crediting.**

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

**Target Balance Accounts.**

If Company maintains multiple accounts at Bank, Company may, with Bank's consent, designate in writing one such account as its "Principal Account" and one or more additional accounts as "Target Balance Accounts." For each Target Balance Account, Company will separately specify to Bank in writing the Ledger Balance or Collected Balance which Company wishes to maintain in such account (the "Target Balance"). At the end of each Business Day, Bank will determine the applicable balance on deposit in each Target Balance Account. If the applicable balance in a Target Balance Account exceeds its Target Balance, Bank will transfer from the Target Balance Account to the Principal Account such funds as are necessary to bring the applicable balance to the Target Balance. If the applicable balance is less than the Target Balance, Bank will transfer from the Principal Account to the Target Balance Account such funds as are necessary to bring the applicable balance to the Target Balance. Bank may, but will not be required to, transfer funds if the transfer would create an Overdraft or exceed the Collected Balance then on deposit in the Principal Account.

**Interest Adjustments.**

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

**Tax Identification Number Certification.**

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

requirements of the IRS and/or, (iii) take any other action which Bank believes is reasonable in the circumstances. If Company is an individual who owns its Account as a sole proprietor, upon that individual's death, Bank must be provided with the individual's estate's or successor's TIN or Bank may either refuse to pay interest earned on Company's Account since the date of the individual's death or withhold a portion of the interest that has been earned on Company's Account since the date of the individual's death.

## **Commercial Savings Accounts**

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

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

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

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

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

## **Commercial Time Accounts**

### **General.**

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

### **Certificated Time Accounts.**

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

**Maturity Date.**

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

**Time Requirements.**

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

**Payment of Interest.**

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

**Additional Deposits.**

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

**Withdrawal of Interest Prior to Maturity.**

A withdrawal of interest prior to maturity will reduce earnings.

**Renewal Policies.**

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

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

Funds transfers to or from Company's Account will be governed by the rules of any funds transfer system through which the transfers are made, as amended from time to time, including, without limitation, the National Automated Clearing House Association and any regional association (each, an "ACH") and

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

**Notice of Receipt of Funds.**

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

**Reliance on Identification Numbers.**

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

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

Company agrees to exercise ordinary care to determine whether a fund transfer to or from Company’s Account was either erroneous or not authorized and will notify Bank of the facts within a reasonable time not exceeding 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 this Agreement, Company will not be considered to have received payment, and Bank will be entitled to reimbursement from Company for that payment.
- Company hereby authorizes any Originating Depository Financial Institution (ODFI) to initiate, pursuant to ACH Operating Rules, ACH debit entries to Company's Account for electronic presentment or re-presentment of Items written or authorized by Company.

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

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

Company may elect to utilize Bank's Stagecoach Deposit® – ATM Deposit Only Card Service by completing and returning to Bank the setup form for the Service. This Service allows Company to make deposits to Company's Account using a Stagecoach Deposit® – ATM Deposit Only card ("Deposit Card") and a designated Wells Fargo® ATM ("ATM"). Company will make such deposits according to the instructions Bank provides and will gain access to the ATM using the Deposit Card and a Personal Identification Number ("PIN"), the risk of misuse of both of which Company assumes. Bank will provisionally credit each deposit to Company's Account based on the amount Company keys into the ATM. Company's ATM deposits are subject to the standard cut-off time established for the ATM into which the deposit was made and Bank's funds availability policy applicable to Company's Account. If the dollar amount of Company's deposit as determined by Bank differs from Company's total (as shown on Company's ATM receipt), Bank will send Company a statement showing the amount of this difference. Company agrees Bank's count of the dollar amount of Company's deposit will be conclusive and binding on Company. Company will have full responsibility for each deposit and its contents until the deposit has been completely and physically accepted into the ATM. If Company claims any portion of a deposit was lost or stolen while in Bank's custody, Company acknowledges Company has the burden of proving its claim. If Company orders supplies for the ATM Deposit Service through the ATM, Company authorizes Bank to initiate debits to Company's Account and credits to the accounts of third party vendors to cover the cost of such supplies provided to Company. Such transfers may be processed through an automated clearing house or any other means chosen by Bank and will be subject to the rules of the funds transfer system used by Bank. Company's authorization will remain in full force and effect until Bank has received written notification from Company of its termination in such time and manner as to afford Bank and any third-party vendor a reasonable opportunity to act on it.

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

If Company elects to utilize Bank's Stagecoach Deposit® – Post Verify Service, Company will prepare, package and deliver Stagecoach deposits to Bank in accordance with Bank's instructions. Bank will

provisionally credit Company's Account for the currency shown on the deposit ticket enclosed in Company's Stagecoach deposit bag as follows: (i) same day credit for

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

## MASTER AGREEMENT FOR TREASURY MANAGEMENT SERVICES

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

Bank and Company agree:

1. **Service Documentation.** The Service Documentation shall be as defined in the Master Banking Services Agreement between Bank and Company.
2. **Services.** Bank and Company will agree upon the Service(s) to be provided.
- 3.

**Service Fees.** Company will pay Bank the fees described in the Service Documentation. Bank may debit Company's account(s) with Bank for any fees not covered by earnings credits, or it may send an invoice to Company for such amounts, which Company shall promptly pay. Invoicing, payment and dispute resolution shall be in accordance with the Local Government Prompt Payment Act, Fla. Stat. 218.70 et seq.

4. **Confidential Information.** Unless otherwise provided in the Service Documentation, all User Guides and software constitute Bank's or its vendor's confidential information ("Confidential Information"), and Company will not acquire any ownership interest in or rights to Confidential Information as a result of Company's use of any Service. Company will (a) maintain the confidentiality of the Confidential Information; (b) not disclose (or permit its employees or agents to disclose), copy, transfer, sublicense or otherwise make any of it available to any person or entity, other than Company's employees who have a need to use the Confidential Information in connection with the applicable Service; and (c) not decompile, reverse engineer, disassemble, modify, or create derivative works of any Confidential Information. Company will notify Bank immediately if it knows or suspects that there has been any unauthorized disclosure, possession, use or knowledge (each, an "Unauthorized Use") of any Confidential Information. If Company (or its employees or agents) is responsible for the Unauthorized Use, Company will, at its expense, promptly take all actions, including without limitation initiating court proceedings to recover possession and prevent further Unauthorized Use of the Confidential Information and obtain redress for any injury caused to Bank as a result of such Unauthorized Use. Nothing stated herein shall limit the parties' obligations to comply in all respects with Florida's Public Records laws.

5. **Liability.**

- 5.1. 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.
- 5.2. Bank is under no obligation to honor, in whole or in part, any entry, file, batch release, transfer instruction, payment order, transaction or instruction that (a) exceeds the



available balance in the Account, unless otherwise provided in the Service Documentation; b) is not in accordance with the Service Documentation or Bank's applicable policies, procedures or practices as made available to Company; c) Bank has reason to believe may not have been duly authorized, should not be honored for its or Company's protection, or involves funds subject to a hold, dispute, restriction or legal process; or d) would possibly result in Bank violating any applicable rule or regulation of any federal or state regulatory authority including without limitation any Federal Reserve guidelines such as the limitations on Bank's intra-day net funds position.

- 5.3 All uses of Services through Company's ID codes, passwords, token cards, PINs, or passcodes (each, a "Code") will be deemed to be authorized by and binding on Company. Company's failure to protect Codes may allow an unauthorized party to (a) use the Services, (b) access Company's electronic communications and financial data, and (c) send or receive information and communications to Bank. Company assumes the entire risk of unauthorized use of Codes and unencrypted electronic transmissions.
- 5.4. Neither Bank nor any software vendor makes any express or implied representations or warranties with respect to the Services or any software used in connection with the Services including without limitation any warranty as to the merchantability or fitness for a particular purpose, other than those expressly set forth in the Service Documentation.
- 5.5. Company will promptly furnish written proof of loss to Bank and notify Bank if it becomes aware of any third party claim related to a Service. Company will cooperate 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.
- 5.6. Bank will have no liability for failure to perform or delay in performing a Service if the failure or delay is due to circumstances beyond Bank's reasonable control. If Bank determines that any funds transfer or communications network, Internet service provider, or other system(s) it has selected to provide a Service is unavailable, inaccessible or otherwise unsuitable for use by Bank or Company, Bank may, upon notice to Company, suspend or discontinue the affected Service.

**6. Miscellaneous.**

- 6.1.** Company will provide Bank promptly upon Bank's request any existing financial statements or other information pertaining to Company's financial condition.
- 6.2.** Company warrants it will not use any Service in a manner which violates any federal or state law including without limitation any sanction or control administered by the Office of Foreign Assets Control or Bureau of Export Administration.
- 6.3** If Company employs an agent in connection with its use of any Service, Company represents and warrants to Bank that (a) Company's governing body has duly authorized the agent and (b) Company will exercise appropriate controls to ensure each agent so authorized does not exceed the authority so granted to it. Any communication to Bank regarding Company's use of a Service from Company's agent will be deemed to be a communication from Company, and Company authorizes Bank to communicate with Company's agent regarding any such communication or Service.
- 6.4.** Sections 1, 3, 4, 5, and 6 will survive termination of this Master Agreement.

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## Treasury Management Product Enrollment

## Customer Information

PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS		CEO Company ID
Customer Name		
Street Address		
City	State	Zip
Country Name	Country Code (if applicable)	
Primary Contact	Phone	
Email Address	Fax	

### Acceptance of Services

Each person signing in the signature block at the end of this form certifies that:

the customer identified in the signature block ("Customer" or "Company") has received and agrees to be bound by the Service Documentation for the Treasury Management Services (each, a "Service") in which Customer is enrolling as of the date of this form. "Service Documentation" is defined in Wells Fargo Bank, N.A.'s ("Bank") ~~Master Agreement for Treasury Management Services.~~

Customer has granted the person(s) signing the signature block the authority on Customer's behalf to (i) enter into this and other agreements with Bank for Services on or after the Effective Date of this form and (ii) amend, terminate or otherwise act on behalf of Customer with respect to this form and the Services.

Customer's use of any Service, including each Service Customer enrolls in after the Effective Date of this form, confirms Customer's receipt of and agreement to be bound by the Service Documentation relating to that Service.

"Customer" may also be referred to as "Company" in the Service Documentation.

**Customer Entity**

Name(s)	Pinellas County Board of County Commissioners	TIN(s)	<u>596000800</u>
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## **Customer Approval - (Authorized Signature Required)**

Each person who signs this form on Customer's behalf is authorized to do so by resolution, agreement or other legally sufficient action of the governing body of Customer, if Customer is not an individual, or is an Authorized Signer on Customer's account.

Printed Name of Authorized Signer

Phone

Signature

Date

### **INTERNAL BANK USE ONLY**

#### **Bank Approval**

Printed Name of Relationship Manager/Authorized Approver

Phone

Relationship Manager/Authorized Approver Signature\*

Date

*\*By signing this document you are approving and acknowledging this individual is authorized to make these changes on behalf of this company.*

## CASH LETTER SERVICE DESCRIPTION

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

1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Cash Letter Service ("Service"). "Service Documentation" is defined in the Master Banking Services Agreement ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Service.** With the Service, Company may present cash letters ("Cash Letters") to Bank containing pre-encoded and properly endorsed U.S. dollar checks drawn on Bank or other U. S. domestic financial institutions (each a, "Check") which conform to all applicable requirements imposed by the Federal Reserve Banks and Bank's Cash Letter User Guide. Bank will deposit the aggregate amount of Checks contained in a Cash Letter into Company's deposit 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 (each, a "Reject Item") 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 Checks 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.** In addition to the limitation of liability provisions set forth in the Master Agreement, Bank will not be liable for, and to the extent permitted by applicable law Company will reimburse Bank for all loss, liability, claims, demands, judgments and expenses paid or suffered or incurred by Bank arising directly or indirectly as a result of or in connection with: (a) Bank's processing of photocopies of Checks from a Cash Letter, (b) Bank's return unpaid of any Check in a Cash Letter, (c) Bank's not notifying Company of any returned Check that is represented and then paid as provided in the Cash Letter User Guide, (d) 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, (e) the late reclamation of any Check caused by the delay of another bank or financial institution, (f) Company's failure to accurately encode any Check in accordance with the requirements of section 4 of this Service Description, or (g) 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 section 5 will survive termination of this Service.
6. **Survival.** Sections 5 and 6 will survive the termination of Service.

## COMMERCIAL DEPOSITORY SERVICE DESCRIPTION



1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Commercial Depository Service ("Service"). "Service Documentation" is defined in the Master Banking Services Agreement ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance
2. **Description of Service.** With the Service, Company may (a) order currency and coin (collectively, "cash") from Bank's cash vault and Bank will make such cash available to an armored car service acting as Company's agent ("Agent") at Bank's cash vault, and (b) deliver currency, coin, checks and other negotiable instruments to Bank's cash vault or night depository locations for processing.
3. **Cash Orders from Bank's Cash Vault.**
  - 3.1. **Cash Requests.** Company may request in writing, telephonically by operator-assisted call or by touch tone/automated response, or electronically via transmission, facsimile, or Bank's *Commercial Electronic Office*® (CEO®) portal (each a "Cash Request") that Bank make available to Company's Agent at Bank's cash vault, in an amount designated in the Cash Request, shipments of cash (each a "Cash Shipment") in bags or other containers ("Cash Bags"). Bank is authorized to act upon any Cash Request Bank receives in accordance with this Service Description, and which Bank believes in good faith to have been made by an authorized representative of Company. Bank has no obligation whatsoever to verify, and will not be liable for its failure to verify or investigate, any Cash Request.
  - 3.2. **Making Cash Available to Company's Agent.** Bank is authorized to make Cash Shipments available to any person whom Bank in good faith believes to be Company's Agent. Bank will have no further responsibility, and Company assumes all risk of loss for cash made available to any such person. Bank will make Cash Shipments available only at the locations, on days, and during the hours published by Bank from time to time. Bank reserves the right to suspend the Service at any time without notice.
  - 3.3. **Company's Authorized Representatives.** Company will promptly certify to Bank the identity of: (a) the person with whom Bank is authorized to communicate regarding authorization codes or other security procedures; (b) Company's Agent authorized to accept delivery of cash; and (c) where applicable, the persons who are authorized users of the Service. Company will give prior written notice to Bank of any change in the person(s) or Agent so authorized by Company. Bank will be fully protected in relying on each such notification and on the obligation of Company to promptly notify Bank of any change in the person(s) or Agent so authorized by Company.
  - 3.4. **Security Procedures.** For requests made in writing or by facsimile, operator-assisted telephone call or transmission, a Customer ID assigned by Bank is required. For CEO requests, a User ID assigned by Bank is required. For touch-tone/automatic response telephone requests, an Access Code is required which can be assigned either by Bank

or by Company. Operator limits may also be required. It is Company's responsibility to put into place internal procedures that will minimize the risk of an unauthorized person gaining access to the Customer ID, User ID(s) and Access Code(s). Such internal procedures include without limitation requiring users to maintain such number(s) and code(s) in strict confidence. Company will notify Bank immediately in the event a breach of security is suspected.

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

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

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

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

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

- Deliver Deposit Bags only at the locations, on the days, and during the hours published by Bank from time to time;

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

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

- 4.3. Cut-off Time; Deposit to Account.** If a Deposit Shipment is received at one of Bank's cash vaults on a Business Day before Bank's published "cut-off time" for that cash vault, the aggregate amount of the deposits in such Shipment will be credited on that Business Day to the Account with Bank specified on the deposit slip for that Shipment. If a Deposit Shipment is received at a cash vault on a Business Day after Bank's "cut-off time," the aggregate amount of the deposits in that Shipment will be credited to the Account on the next succeeding Business Day. Bank will not deposit any items received in any Deposit Shipment unless the account number of the Account into which the deposit is to be made is specified on the deposit slip for that Shipment.
- 4.4. Processing of Deposit Shipments.** Company authorizes Bank to open each Deposit Bag, count the contents, credit the amount of items to the Depository Account indicated on the deposit slip contained in the Deposit Bag and process, all in accordance with Bank's customary procedures. All deposits are subject to verification, and Bank's count of the items will be conclusively deemed to be correct and complete for all purposes. No relationship of debtor and creditor will arise between Bank and Company until the count has been completed and the deposit credited to the Account. Company acknowledges that it has had an opportunity to have Bank's applicable count and verification procedures explained to its representative and agrees that the same will be deemed commercially reasonable. Company understands that no photocopying or microfilming of items will be performed at any cash vault location.
- 4.5. Adjustment Procedures.** If the aggregate amount of the items in any Deposit Shipment, as counted by Bank, is less than that reported on the deposit slip covering that Shipment, Bank will debit the Account specified on the deposit slip by such difference and report the difference to Company. If that Account has an insufficient collected and available balance to cover the debit, Bank will debit any of Company's other accounts with Bank for the difference, and Company agrees to promptly reimburse Bank for the difference (or any portion thereof) for which there are insufficient available



balances in Company's accounts with Bank. If the aggregate amount of the items in any Deposit Shipment, as counted by Bank, is more than that reported on the deposit slip covering the Shipment, Bank will credit the Account specified on the deposit slip for the difference and notify Company of the difference.

5. **Delivery and Processing of Deposit Shipments at Bank's Night Depository Locations.** The following procedures will govern Company's delivery of currency, coin, checks, and other negotiable instruments (each a "Night Deposit") to Bank's night depository locations (each a "Night Deposit"), and Bank's processing of Night Deposits.
  - 5.1. **Night Depository Locations; Issuance of Keys.** Company may make Night Deposits to its deposit account(s) with Bank by placing the items to be deposited into disposable bags furnished by Bank (each a "Night Bag") and then placing the Night Bags in the night depository receptacle ("Night Depository") at one of Bank's branches/stores (each a "Store") listed on Bank's Night Depository Set-up Form. Each office of Company listed on the Night Depository Set-up Form will receive one key to the Night Depository at a designated Store. Company will designate in writing to Bank the individuals to receive the key for each of its offices; Bank may require such individuals to sign a receipt for the keys they receive.
  - 5.2. **Contents of Night Bags; Deposit of Night Bags.** Company agrees that Night Bags will be used only for the deposit of currency, coin, checks or negotiable instruments properly endorsed by Company (collectively "items"), and will not be used in any unauthorized manner or for any unlawful purpose. As to any property other than items included in a Night Bag, Bank will not be deemed a bailee and will have no liability for any loss of or damage to such property which may occur. Each Night Bag must contain one or more deposit slips listing all the items contained in that Bag and their total dollar amount, and identifying the deposit Account of Company to which the dollar amount of the deposit is to be credited. After each Night Bag is placed in a Night Depository, the Night Depository must be securely locked. At the time each Night Bag is placed in a Night Depository the Bag must be securely closed and placed completely in the Night Depository.
  - 5.3. **Processing of Night Deposits.** Bank may open each Night Bag and remove its contents without Company or any of its representatives being present. The contents of each Night Bag will be processed in accordance with Bank's standard procedures, and if placed in a Night Depository before Bank's established "cut-off time" on any Business Day, those items acceptable for deposit will be deposited into the Account as of the close of business on that same Business Day. The cut-off time for deposits made through the night depository may be different from that for deposits made at the teller line. Night Deposits placed in a Night Depository after Bank's established "cut-off time" will be credited to the Account on the next succeeding Business Day. Company understands and agrees that the contents of a Night Bag will not be credited to the Account, nor will the relationship between Company and Bank be that of a debtor to a creditor with respect to any item in a Bag, until Bank has accepted the item for deposit into the Account after counting all the items in the Bag and calculating the total dollar amount of all such items.
  - 5.4. **Counting and Adjustment Procedures.** If Company's records regarding the total dollar amount of the items in any Night Bag differ from Bank's calculation of the total dollar amount of the items in the Bag, Company has the burden of proving that its records show the correct amount in the Bag or Bank's total will be accepted as final. If

there is a difference between Bank's total and Company's total for the amount of items in a Night Bag (as Company's total is shown on the deposit slip or slips in the Bag), Bank will send Company a statement indicating the amount of the difference. In the event that the difference cannot be resolved, Bank's count of the dollar amount will be conclusive and binding on Company.

- 5.5. **Claims of Lost or Stolen Items.** Company will have the burden of proving the amount of any item which it claims was lost or stolen while it was at a designated Store and that disappearance of the item occurred while it was at the designated Store. Company agrees to notify Bank immediately if Company determines that any Night Bag or any item in a Night Bag has been lost or stolen while at one of Bank's Stores. Company agrees that it will have total responsibility for each Night Bag and its contents until the Bag has dropped completely into a Night Depository.
6. **Special Instructions.** Company may submit to Bank in writing any special instructions it may have in connection with cash orders or deposits of items at Bank's cash vault or night depository locations. Bank may at its option accept or reject the instructions and so notify Company. Even if accepted, Bank may stop complying with the instructions upon prior notice to Company if, in Bank's opinion, continued compliance would increase Bank's costs or risks, interfere with its established or revised procedures, or diminish the efficiency of Bank's operations. Any loss attributable to increased risk resulting from a special procedure will be borne solely by Company.
7. **Further Assurances.** Company agrees to do any and all such further acts Bank may consider reasonably necessary or desirable to implement and carry out the intent of this Service Description, including, without limitation, providing information Bank requests regarding any Deposit Shipment, including, without, limitation, information necessary to file a Currency Transaction Report under the regulations implementing the Currency and Foreign Transactions Reporting Act of 1970, as amended from time to time, and to determine the source of any cash or items in a Deposit Shipment.
8. **Representations and Warranties regarding Deposit Shipments.** To be eligible to make Deposit Shipments at a cash vault or Night Depository, Company hereby represents and warrants to Bank at the time of the delivery of each Deposit Shipment that:

  - 8.1 **Deposits for Own Account.** Company makes Deposit Shipments for its sole account and does not directly or indirectly make any Deposit Shipments on behalf of any other party; unless such party has been previously disclosed to Bank and approved in writing by Bank, in its sole discretion.
  - 8.2 **No Deposits from Outside the United States.** Company does not make Deposit Shipments from a source or sources known, or which upon reasonable inquiry would be known, to Company to be outside the United States.
  - 8.3. **No Business as a Foreign Exchange House.** Company does not conduct any business, whether in whole or any part, as a foreign exchange house including, without limitation, as a Casa de Cambio.
9. **Termination of Services.** Bank may immediately terminate any or all of the Services described herein in the event of Company's breach of any representation or warranty in Section 8. Otherwise, Bank may terminate this Service upon sixty (60) days prior notice to Company.

**10. Survival.** Sections 3.6, 4.4., 4.5., 5.4., 5.5., 7 and 10 will survive termination of the Service.

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## RETURNED ITEM SERVICES SERVICE DESCRIPTION

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

1. **Introduction.** This Returned Item Services Service Description ("Service Description") and the other Service Documentation as defined in the Master Banking Services Agreement ("Master Agreement") between Wells Fargo Bank, N.A. ("Bank"), and the company identified in the Acceptance of Services ("Company") between Bank and Company govern Bank's Returned Item Services (each, a "Service").
2. **Description of Bank's Returned Items Services.** Bank's Returned Item Services enable Company to have Bank (a) act as Company's returned Item processor with respect to Items payable to Company that are presented to Bank or another financial institution for payment and returned to Bank unpaid (each, a "Returned Item") in accordance with Company's Special Instructions to Bank for Returned Items ("Special Instructions") and (b) originate debits and report and process credits received for Company's returned check fee ("Returned Item Service Fee Recovery"). Company will communicate its Special Instructions regarding Company's Returned Items to Bank, and Bank will communicate to Company regarding the Services, using the media, format and communication channel(s) to which Company and Bank agree, separately.
3. **Conditions to Provision of Bank's Service.** As conditions to Bank's provision of the Services, Company will at all times (a) maintain Company's demand deposit account(s) at Bank (each, an "Account") in good standing; (b) subscribe to Bank's *Commercial Electronic Office®* ("CEO®") Service; and (c) comply with all Rules Applicable to Bank's Returned Item Services as set forth in this Service Description.
4. **Rules Applicable to Bank's Returned Item Services.** Bank will provide its Services to Company in accordance with:
  - 4.1. the Service Documentation defined in the Master Agreement; and
  - 4.2. State and federal laws and regulations and clearinghouse rules applicable to a Returned Item which may include Federal Reserve Board Regulation CC Subpart C relating to the collection of checks ("Reg CC"), Federal Reserve Board Regulation E ("Reg E") and, in the case of Bank's Returned Item Service Fee Recovery Service when Bank originates an ACH entry on Company's behalf, the National Automated Clearinghouse Association Operating Rules, as supplemented by any applicable operating rules of any automated clearing house of which Bank is a member (together, the "NACHA Rules"), all as amended from time to time.
5. **Special Instructions.** Bank will process Company's Returned Items in accordance with Company's Special Instructions, unless Bank determines in Bank's sole discretion that doing so with respect to a Returned Item would prevent Bank from effectively providing Bank's Service to Company.

6. **Bank's Right to Chargeback Returned Items.** Bank may chargeback a Returned Item to any account Company owns in whole or in part at Bank or any affiliate of Bank without regard to whether the Returned Item was initially deposited to the account or to an account at another financial institution.
7. **Returned Item Service Fee Recovery.** Bank determines the state whose laws establish the maximum returned check fee that Company may assess a customer who issues a Returned Item to Company based on information about Company's retail locations Company provides to Bank when Company enrolls in the Service and subsequently after Bank receives notice from Company regarding a location change in Company's retail locations. If Company fails to provide information to Bank regarding a location change in a timely fashion, Bank will assess the lowest maximum fee permitted in the states for which Company has provided location information.
8. **ACH Entries.**
  - 8.1. **Payment Obligations; Settlement; Returned Debit Entries.** In the case of Services for which Bank originates ACH debit entries on Company's behalf, each credit to Company's Account will be made on the applicable settlement date. Bank may charge Company's Account for any debit, correcting or reversing entry which is later returned to Bank. Company authorizes Bank upon prior oral or written notice to Company to place a hold on an equal amount of funds in Company's Account or to take any other action Bank deems appropriate to ensure Bank receives payment for any debit, correcting or reversing entry which is later returned to Bank.
  - 8.2. **Reimbursement.** Company will reimburse Bank for any loss or expense Bank incurs, including reasonable attorney's fees and legal expenses, as the result of (a) a breach of any warranty Bank makes under the NACHA Rules in connection with providing the Services to Company, (b) a breach of any representation or warranty that Company makes in this Service Description, or (c) an action Company asks Bank to take in connection with Bank's providing the Services to Company. Company authorizes Bank to recover any such amount by debit to any account Company owns in whole or in part at Bank or any affiliate of Bank.
9. **Company's Representations and Warranties.** Company represents and warrants to Bank that:
  - 9.1. The information about Company's retail locations that Company provides to Bank in accordance with section 7 is accurate.
  - 9.2. Company has received and will maintain current copies of the Rules Applicable to Services including without limitation Reg CC, Reg E and the NACHA Rules and is in compliance therewith.
10. **Liability.** To the extent permitted by applicable law, Company will reimburse Bank for all liabilities, losses, damages, claims, obligations, demands, charges, costs, or expenses (including reasonable fees and disbursements of legal counsel and accountants) (collectively, "Losses and Liabilities") awarded against or incurred or suffered by Bank arising directly or indirectly from or related to:

- 10.1. Any negligent or intentional act or omission by Company in the performance of its obligations under the Service Documentation including without limitation Company's obligation to provide Bank with information about Company's locations.
  - 10.2. Any material breach in a representation, warranty, covenant, or obligation of Company contained in the Service Documentation;
  - 10.3. The violation of any applicable law, statute, or regulation or of the Rules Applicable to Bank's Returned Items Services including without limitation Reg CC, Reg E and the NACHA Rules in the performance of Company's obligations under the Service Documentation; and
  - 10.4. A breach of any warranty Bank makes under the NACHA Rules in connection with Bank's Services under this Service Description, any failure by Bank to assess the correct Returned Item Service fee based and any delay in the return of any Returned Item.
11. **Survival.** Sections 6, 7, 8, 9, and 10 of this Service Description will survive termination of the Service.

## ELECTRONIC RETURNS SERVICE DESCRIPTION

1. **ACH Rules.** Company acknowledges that it has had an opportunity to review and agrees to comply with and be bound by the Operating Rules of the Automated Clearing House ("ACH") in which Bank is a participant, as varied by this Service Description and the other Service Documentation, each as amended from time to time (the "Rules"). By using the Service, in addition to any other warranties Company makes under the Rules and this Service Description, Company represents and warrants to Bank that with respect to each item Company attempts to collect through the Service:

- Company has good title to or is entitled to enforce the item to which the RCK entry relates or is authorized to obtain payment or acceptance on behalf of one who has good title to or is entitled to enforce the item.
- All signatures on the item to which the RCK entry relates are authentic and authorized.
- The item to which the RCK entry relates has not been altered.
- The item to which the RCK entry relates is not subject to a defense or claim in recoupment of any party that can be asserted against Company.
- Company has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor, or, in the case of an unaccepted draft, the drawer of the item to which the RCK entry relates.
- The item to which the RCK entry relates is drawn on, payable through, or payable at the receiving depository financial institution, and if Company originates the RCK entry, the amount of the item, the item number, and the account number contained on the item have been accurately reflected in the RCK entry.
- Subsequent to the origination of an RCK entry, the item to which the RCK entry relates or a copy of such item will not be presented to the receiving depository financial institution unless the related RCK entry has been returned by the receiving depository financial institution.
- If Company encodes the item, the information encoded after issue in magnetic ink on the item is correct.
- Any restrictive endorsement made by Company or its agent on the item to which the RCK entry relates is void or ineffective upon initiation of the RCK entry.

Company will be responsible for promptly obtaining all future amendments to the Rules.

2. **Eligible Items.** It is intended that the Service be provided only in connection with items that are "eligible items", as that term is defined from time to time by the Rules. Company acknowledges that the term is currently defined in the Rules to mean an item that:

- is an item within the meaning of Revised Article 4 of the Uniform Commercial Code (1990 Official Text);
- is a negotiable demand draft drawn on or payable through or at a participating depository financial institution, other than a Federal Reserve Bank or Federal Home Loan Bank;
- is in an amount less than \$2,500;
- indicates on the face of the document that the item was returned due to "Not Sufficient Funds," "NSF," "Uncollected Funds," or comparable language;
- is dated 180 days or less from the date the entry is being transmitted to the receiving depository financial institution (i.e., the item to which the RCK entry relates is not stale dated);
- is drawn on a consumer account; and
- has been previously presented (i) no more than two times in its physical form, if the entry is an initial RCK entry; or (ii) no more than one time in its physical form and no more than one time as an RCK entry, if the entry is a reinitiated RCK entry pursuant to subsection 2.10 of the Rules ("Reinitiation of Returned Entries by Originators").

Company represents and warrants to Bank that all items which Company requests Bank to attempt to collect as an RCK Entry (as that term is defined by the Rules from time to time) are eligible items.

3. **Authorization.** Company represents and warrants to Bank that for every RCK entry, the issuer of the check has authorized Company to electronically represent the check and that such authorization is in all respects legally sufficient under applicable law.
4. **Representation/Returned Check Fees.** Company acknowledges that the Rules do not allow collection of fees associated with a represented item by means of a single RCK entry in the amount of both the represented item and associated fees. Company represents and warrants that each RCK entry will only be for the amount of the item, and will not include any amount for a fee. In the event Company initiates an ACH entry through Bank to collect fees associated with a represented item, Company represents and warrants to Bank that (i) Company has read and understood the provisions in the Rules applicable to such an ACH entry, and (ii) such an ACH Entry is in all respects authorized under the Rules.
5. **Reimbursement.** Unless it results solely from Bank's negligence or intentional misconduct, Company will to the extent permitted by applicable law reimburse Bank for any and all claims, demands, losses, liability, or expense it incurs, including attorney's fees and costs, resulting directly or indirectly from (i) the breach of any warranty Bank makes under the Rules or Company makes in this Service Description, or (ii) any action Company asks Bank to take in connection with the Service this Section 5 shall survive termination of the Service.
6. **Provisional Credit.** Any credit that Company receives in connection with an RCK Entry is provisional until such time as settlement for the entry becomes final. In the event any RCK Entry is returned or an adjustment memorandum is received with respect to such RCK Entry, Company will immediately deposit with Bank sufficient good and collected funds to cover the returned RCK Entry or adjustment memorandum. Bank is authorized to debit Company's account(s) for the amount of any such returned RCK Entry or adjustment memorandum.
7. **Operating Procedures; Processing Schedules.** Each RCK Entry, file of RCK Entries, or check for RCK initiation must be prepared and delivered or transmitted by Company or its agent to Bank in accordance with Bank's then current instructions and processing schedules. Company will retain a copy of each check submitted for RCK initiation, RCK Entry, and file of RCK Entries sent to Bank, or will otherwise ensure that it is able to reconstruct them for a period of five (5) Business Days after the applicable settlement date. Company will submit such copy or such reconstructed check, RCK Entry, or file of RCK Entries to Bank promptly upon request.
8. **Rejected Entries.** In the event any RCK Entry submitted by or on behalf of Company is rejected by the ACH for any reason, it will be the responsibility of Company to remake the entry; provided, however, that Bank will remake such entry in any case where rejection by the ACH was due to mishandling of the entry by Bank and sufficient data is available to Bank to permit it to remake the entry. Company will provide to Bank on request all information necessary to remake any RCK Entry or file of RCK Entries.



## E-BOX® SERVICE DESCRIPTION



1. **Introduction.** The Service Documentation is a part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") E-Box service ("Service"). "Service Documentation" is defined in the Master Banking Services Agreement ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Service.** Bank (a) receives electronic information ("Remittance Information") about payments Company's customers make to Company through online bill payment services and other payment channels described in Bank's Reference Guide for the Service (each, a "Payment"); (b) processes Payments for credit to Company's account at Bank ("Account"); and (c) provides information reporting on Payments to Company through Bank's separate Receivables Manager Service ("Remittance File"). The specific processing services Bank will provide to Company are detailed in the Statement of Work to which Company and Bank agree separately ("SOW"). Each Business Day, Bank credits Company's Account for Funded Payments (see section 3) via a consolidated Automated Clearing House ("ACH") credit entry ("File"). Bank originates each File in accordance with the National Automated Clearing House Association Operating Rules and any applicable local ACH rules (collectively, the "ACH Rules"). In order to enroll in the Service, Company will also enroll in Bank's Receivables Manager Service.
3. **Funded Payments.** A "Funded Payment" is a payment for which Bank receives Remittance Information and the funds relating to the Payment. Bank will process Payments for which Bank has received Remittance Information but not funding (each, an "Unfunded Payment") in accordance with the SOW.

# **COMMERCIAL ELECTRONIC OFFICE® ("CEO"®)**

## **SERVICE DESCRIPTION**

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

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

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

- 4.3. Bank Administration.** If Company does not enroll in Bank's self-administration option, there is one category of Authorized Representatives: Users. Bank will assign Bank's then-current Log-On credentials to each User Company designates. Each User Company designates will remain authorized until Bank has a reasonable time to act after receiving Company's notification that the User is no longer so authorized.
- 5. Restricting or Terminating Access to the CEO.** Bank will not be obligated to permit any Authorized Representative to use any Service through the CEO if Bank determines such use is (a) not in accordance with any term applicable to the CEO, (b) not permitted by any state or federal law or regulation, (c) not authorized by Company or any third person whose authorization Bank believes is necessary for such use, or (d) should be denied for Company's or Bank's protection (without Bank's agreeing to, or being required to, make this determination in any circumstance).
- 6. Financial Information.** Financial market data, quotes, news, research, and other financial information developed by third parties and transmitted to Bank (collectively, "Financial Information") may be available to Company at the CEO. The posting of any Financial Information or any other information or data at the CEO will not be a recommendation by Bank of any particular Service or transaction. Bank does not guarantee the accuracy or completeness, (a) of any Financial Information, (b) is not responsible for the actions or omissions of the third parties developing or transmitting Financial Information or (c) for any decision made or action taken by Company in reliance on any Financial Information.
- 7. Cash Flow Analysis Service.** This section contains additional terms applicable to Bank's Cash Flow Analysis Service. This Service enables Company to view and use certain data for global cash positioning and forecasting and journal entry. Bank will automatically populate data from Company's deposit account(s) at Bank and other financial institutions Company directs to provide data to Bank. Company may also manually populate data. Bank will not verify the accuracy of data from other financial institutions, customer-populated data or forecasting information. Forecasting information is not a guarantee of actual performance. If Company uses this Service to convert balances to a currency other than the currency in which the Account is denominated, the conversion rate used through the Service may differ from the conversion rate actually used when the funds are converted on a given Business Day.
- 8. Company's Representations and Warranties.** Company represents and warrants to Bank:

  - 8.1.** Company's governing body has duly authorized each Authorized Representative, regardless of whether Company enrolls in Bank's self-administration option, Bank Administration or whether the individual is designated to act as Company Administrator, Administrator or User; and
  - 8.2.** Company will preserve the confidentiality of the Log-On Credentials and immediately notify Bank if Company becomes aware or suspects that any Log-On Credential may have been compromised.

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

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# **WELLS FARGO REMOTE DEPOSIT CAPTURE SERVICE DESCRIPTION**



## **(Wells Fargo Electronic Deposit<sup>SM</sup>, Desktop Deposit<sup>®</sup>, Remote Deposit Capture)**

1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Remote Deposit Capture service ("Service"). "Service Documentation" is defined in the Master Banking Services Agreement ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of Service.** The Service enables Company to create Electronic Items from eligible paper items and transmit the Electronic Items in an electronic file ("Electronic File") to Bank for review and processing for credit to Company's deposit account at Bank ("Account") in accordance with this Service Documentation. An "Electronic Item" is the electronic image of the front and back of each eligible U.S. Dollar paper item and other information captured from the paper item including without limitation MICR data (and will be deemed to be an "item" for purposes of the Uniform Commercial Code). Bank's Reference Guide for the Service lists eligible U.S. Dollar items (and ineligible items). For each Electronic Item Bank determines is eligible for processing, Bank will:
  - 2.1. create a substitute check as defined in the Account Agreement 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 original 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. post any Electronic Item for which Bank is the Paying Bank.
3. **Creating Electronic Items and Transmitting Company's Electronic File to Bank.** To create Electronic Items and transmit Company's Electronic File to Bank, Company will use either (a) Bank provided software and Bank provided, certified or approved hardware, or (b) Company's software and hardware or third-party provided software and hardware, provided each generates Electronic Items and Electronic Files that meet Bank's then current standards and specifications. Any third-party processor Company uses to prepare and/or transmit Company's Electronic File is Company's agent, and Company will be responsible for ensuring its agent complies with Company's responsibilities under this Service Description. In particular, each Electronic File Company's agent transmits to Bank will include only Electronic Items payable or endorsed to Company, unless Bank expressly agrees to permit Company's agent to include Electronic Items payable to multiple customers of Bank.
4. **Processing Company's Electronic File.** Bank will review each Electronic Item and process the Electronic Items Bank determines are eligible for processing on the Business Day 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 and on the next Business Day if Company transmits Company's Electronic File to

Bank after Bank's Cut-Off Time. "Business Day" is every day except Saturday, Sunday and any federal holiday.

5. **Exception Items.** Each Business Day on which Bank processes Company's Electronic File, Bank may, without liability to Company, reject Electronic Items Bank determines are ineligible for the Service (each, an "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, (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, or (d) any Electronic Item other than one described in (a), (b), or (c) of this section 5 that applicable law prohibits Bank from accepting through a remote deposit capture platform. Bank will notify Company of each Exception Item through Bank's *Commercial Electronic Office*® service or other communication channel at Bank's discretion. Company will deposit an Exception Item to Company's Account only by depositing the original Paper Item to which the Exception Item relates or as otherwise agreed by Bank and Company. Even if Bank does not identify an Exception Item when Bank processes the Electronic File that includes the Exception Item, 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 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.
6. **Deposits to Company's Account.** Bank will be deemed to have accepted each Electronic Item for deposit to Company's Account (other than any Exception Item) (a) on the Business Day Bank processes the Electronic Item (b) at the Bank office where Company's Account is maintained. Funds from these Electronic Items will be made available in accordance with Bank's Funds Availability Policy applicable to Company's Account and will be deemed to be collected in accordance with Bank's Electronic Deposit Collected Funds Schedule which Bank will provide to Company upon request and may amend from time to time.
7. **Third-Party Processors.**
  - 7.1. **General.** This section contains additional terms applicable when Company is a third-party processor. Company is a "third-party processor" when it uses the Service either to (a) create and process an Electronic Item on behalf of a customer or (b) process an Electronic Item one of its customers has created and transmitted to Company.
  - 7.2. **Prerequisites for Acting as a Third-Party Processor.** Prior to acting as a third-party processor with respect to any customer, Company will conduct due diligence appropriate to the type of Customer (consumer or business). As part of Company's due diligence, at time a customer initially opens an account with Company, Company will obtain the customer's name, Taxpayer Identification Number, and address. In addition, Company will fulfill obligations under applicable law with respect to (a) establishing and maintaining a Customer Identification Program and an Anti-Money Laundering Program and (b) suspicious activity monitoring and reporting. Company will also enter into an agreement with each of its customers which includes (i) provisions paralleling those in this Service Description relating to creating Electronic Items and maintaining the security of original Paper Items; (ii) warranties paralleling each of the warranties Company makes to Bank in this Service Description; (iii) an acknowledgement that Bank may at any time refuse to process Electronic Items for that customer; and (iv) if the customer is a business entity, an obligation that customer, upon request by Company, provide Company the information Company requires to enable Company to understand the nature of the customer's business.

- 7.3 Risk Parameters; Ongoing Monitoring.** For each customer for which Company acts as a third-party processor, Company will, in accordance with reasonable commercial standards, monitor the customer's deposits for suspicious activity including out-of-pattern, duplicate and suspicious Electronic Items on an ongoing basis and take appropriate actions with respect to the customer's account with Company, up to and including refusing to process Electronic Items for the Customer and/or preventing the Customer from transacting on its account(s) with Company. Bank will establish and maintain confidential internal risk parameters for Company's Electronic File but Company is solely responsible for monitoring its customer's Electronic Items.
- 8. Company's Representations and Warranties.** Company represents and warrants to Bank Company will:
- 8.1. use the Service only for eligible paper items payable to or endorsed for deposit by Company (unless Bank expressly agrees otherwise);
  - 8.2. transmit to Bank only Electronic Items suitable for processing including without limitation legible Electronic Items containing machine-readable MICR data;
  - 8.3. not transmit to Bank any Electronic Item that duplicates an Electronic Item previously transmitted to Bank or that did not originate as an eligible paper item;
  - 8.4. maintain control over and sole responsibility for secure retention and destruction of each original eligible paper item for which Company or one of Company's customers has created an Electronic Item (including the security and integrity of nonpublic personal information appearing on the original paper item throughout the transmission flow and while in storage) and properly secure all hardware Company uses in connection with the Service at all times;
  - 8.5. not transmit to Bank, deposit to Company's Account, or otherwise negotiate any original eligible 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;
  - 8.6. if Company uses an agent to create Electronic Items and/or transmit Company's Electronic File to Bank, Company will ensure its agent includes only Electronic Items payable to Company in an Electronic File, unless Bank expressly agrees to permit the agent to include Electronic Items payable to multiple customers of Bank; and
  - 8.7. if Company is a third-party processor as set forth in section 7 of this Service Description, comply with section 7 of this Service Description.
- 9. Liability.** To the extent permitted by applicable law, Company will reimburse Bank for 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 Bank 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 sole responsibility for secure retention and destruction of each original

paper item for which Company has created an Electronic Item (including the security and integrity of nonpublic personal information appearing on the original paper item throughout the transmission flow and while in storage), 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. 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
  - 9.4. Bank presenting an Electronic Item to the Paying Bank for payment.
10. **Termination.** In addition to its rights to discontinue providing Services under the Master Agreement, 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 of this Service Description.
11. **Additional Controls on Company.**
- 11.1. **General.** In FIL-4-2009, Risk Management of Remote Deposit Capture ("RDC") Guidelines, the FFIEC sets forth guidelines for agreements between a financial institution and its RDC customers. In accordance with these guidelines, Bank has the authority upon reasonable prior notice to Company to (a) mandate specific internal controls at Company's locations, (b) periodically audit or require audits of Company's RDC operations including Company's IT infrastructure at Company's expense, and (c) request additional information about Company.
  - 11.2. **Company's Internal Controls.** Company will establish internal controls related to Company's RDC operations. Upon reasonable request, Company will provide Bank with information about its internal controls and will work in good faith with Bank to resolve any concerns that Bank identifies with respect to such internal controls;
  - 11.3. **Company's Consumer Complaints.** Bank may upon reasonable prior notice to Company request information about (a) Company's procedures for handling consumer complaints relating to Company's RDC product ("consumer complaints"), (b) the number of consumer complaints Company received in the prior calendar quarter, and (c) the then current status of each consumer complaint.
12. **Survival.** Sections 8 and 9 of this Service Description will survive termination of the Service.



## ACH ORIGATION SERVICE DESCRIPTION

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FARGO

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

reimburse Bank for any returned debit Entries on the same day Company receives notice of such returned Entry.

12. **Reconstruction of Entries and Files.** Company will retain sufficient records to permit it to reconstruct each Entry and File it delivers to Bank for a period of five (5) Business Days after the applicable settlement date and will submit the reconstructed Entry or File to Bank upon request.
13. **Audit.** Company grants Bank ongoing access to Company's Files and the right to audit periodically such Files and Company's ACH processes and controls so Bank can verify Company's compliance with this Service Description.
14. **Bank's Internal Risk Parameters.** Bank establishes internal risk parameters to identify out-of-pattern or suspect Entries or Files and protect Company and Bank from potential losses. These parameters may include without limitation limits on debit and credit settlements on a single Business Day and/or over multiple consecutive Business Days. Bank may pend or delete an Entry or File exceeding the applicable parameters. In addition, any transaction TYPE (debit or credit) or SEC (standard entry class) as defined in the ACH Rules may, at Bank's option, be conditioned upon Bank's prior approval. Upon notice to Company, Bank may discontinue processing a TYPE and/or SEC of transactions Bank has previously processed for Company.
15. **International Entries.**
  - 15.1. **General.** This section contains additional terms applicable when the financial institution holding the account designated to receive an Entry is in a jurisdiction ("Receiving Country") other than the United States (each, an "International Entry"). Bank will process each International Entry in accordance with (a) the laws and payment system rules of the Receiving Country (b) any agreement governing International Entries between Bank and the gateway operator through which Bank processes the International Entry, the terms of which Bank communicates to Company prior to Company's use of the Service or from time to time thereafter, and (c) the ACH Rules. If there is a conflict among these three clauses, they will govern in the order set forth in this subsection.
  - 15.2. **Credit Entries.** With respect to credit Entries Bank agrees to originate in the currency of a designated foreign government or intergovernmental organization ("Foreign Currency"), Bank will convert the amount to be transferred from U.S. dollars ("USD") to the Foreign Currency at Bank's sell rate for exchange in effect on the Business Day the Entry is transmitted by Bank to the ACH or gateway operator. If the financial institution designated to receive the funds does not pay the Receiver specified in the Entry, or if the Entry is subsequently determined to be erroneous, Bank will not be liable for a sum in excess of the amount of the original Entry after it has been converted from the Foreign Currency to USD at Bank's buy rate for exchange at the time the Entry is returned to Bank.
  - 15.3. **Debit Entries.** With respect to debit Entries Bank agrees to originate in a Foreign Currency, Bank will convert the amount of each Entry from the Foreign Currency to U.S. Dollars at Bank's buy rate for exchange in effect on the settlement date of the Entry. If the financial institution designated to receive the Entry subsequently returns it, Bank may charge the applicable Account (or any other accounts Company owns in whole or in part at Bank or any affiliate of Bank) for the amount equal to the value of the returned Entry, after Bank has converted the Foreign Currency to USD at Bank's sell rate for exchange at the time the Entry is returned to Bank. Bank will not be liable for a sum in excess of the original amount of the Entry after conversion.
  - 15.4. **Acts or Omissions of Third Parties.** Bank will not be liable for any failure or delay by a gateway operator, any intermediary financial institution, or the financial institution designated to

receive the Entry in the Receiving Country in processing or failing to process any Entry Bank transmits to the Receiving Country, or for acts or omissions by a third party including without limitation the delay or failure of any third party to process, credit or debit any Entry.

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

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

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

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

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

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

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

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

**18. Smart Decision Service.** This section contains additional terms applicable to Bank's Smart Decision Service. Bank will process for credit to the Account specified by Company checks and other instruments payable to Company (each, an "Item") that Company delivers to Bank. Company will use the depository channels through which Bank offers the Service including electronic channels and other channels specified by Bank through which Bank accepts Items for processing. When Company uses electronic depository channels, Company transmits an "Electronic File" to Bank that includes electronic images of Items (each, an "Electronic Image") and other information regarding Items in the Electronic File. Each Business Day, Bank processes Company's Electronic File and other Items according to the processing criteria Bank has on file for Company, the issuer of an Electronic Image or Item, and Bank

(each, respectively, a "Company Preference," an "Issuer Preference," or a "Bank Preference.") Based on these Preferences, Bank will (a) convert each eligible Electronic Image and Item to an ACH debit Entry on the deposit account on which it was drawn; (b) process remaining Electronic Images in accordance with Bank's separate Service Documentation governing the electronic depository channel Company used to deliver the Electronic Image to Bank; or (c) process remaining Items in accordance with Bank's Commercial Account Agreement. If a Company Preference or an Issuer Preference conflicts with a Bank Preference, Bank will follow the Bank Preference.

## **19. Warranties.**

**19.1 General.** Company acknowledges Bank makes certain warranties under the ACH Rules with respect to each Entry. To the extent permitted by applicable law, Company will 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.

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

**20. Reimbursement.** Company acknowledges Bank indemnifies certain persons under the ACH Rules. To the extent permitted by applicable law, Company agrees to reimburse Bank for any loss Bank incurs, including its reasonable attorneys' fees and legal expenses, as the result of (i) the enforcement of any such indemnity or (ii) Company's breach of any representation, warranty, covenant or obligations of Company contained in this Service Description, except to the extent the loss resulted solely from Bank's own gross negligence or intentional misconduct.

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

**22. Survival.** Sections 4, 5, and 7-20 will survive termination of the Services.



## **PERFECT RECEIVABLES® SERVICE**

### **SERVICE DESCRIPTION**



1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Perfect Receivables service ("Service"). "Service Documentation" is defined in the Master Banking Services Agreement ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the company identified in the Acceptance.
2. **Description of the Service.** Bank's Service enables Company to elect options for posting, and reporting information about automated clearing house ("ACH") entries and wire transfers (each, a "Remittance") that Bank posts each Business Day for credit to one or more deposit accounts Company maintains at Bank or Bank's affiliate (each, an "Account").
3. **Bank's Processing of Remittances-Chargebacks.** 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 Bank rejects. Each credit to Company's Account for Remittance is provisional until Bank receives final settlement for the Remittance. 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 Remittance. Company will pay any shortfall remaining after such chargeback to Bank immediately upon demand.
4. **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 receives the Remittance, Company does not maintain an Account with Bank, the Service has been terminated; or Bank is not permitted by law to accept credits to any of Company's Accounts; or (d) if Company is in default under this Service Description or any other Service Documentation.
5. **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) Company elects.

## TARGET BALANCE ACCOUNT SERVICE DESCRIPTION



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



## WIRE TRANSFER SERVICE DESCRIPTION

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

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

## 5.2. Payment Manager® Initiation Method.

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

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

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

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

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

## 5.3. Voice Initiation Method.

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

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

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

### 5.5. Non-Standard Security Procedure.

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

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

continue until Bank receives express written notice from Company that such authority is revoked.

12. **Limitation of Bank's Liability.** If Bank executes Company's Payment Order by sending instructions to another financial institution, Bank may send the payment order by any transmission method and by any route Bank in its sole discretion considers reasonable. Bank will not be liable for any third party's failure to or delay or error in processing a Payment Order. If the beneficiary bank does not pay the beneficiary specified in the Payment Order, a refund will be made only after Bank has received confirmation of the effective cancellation of the Payment Order and Bank is in free possession of the funds debited or earmarked in connection with the Payment Order. If Bank is notified it did not transfer the full amount stated in a Payment Order, Bank's sole obligation will be to promptly execute a second Payment Order in the amount of the stated deficiency. If Bank executes a Payment Order in excess of the amount stated in the Payment Order, to the extent Company does not receive the benefit of the Payment Order, Bank will only be liable for any loss of the principal amount transferred in excess of the amount stated in the Payment Order. Additionally, Bank will be liable for the amount of interest Company has lost due to the transfer of the excess amount, computed at the then current Federal Funds rate. However, Bank's liability for loss of interest will be limited to twenty (20) calendar day's interest unless Customer has notified Bank of the error within twenty (20) calendar days of the date on which the Payment Order at issue was processed. This section sets forth Bank's complete liability for a Payment Order issued or received under this Service Description.
13. **Survival.** Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 will survive the termination of Services.

## INFORMATION REPORTING SERVICE DESCRIPTION



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

## IMAGE FILE IMPORT SERVICE DESCRIPTION



1. **Introduction.** This Service Description and the other Service Documentation as defined in the Master Banking Services Agreement ("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 ("Files") containing images of and data regarding (a) specified transactions involving checks or other instruments (each, an "Item") on each account at Bank that Company enrolls in the Service (each, an "Account"), and (b) Items otherwise processed by Bank on behalf of Company. Covered account-related transactions include Bank's acceptance of Items for deposit to an Account, Bank's posting of deposited Items to an Account, Bank's encashment or collection of Items presented against an Account, and Bank's handling of Items returned unpaid to an Account. The data and images Bank provides will include an index of each Item together with, in the case of processed or deposited Items, images of coupons and other documents that are received and processed by Bank along with the Items. Company may access Files through 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 6) if Company has elected to use the WellsImage® 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.



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

This Service Description contains provisions which, in addition to the provisions contained in the Master Banking Services Agreement between Bank and Company (the “Agreement”) and other applicable Service Documentation defined therein, 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.

## WELLSIMAGE® CD SERVICE DESCRIPTION

WELLS  
FARGO

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



## **ACCOUNT RECONCILIATION PLAN SERVICE SERVICE DESCRIPTION**



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

## CHEXSTOR® SERVICE DESCRIPTION



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

## IMAGE POSITIVE PAY SERVICE DESCRIPTION



1. **Introduction.** This Service Description is part of the Service Documentation governing the Wells Fargo Bank, N.A. ("Bank") Image Positive Pay service ("Service"). "Service Documentation" is defined in the Master Banking Services Agreement ("Master Agreement"). The Service Documentation includes the Acceptance of Services ("Acceptance"), and "Company" is the Bank customer identified in the Acceptance.
2. **Description of Service.** The Service enables Company to instruct Bank to pay or return counterfeit Checks, Checks otherwise not validly issued and certain altered Checks presented to Bank for payment on the deposit account(s) at Bank that Company enrolls in the Service (each, an "Account"). Each Business Day, Bank electronically compares the serial number and numeric amount of each Check presented to Bank for payment before Bank's separately-disclosed cutoff time on the prior Business Day to Company's Check Issue Data (see section 5). In accordance with section 7, Bank will notify Company of each Check that does not match Company's Check Issue Data (each, an "Exception Item") and will pay or return each Exception Item in accordance with this Service Description. "Check" refers to each check presented for payment on Company's Account, whether it is counterfeit, not validly issued, altered or validly issued by Company. A "Business Day" is every day except Saturdays, Sundays, and federal holidays. Except as otherwise provided in this Service Description, enrollment in Bank's Account Reconciliation Plan ("ARP") Service is required.
3. **Service Options.** Company may enroll an Account in one of three options of the Service. The Service options differ based on (a) when Bank electronically compares a Check to Company's Check Issue Data (before or after posting the Check to Company's Account); (b) Bank's handling of errors on Checks; (c) the content of Bank's report to Company of discrepancies between a Check and Company's Check Issue Data ("Exceptions Report"); and (d) the time by which Company must notify Bank of Company's pay or return decision ("Decision Deadline"), as specified in the Exceptions Report. Each discrepancy is an "Exception," and each Check with a discrepancy is an "Exception Item."
  - 3.1. **Perfect Presentment® Positive Pay.** Bank electronically compares a Check to Company's Check Issue Data prior to posting the Check to Company's Account. Each Check with error(s) that Bank can correct, such as an encoding error, will be corrected, so that the Exceptions Report includes only unresolved Exception Items. This option is offered only on an Account enrolled in Bank's Controlled Disbursement Service.
  - 3.2. **Positive Pay and Positive Pay Only.** Bank electronically compares a Check to Company's Check Issue Data after posting the Check to Company's Account. Bank then reviews each Exception Item, and reverses and reposts each Exception Item with error(s) that Bank can correct, such as encoding errors, so that the Exception Report includes only unresolved Exception Items. Enrollment in Bank's ARP Service is not required for Positive Pay Only.
  - 3.3. **Basic Positive Pay.** Bank electronically compares a Check to Company's Check Issue Data after posting the Check to Company's Account and provides Company with an Exceptions Report containing all Exception Items including Checks with encoding errors.

4. **Payee Validation.** In addition to performing the electronic comparison described in section 2, Bank electronically compares the payee's name on each Check exceeding the dollar threshold determined by Bank to the payee's name in Company's Check Issue Data. If there is a discrepancy between the two names that is not within parameters Bank establishes, Bank will (a) include the Check as an Exception Item in Company's Exceptions Report (and the discrepancy will constitute an Exception), or (b) manually review the Check. Bank will not perform Payee Validation with respect to a Check if (i) Company fails to include the payee's name on the Check in Company's Check Issue Data; (ii) Bank does not receive Company's Check Issue Data for the Check before the cutoff time Bank separately discloses; or (iii) Company requests Bank add the payee's name manually to Check Issue Data Company has previously provided to Bank. Bank will reimburse Company for the face amount of any Check Bank pays if the Company incurs a loss as a result of an unauthorized alteration of the payee's name on the Check, except if the Check with the unauthorized alteration is hand-written or if Bank fails to identify an alteration or other exception in the payee's name because Company has (x) truncated the payee's name in Company's Check Issue Data, or (y) elected to use customized zone formatting (as detailed in Bank's Customer Guidelines for the Service).
5. **Check Issue Data.** The "Check Issue Data" for any Check is the Check's complete serial number and numeric amount, and if Company has selected Payee Validation, the payee's name (or truncated name). As detailed in Bank's User Guide for the Service, a "truncated name" is the portion of a payee's name Company includes in its Check Issue Data based on the option it has elected from the options for truncation Bank offers. Each Business day not later than the cutoff time Bank separately discloses, Company will provide the Check Issue Data for all Checks issued through that Business Day to Bank in the format, through the medium, and at the place(s) Bank specifies. In performing the Service, Bank will use only the Check Issue Data Company provides to Bank. Bank will not electronically or manually compare a Check with an issue date after the current Business Day against the Checks presented for payment on the Account until the issue date contained on Company's future-dated Check register matches the current Business Day's calendar date. Bank will not accept Check Issue Data containing an issue date more than forty-five (45) calendar days in the future.
6. **Payment of Matching Checks.** If a Check presented to Bank matches the Check Issue Data Company has provided to Bank (a "Matching Check"), Bank will make final payment on the Check and charge the Check to Company's Account (subject to section 13).
7. **Notification of Exception Item; Image of Exception Item.**
  - 7.1. **Electronic Comparison.** When Bank identifies an Exception Item through its electronic comparison process, Bank notifies Company of the Exception Item through the Exceptions Report Bank makes available to Company via Bank's *Commercial Electronic Office® (CEO®)* portal.
  - 7.2. **Manual Review.** When Bank manually reviews a Check in accordance with section 4 and identifies a payee name discrepancy, Bank will use its best efforts but in no event make more than one attempt to notify Company of the discrepancy by telephoning Company at the number Bank has on file for Company.
  - 7.3. **Holdover Exception Items.** This subsection applies when Company has enrolled its Controlled Disbursement Account in Bank's Perfect Presentment Positive Pay Service. A "Holdover Exception Item" is an Exception Item Bank identifies after Bank prepares and transmits the Exceptions Report to Company. Bank will use its best efforts but in no event make more than one attempt to notify Company of each Holdover Exception Item by telephoning Company at the number Bank has on file for Company.

- 7.4. Image of Exception Item.** Bank will use reasonable efforts to provide an image of any Exception Item (including a Holdover Exception Item) to Company, but Bank will have no liability if Bank is unable to do so prior to Company's Decision Deadline.
- 8. Default Options.** A "Default Option" is the action Bank takes with respect to each Exception Listed in the Exceptions Report (see subsection 7.1) if Company does not instruct Bank to pay or return it before the Decision Deadline applicable to it (see subsection 9.3). Bank offers two Default Options: (a) "Return", under which Bank returns the Exception Item to the bank of first deposit marked "refer to maker" even if Company validly issued the Exception Item (and does not charge it to Company's Account); or (b) "Pay", under which Bank charges the Exception Item to Company's Account (even if it is counterfeit, altered or not validly issued).
- 9. Company's Instructions to Bank; Failure to Instruct By Decision Deadline.**
- 9.1. Company's Pay or Return Decision.** Company will make its pay or return decision based on the information about the serial number and amount of the Exception Item in the Exceptions Report, and if Company has elected Payee Validation, on any payee information Bank provides to Company.
- 9.2. Instructions Prior to Decision Deadline.** If, prior to Company's Decision Deadline, Company instructs Bank to pay or return an Exception Item, Bank will follow Company's instructions (subject to section 13). For each Exception Item, Company will use the same communications channel to instruct Bank that Bank used to notify Company of the Exception Item. If Bank included the Exception Item on the Exception Report Bank makes available to Company via the CEO portal, Company will use the CEO portal to communicate its instruction regarding the Exception Item to Bank. If Bank attempted to contact Company by telephone, Company will telephone Bank to communicate its instruction.
- 9.3. No Instructions Prior to Decision Deadline.** If Company does not instruct Bank prior to Company's Decision Deadline with respect to an Exception Item described in subsection 7.1, Bank will process the Check in accordance with Company's Default Option. If Bank is unable to obtain Company's instructions prior to the Decision Deadline regarding an Exception Item described in subsection 7.2, Bank will return the Exception Item unpaid (regardless of Company's Default Option). If Bank is unable to obtain Company's instructions prior to the Decision Deadline regarding a Holdover Exception Item described in subsection 7.3, Bank will process the Holdover Exception Item in accordance with Company's Default Option.
- 10. Teller Line Checks.** A Check presented for encashment at Bank's teller line is a "teller line Check". A teller line Check that is not included in Company's Check Issue Data on file with Bank at the time it is presented for encashment is a "teller line Exception Item". Bank will take those steps to review and cash or refuse to cash a teller line Exception Item as Bank in its sole discretion determines are commercially reasonable. Company may instruct Bank to exclude all teller line Checks from this process, in which event each teller line Check will be deemed to be a Matching Check, even if it is not included in Company's Check Issue Data on file with Bank at the time it is presented for encashment.
- 11. Limitation of Liability.** Bank will pay each Check Company has authorized Bank to pay in accordance with this Service Description (including each Matching Check) and each Check Company is deemed to have authorized Bank to pay (including each Check Bank pays in accordance with Company's Default Option) without performing any Check verification

procedure other than those procedures described in this Service Description. Bank will have no liability for paying a Matching Check or an Exception Item Company is deemed to have approved if (a) there is an alteration in its serial number or amount; (b) it is counterfeit, bears a forged or unauthorized signature; or (c) it was otherwise not validly issued. Each Check that Bank pays in accordance with this Service Description will be deemed to be properly payable, and each Check that Bank returns in accordance with this Service Description will be deemed not to be properly payable. Without limiting the provisions contained in the other Service Documentation, Company (i) to the extent permitted by applicable law, will reimburse Bank for any and all liabilities, losses, damages, claims, obligations, demands, charges, costs, or expenses (including reasonable fees and disbursements of legal counsel and accountants) that Bank may suffer or incur as a result of Bank's payment or return of a Check at Company's instruction or otherwise in accordance with sections 9 or 10 of this Service Description, and (ii) releases and forever discharges Bank from all claims and damages, whether known or unknown, liquidated or unliquidated, contingent, direct or indirect, which Company has, or claims to have against Bank relating to the payment or return of any Check in accordance with this Service Description.

12. **Stop Payment; Cancel and Void Instructions; Stale-Dated Checks.** Company will not use the Service as a substitute for Bank's stop payment service. Company will follow Bank's standard stop payment procedures if it desires to stop payment on a Check that was validly issued. Company will use (a) a cancel instruction only to delete an outstanding Check included in its Check Issue Data and (b) 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. If Company elects to use Bank's "stale-dated" feature, Bank will return each Matching Check that is stale-dated unless Company instructs Bank to pay the Check. A Check is "stale-dated" when it is a Matching Check with an issue date exceeding the number of months Company elects as its stale date.
13. **Bank's Right to Return Checks.** Nothing in this Service Description will limit Bank's right to return any Check that Company has authorized Bank to pay in accordance with this Service Description if Bank determines (a) 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 (b) there are insufficient collected and available funds in the Account to pay the Check. As between Company and Bank, any determination by Bank not to pay a Check will not constitute wrongful dishonor of such Check.
14. **Survival.** Sections 4, 5, 7, 9, 10, 11 and 13 will survive termination of the Service.

## PAYMENT AUTHORIZATION SERVICE DESCRIPTION



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

## Exhibit B Insurance Requirements

**Notice:** The Contractor/Vendor must provide a certificate of insurance and endorsement in accordance with the insurance requirements listed below (Section C) prior to recommendation for award. Failure to provide the required insurance within a ten (10) day period following the determination or recommendation of lowest responsive, responsible bidder may result in the County to vacate the original determination or recommendation and proceed with recommendation to the second lowest, responsive, responsible bidder.

The Contracted vendor shall obtain and maintain, and require any sub-contractors to obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth. For projects with a Completed Operations exposure, Contractor shall maintain coverage and provide evidence of insurance for two (2) years beyond final acceptance. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and have an AM Best rating of A- VIII or better. Within ten (10) calendar days after contractor's receipt of notice of award, the Contractor shall e-mail properly executed and approved Certificates of Insurance to evidence compliance with the insurance requirements of the agreement to [CertsOnly-Portland@ebix.com](mailto:CertsOnly-Portland@ebix.com); be sure to include the organization's unique identifier, which will be provided upon notice of award. The Certificate(s) of Insurance shall be signed by authorized representatives of the insurance companies shown on the Certificate(s). **A copy of the endorsement(s) referenced in paragraph four (4) for Additional Insured shall be attached to the certificate(s).**

No work shall commence at any project site unless and until the required Certificate(s) of Insurance are received and approved by the County. Approval by the County of any Certificate of Insurance does not constitute verification by the County that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of the Agreement. Contractor agrees to make its insurance policies available for review by Pinellas County in the event that Pinellas County is party to a claim in which such policy would insure. Such review shall occur in a controlled environment at a Wells Fargo location selected by Pinellas County

All policies providing liability coverage(s), other than worker's compensation, bankers professional liability, and cyber risk liability policies, obtained by the Contractor and any sub-contractors to meet the requirements of the Agreement shall include Pinellas County Board of County Commissioners as an Additional Insured or have an omnibus or blanket additional insured endorsement. Evidence of such shall include a copy of this endorsement for each policy aforementioned.

If any insurance provided pursuant to the Agreement expires prior to the completion of the Work, renewal Certificates of Insurance and endorsements shall be furnished by the Contractor to the County at least five (5) days of the expiration date.

Contracted vendor shall also notify County in writing no less than thirty (30) days prior to the expiration or adverse material change in coverage that results in noncompliance with the insurance requirements outlined herein. Notice shall be given to: Pinellas County, c/o Ebix BPO, PO Box 257, Portland, MI, 48875-0257; be sure to include your organization's unique identifier, which will be provided upon notice of award. Nothing contained herein shall absolve Contractor of this requirement to provide notice.

Should the Contractor, at any time, not maintain the insurance coverages required herein the County may terminate the Agreement, or at its sole discretion may purchase such coverages necessary for the protection of the County and charge the Contractor for such purchase. The County shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the County to purchase such insurance shall in no way be construed to be a waiver of any of its rights under the Agreement.

The following terms and/or conditions should apply:

- (1) The Named Insured on the Certificate of Insurance must match the entity's name that responded to the solicitation and/or is signing the agreement with the County.
- (2) Companies issuing the insurance policy, or policies, shall have no recourse against County for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Contractor.
- (3) The term "County" or "Pinellas County" shall include all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and Constitutional offices of County and individual members, employees thereof in their official capacities, and/or while acting on behalf of Pinellas County.



## Exhibit B Insurance Requirements

- (4) The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County or any such future coverage, or to County's Self-Insured Retentions of whatever nature.
- (5) All policies shall be written on a primary, non-contributory basis.
- (6) Any certificate of insurance evidencing coverage provided by a leasing company for either workers compensation or commercial general liability shall have a list of covered employees certified by the leasing company attached to the certificate of insurance. The County shall have the right, but not the obligation to determine that the contractor is only using employees named on such list to perform work for the County. Should employees not named be utilized by contractor, the County, at its option may stop work without penalty to the County until proof of coverage or removal of the employee by the contractor occurs, or alternatively find the contractor to be in default and take such other protective measures as necessary.
- (7) Commercial General Liability, Business Automobile Liability, and Worker's Compensation insurance policies shall include waivers of subrogation in favor of Pinellas County from both the Contractor and sub-contractor(s).

The insurance requirements for this Agreement, which shall remain in effect throughout its duration and for two (2) years beyond final acceptance for projects with a Completed Operations exposure, are as follows:

(A) Workers' Compensation Insurance

Limit	Florida Statutory
<b>Employers' Liability Limits</b>	
Per Employee	\$ 100,000
Per Employee Disease	\$ 100,000
Policy Limit Disease	\$ 500,000

- (B) Commercial General Liability Insurance including, but not limited to, Independent Contractor, Contractual Liability Premises/Operations, Products/Completed Operations and Personal Injury.

Limits	
Combined Single Limit Per Occurrence	\$ 1,000,000
Products/Completed Operations Aggregate	\$ 1,000,000
Personal Injury and Advertising Injury	\$ 1,000,000
General Aggregate	\$ 2,000,000

- (C) Business Automobile or Trucker's/Garage Liability Insurance covering owned, hired and non-owned vehicles. If the business does not own any vehicles, then evidence of Hired and Non-owned coverage is sufficient. Coverage shall be on an "occurrence" basis, such insurance to include coverage for loading and unloading hazards, unless Contractor can show that this coverage exists under the Commercial General Liability policy.

Limit	
Combined Single Limit Per Accident	\$ 1,000,000

## Exhibit B Insurance Requirements

- (D) Excess or Umbrella Liability Insurance excess of the primary coverage required , in paragraphs (A), (B), and (C) above:

### Limits

Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000

- (E) Bankers Professional Liability Insurance "All Risk" insuring agreement including Fiduciary Liability with at least minimum limits as follows. If "claims made" coverage is provided, "tail coverage" extending three (3) years beyond completion and acceptance of the project with proof of "tail coverage" to be submitted with the invoice for final payment. In lieu of "tail coverage", Proposer may submit annually to the County, for a three (3) year period, a current certificate of insurance providing "claims made" insurance with prior acts coverage in force with a retroactive date no later than commencement date of this contract.

### Limits

Each Occurrence or Claim	\$ 50,000,000
General Aggregate	\$ 50,000,000

For acceptance of Directors and Officers coverage included within another policy required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of Professional Liability and other coverage combined.

- (F) Cyber Risk Liability (Network Security/Privacy Liability) Insurance including Network Interruption for protection of private or confidential information whether electronic or non-electronic, network security and privacy; privacy against liability for system attacks, denial or loss of service, introduction, implantation or spread of malicious software code, security breach, unauthorized access and use; including regulatory action expenses; and per person notification and credit monitoring expenses for up to two million entities, with at least minimum limits as follows:

### Limits

Each Occurrence	\$ 5,000,000
General Aggregate	\$ 5,000,000

- (G) Crime/Fidelity/Financial Institution Insurance coverage shall include in-transit coverage and Client's Property coverages similar or equivalent to ISO form CR 04 01, either within the policy or by endorsement with at least minimum limits as follows:

### Limits

Each Occurrence	\$ 10,000,000
General Aggregate	\$ 10,000,000

If coverage is provided by Banks Fidelity Bond, Pinellas County must be named as a Joint Loss Payee.

- (H) Property Insurance Contractor will be responsible for all damage to its own property, equipment and/or materials.

## PINELLAS COUNTY RANKING

**RFP TITLE: Banking Services**

**RFP#: 134-0117-P (RM)**

<b>Company Name:</b>	<b>Point Total:</b>	<b>Ranking:</b>
Wells Fargo Bank, N.A.	866.50	1
Bank of America, N.A.	795.50	2
J.P. Morgan Chase Bank N.A.	776.00	3
Sun Trust Bank	753.50	4