



# FIFTH THIRD BANK

38 Fountain Square Plaza  
Cincinnati, Ohio 45263

## Master Treasury Management Agreement

This Master Treasury Management Agreement (“*MTMA*” or, in this document, this “*Agreement*”) is by and between the undersigned “*Customer*” and Fifth Third Bank (“*Bank*”) and is effective when and as of the later date executed by Bank as indicated on the Signature Page to this Agreement (the “*Effective Date*”). Unless defined in this Agreement, including in Section 26 below, capitalized terms shall have the meaning provided in the Online Channel Access Agreement or Commercial Account Rules, as applicable.

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April 2018





## SECTION 1. BANK SERVICES

**Section 1.1. Service Terms.** Customer desires to obtain, and Bank agrees to provide the Services as provided in this Agreement more specifically described and governed by the applicable Service Terms. In the event of a direct conflict between the Service Terms and this Agreement, the Service Terms will control, provided, however, that this Agreement, and in particular, Section 11 of this Agreement, will control in the event of such a conflict regarding Customer's indemnification obligations. If there is a conflict between this Agreement and the Commercial Account Rules, the provisions of this Agreement prevail to the extent necessary to resolve the conflict. Customer acknowledges and agrees that Bank may arrange for certain or all of the aspects of the Services, including software and processing to be performed or provided by a Processor and that Customer shall have no rights or remedies against any such Processor for the Services, but only against Bank. Bank's Processors are obligated to comply with the confidentiality, privacy and security requirements of this Agreement. Bank is solely liable and responsible for the aspects of the Service provided by its Processors to the same extent if Bank has performed or failed to perform the Service, and Customer agrees not to bring any claim or cause of action against a Provider and only against Bank.

**Section 1.2. Customer Use.** Customer may request a Service by any means Bank approves ("*Service Request*"). By using the Service, Customer acknowledges and agrees it has received a copy of the Service Terms for that Service, the Service Terms apply to Customer's use of the Service and the Service Terms are incorporated into, and made a part of, this Agreement. Any reference to this Agreement shall be deemed to include the applicable Service Terms. Neither party is bound by or subject to the Service Terms for any Service Customer does not use. Bank provides the Services for the sole and exclusive benefit of Customer, and if Bank approves in writing, Customer's Affiliates. Any Vendor used by Customer is Customer's agent and not Bank's, and Customer is liable and solely responsible for: (a) any Vendor's failure to comply with this Agreement including any Security Procedures or operating requirements relating to the Services; and (b) all fees, costs and expenses owed to each Vendor for its services.

**Section 1.3. Accounts.** Customer shall at all times have and maintain with Bank one or more Accounts for use in connection with a Service and maintain in such Account a sufficient collected balance to pay for Customer's use of, and transactions in, such Accounts, including fees and expenses payable to Bank. The Commercial Account Rules apply to your use of the Account in connection with a Service and together with this Agreement govern the Services.

## SECTION 2. ONLINE CHANNEL ACCESS AGREEMENT

Customer is required to enter into and maintain an Online Channel Access Agreement in effect between Customer and Bank in order to use and access the Services (the "OCA"). The OCA in effect from time to time governs the Access Channels and Channel Services (each as defined in the OCA) used to access the Services where applicable. The Channel Services available in connection with these Services include the ability to view and manage Account information, transmit Instructions, Payment Orders and





other directions and decisions to us and other online features as described in this Agreement or the Service Terms.

## **SECTION 3. CUSTOMER INFORMATION**

**Section 3.1. Service Information; Implementation.** Customer agrees to provide all information that Bank reasonably requires in order to set up and provide the Services to Customer. Customer (a) represents and warrants that all information provided or to be provided to Bank by Customer's representatives on the Implementation Forms or otherwise is true and correct, and (b) agrees to provide any additional information that Bank may be reasonably required to begin, or continue providing, the Services. Any changes by Customer to the information provided to Bank must be made in writing and will be effective after Bank has had a reasonable opportunity to act on the changed information.

**Section 3.2. Personnel.** Bank is entitled to rely upon the accuracy and authenticity of all Instructions, information and authorizations received from an officer or authorized employee or representative of Customer (an "Authorized Agent") and those purporting to be of an Authorized Agent. Customer agrees to notify Bank immediately of any change in the status of an Authorized Agent. Customer acknowledges that Bank may require a reasonable time period before Bank acts upon any such change. Customer agrees that Bank may refuse to comply with requests from any individual until Bank receives documentation reasonably satisfactory to Bank confirming the individual's authority.

## **SECTION 4. FEES AND TAXES**

Customer agrees to pay Bank the fees and charges for Services as provided to Customer in writing and in effect from time to time as billed by Bank, and fees and charges for any requested or required special service or handling (collectively, the "Fees"). Customer is responsible for all taxes attributable to its use of the Services or this Agreement (excluding taxes based on Bank employees, property or net income). Bank may periodically amend its Fees, however, such changes will not be effective against Customer until thirty (30) days after Customer has been notified of such changes in writing. Unless other arrangements are made for payment of the Fees, Bank will automatically debit an Account in the amount thereof when due.

## **SECTION 5. INSTRUCTIONS**

Each Instruction that is sent to Bank electronically in accordance with this Agreement including the applicable Service Terms shall be considered to be an original writing and to have been signed by an Authorized Agent. Customer is solely responsible for the accuracy and completeness of each Instruction or communication sent to Bank. Any communication Customer sends to Bank will not be effective until Bank actually receives it and has had a reasonable opportunity to act upon it.

## **SECTION 6. BANK REPRESENTATIONS AND WARRANTIES**

Bank represents and warrants to Customer that: (a) Bank is duly organized, validly existing, and in good standing in the jurisdiction in which Bank is organized; (b) the execution, delivery and performance by us





of this Agreement has been authorized by all necessary corporate and governmental action; (c) the persons signing this Agreement on Bank's behalf are duly authorized to do so; (d) this Agreement represents Bank's legal, valid and binding obligation; and (e) Bank's execution and performance of this Agreement and Bank's provision of the Services do not and will not violate any Applicable Law, Bank's articles of association or bylaws or any material agreement by which Bank is bound. EXCEPT AS EXPRESSLY SET FORTH ELSEWHERE IN THIS AGREEMENT OR IN THE APPLICABLE SERVICE TERMS, BANK MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO ANY SERVICE OR BANK'S PERFORMANCE OF THE SERVICES, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO DESCRIPTIONS OR SPECIFICATIONS CONSTITUTE REPRESENTATIONS OR WARRANTIES OF ANY KIND.

## **SECTION 7. CUSTOMER REPRESENTATIONS AND WARRANTIES**

Customer represents and warrants to Bank that: (a) Customer is duly organized, validly existing, and in good standing in the jurisdiction in which Customer is organized, and is validly qualified in any other jurisdiction where Customer does business and is required to be qualified except where the failure to be so qualified would not have a material adverse effect on Customer; (b) the execution, delivery and performance by Customer of this Agreement, the Related Agreements and Implementation Forms and the use of the Services have been authorized by all necessary entity and governmental action; (c) the persons signing this Agreement, the Related Agreements and Implementation Forms on Customer's behalf are duly authorized to do so; (d) this Agreement represents Customer's legal, valid and binding obligation; (e) the execution and performance of this Agreement and the use of the Services do not and will not violate in any material respect any Applicable Law, Customer's entity governing documents, or any material agreement by which Customer is bound; (f) each Account Customer maintains with Bank, and all use of the Services, is maintained or used solely for a legitimate business or commercial purpose and not a personal, family or household purpose, and (g) the use of the Services does not and will not subject Bank, or Bank's Processors, to the privacy and security requirements of the Health Insurance Portability and Accountability Act, as a business associate (defined at 45 CFR 160.103) or otherwise. Customer reaffirms these representations and warranties each time it uses a Service and agrees to promptly notify Bank if any representation or warranty made by Customer is no longer true.

## **SECTION 8. SECURITY PROCEDURES; OPERATING PROCEDURES**

**Section 8.1. Establishment.** Access to some Services requires the use of Security Procedures, including for Services obtained through an Access Channel and use of the applicable Credentials. The Security Procedures verify the origin and authenticity of Instructions and communications sent to Bank. Where permitted, Customer will select from the Security Procedures for a particular Service from those offered and recommended by Bank in the set-up process for that Service, and agrees to implement changes to the Security Procedures issued by Bank as needed. Customer agrees that such Security Procedures are commercially reasonable and suitable for Customer with respect to Customer's intended use of the applicable Services. The Security Procedures are not designed to detect errors in any Instruction to Bank.

**Section 8.2. Verification.** If Bank accepts and acts in good faith on a Payment Order issued to Bank in Customer's name and in accordance with the Security Procedures and any written agreement







between Customer and Bank, the Payment Order is effective as Customer's Payment Order whether or not it is authorized, and Customer is bound by it in accordance with Applicable Law and the terms of this Agreement, including the applicable Service Terms. Any other Instruction communicated to Bank in Customer's name in compliance with the Security Procedures and all access to and use of Services and Channel Services using the Security Procedures are considered authorized by Customer.

**Section 8.3. Funds Transfers.** In connection with the use of Bank's wire transfer, ACH and other electronic funds transfer Services, Bank recommends that Customer establish an approval protocol appropriate for Customer's particular circumstances (including the type, amount and frequency of such transactions) to prevent unauthorized transactions. If Customer does not establish and require adherence to an approval protocol for such funds transfers or if Customer selects a "no approval" option, Customer assumes the risks of all transactions that could have been prevented by requiring such protocol or approval. Funds transfers involving only internal electronic funds transfers between Accounts may not be subject to all of the Security Procedures required for external electronic funds transfers.

**Section 8.4. Credentials.** Access to some Services may require the use of certain Credentials. Proper use of the Credentials is part of the Security Procedures for these Services. The use of the Credentials is subject to any terms of use or license accompanying the Credentials as applicable, and may only be used as and where delivered to Customer and only for the purpose of accessing Services. The Credentials and the related technology, documentation and materials at all times remain the Bank's or its Processor's property.

**Section 8.5. Authority.** The Security Procedures are in addition to and do not limit, revoke or affect the authority of any person (whether by course of dealing or otherwise) to transmit Instructions in Customer's name. Bank may continue to rely upon such authority and Bank is authorized to act upon Instructions received from persons acting pursuant to such authority. Customer is bound by any authorized Payment Order or other Instruction, and by use of the Channel Services by authorized personnel.

**Section 8.6. Other Applications.** As part of to the Security Procedures, Bank applies software and other programs and processes ("*Additional Programs*") to select certain Instructions for further review and verification by Customer. The application of these Additional Programs may delay the processing of Instructions or other transactions until Bank obtains such verification. Bank will use reasonable efforts to obtain such verification, provided; that Customer understands and agrees that Bank has no obligation to use or comply with any such Additional Programs, and Customer agrees that these additional procedures are NOT a substitute for proper Account controls and management on its part.

**Section 8.7.** Bank is not responsible for its refusal to act upon or delay in processing any Instruction that does not comply with this Agreement or the applicable Service Terms, or as a result of its properly following the Security Procedures or applying Additional Programs.

**Section 8.8. Safeguarding the Security Procedures.** In addition to Customer's use of the Bank's Security Procedures, Customer agrees to (a) maintain the complete security and confidentiality of the Security Procedures, and (b) institute and use prudent internal security procedures and practices to control access to the Services and use of the Security Procedures. Customer's failure to protect the confidentiality of the Security Procedures may enable an unauthorized person to use the Services and





access Customer's Accounts and data. Customer must notify Bank immediately if there has been a breach of its security, or any Security Procedure has been lost, stolen, misused or compromised.

## **SECTION 9. COMPLIANCE**

This Agreement and the use and provision of Services are subject to all Applicable Law, rules, regulations and other laws, including without limitation, the UCC, and Operating Rules. Both parties agree to be bound by the Operating Rules where applicable and to comply with Applicable Law in using or providing the Services, as the case may be.

## **SECTION 10. LIMITATION OF LIABILITY**

CUSTOMER AGREES, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THAT IN ADDITION TO ANY OTHER LIMITATION ON BANK'S LIABILITY IN THIS AGREEMENT OR THE OCAA, IN NO EVENT WILL BANK (OR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, AFFILIATES, EMPLOYEES OR AGENTS) BE LIABLE OR RESPONSIBLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR SPECULATIVE LOSSES, EXPENSES, INJURY, COSTS OR DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, REVENUE, SAVINGS, TIME, DATA, GOODWILL AND OPPORTUNITIES, ATTORNEYS' FEES, AND COURT AND OTHER DISPUTE RESOLUTION COSTS) THAT CUSTOMER OR ANY OTHER PERSON MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, EVEN IF BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, COST OR DAMAGE AND REGARDLESS OF THE TYPE OF CLAIM.

Bank's liability to Customer arising from any Service or this Agreement will be limited to Customer's actual monetary damages that are the direct result of Bank's negligence or willful misconduct. Notwithstanding the foregoing, for Payment Orders which are governed and subject to UCC Article 4A, Bank is liable only for damages required to be paid under UCC Article 4A. In addition to the foregoing limitation, in the instance of any overbilling by Bank that is timely reported by Customer as required by this Agreement, Bank's liability shall not exceed the amount overbilled by and paid to Bank by Customer. In no instance shall Bank be responsible or liable for (a) any act or omission of Customer's officers, employees or agents, or of any third party (other than Bank's Processors), (b) any failure to act by Bank if Bank reasonably believed taking the omitted action would have violated Applicable Law, or (c) any interception of information relating to the Customer or its transactions as a result of Customer's use of the Internet or other Access Channel or the Channel Services that is not the result of Bank's gross negligence or willful misconduct.

## **SECTION 11. INDEMNIFICATION OBLIGATIONS**

**Section 11.1. Customer.** To the extent permitted by law, and without waiving any defense that is available to Customer, including that of sovereign immunity, Customer agrees to indemnify and hold Bank and its officers, directors, employees, affiliates, shareholders and agents harmless from and against any and all Losses resulting directly or indirectly from, or arising in connection with: (a) Customer's breach of any of Customer's agreements, representations, warranties or covenants in this Agreement, the Service Terms or any other Related Agreement; (b) Customer's violation of Applicable Law; or, (c) Customer's use of the Services and Bank complying with or carrying out any Instruction or other direction given to Bank in





accordance with this Agreement. Customer is not, however, obligated to indemnify Bank for any Losses directly resulting from Bank's gross negligence, willful misconduct, or bad faith. Bank acknowledges that Customer has represented that Kentucky law prohibits Customer from indemnifying another entity.

**Section 11.2. Bank.** To the fullest extent not prohibited by Applicable Law, Bank agrees to indemnify and defend at Bank's own expense or settle any action brought against Customer to the extent that it is based on a claim that Customer's use of a Service directly infringes a copyright, trademark or patent or constitutes misappropriation of a third-party trade secret, provided, however, that Customer: (a) promptly notifies Bank in writing of such claim; (b) has not made any admission of liability or agreed to any settlement or other material issue relating to such claim; (c) reasonably cooperates with Bank at Bank's expense in the defense or settlement; and (d) gives Bank sole control and authority over all aspects of the defense or settlement of such claim.

## **SECTION 12. BANK RECORDS.**

Bank records as to this Agreement and Related Agreements, Services and transactions using the Services shall be controlling in the event of any conflict with Customer's records. Customer authorizes Bank (but Bank is not obligated) to record electronically and retain telephone conversations between Customer and Bank. Imaging and electronic records will be retained by Bank, and copies of such records will be available at Customer's request and expense, until such records are disposed of in accordance with Bank's then current policies and procedures.

## **SECTION 13. CONFIDENTIALITY, PRIVACY AND SECURITY**

**Section 13.1. Customer.** Subject to Customer's duties under Applicable Law, Customer agrees to keep confidential and not disclose to any third party (other than its agents) Bank's fees and charges, Service Terms including User Guides, software, non-public Service features and other proprietary information and systems Bank and its Processors provide and disclose in connection with the Services. Customer acknowledges the exclusive ownership by Bank or its Processors of such information, and agrees to use such information solely for purposes of using the Services.

**Section 13.2. Bank.** Bank acknowledges that non-public information Bank obtains from Customer in connection with providing a Service to Customer may be confidential. Bank has implemented policies, procedures, and controls to safeguard Customer information in accordance with Applicable Law and regulatory guidelines.

## **SECTION 14. ACCOUNT MANAGEMENT**

**Section 14.1. Customer Information Review.** Customer is responsible for monitoring its use of Bank's Services and all activity in its Accounts with Bank including individual transactions. Information regarding transactions with the Services is reported on Customer's periodic Account statement and is also available with one or more Services. Customer agrees to: (a) regularly review the Account information that Bank makes available to Customer; (b) promptly review the Account statements that Bank sends to Customer; and (c) notify Bank as soon as reasonably possible of any error, unauthorized transaction or other similar matter but, in any case, not more than thirty (30) calendar days after the information is so





made available or sent to Customer (90 days in the case of information relating to Bank fees). If Customer fails to notify Bank of any such error or other similar manner within such 30 or 90-day period, as applicable, of the date on which such information is sent by Bank or otherwise made available to Customer, then Customer shall be precluded from asserting such error or discrepancy against the Bank. Notwithstanding the forgoing, Bank reserves the right to, in its sole discretion, adjust transaction records for good cause after the expiration of such time periods.

**Section 14.2. Loss Prevention.** Bank offers a variety of Services and other tools designed to assist Customer in reducing or stopping the incidence of fraud and unauthorized activity in Customer's Accounts including positive pay, ACH transaction control, disbursement control, information reporting and Account Management Services. To the extent Customer chooses not to use one of these Services or features or implement Customer Measures, and the proper use of that Service or Customer Measure could reasonably have prevented a Loss due to the incidence of fraud, or unauthorized activity, Customer shall hold the bank harmless for the amount of such Losses that could have been reasonably prevented.

**Section 14.3. Account Information.** Depending upon the Service features that Customer selects, Customer will have access to Account and transaction information on a prior day or intraday basis, or both. Account information changes frequently and is subject to updating, verification and correction. Bank assumes no responsibility for Customer's reliance on any Account or Service information reported on an intraday or prior day basis subsequently updated, verified or corrected.

## **SECTION 15. OVERDRAFTS**

Bank may delay or refuse to process any item, transaction or Instruction including applicable fees or charges that would result in an Overdraft (as defined in the Commercial Account Rules) in Customer's Account. Bank processes Items and other debits to Customer's Account in the order described in the Commercial Account Rules provided to Customer governing the Customer's Accounts with Bank. If Bank decides in its discretion to process an item, transaction or Instruction despite the Overdraft, Customer agrees to reimburse Bank immediately for: (a) the full amount of any Overdraft or shortfall created by that item, transaction or Instruction; (b) all Overdraft fees and charges; (c) interest on the amount of the Overdraft or shortfall for the day the Overdraft or shortfall was created and for each following day until the Overdraft or shortfall has been paid; and (d) all Losses Bank incurs in collecting from Customer the Overdraft, or any fees, charges or interest relating to it.

## **SECTION 16. TRANSACTION LIMITS**

If Bank in good faith determines that: (a) providing any Service to Customer could reasonably be expected to result in a violation of any Applicable Law or a material loss to Bank, (b) Bank is entitled to terminate the applicable Service under the "Termination" section of this Agreement (with or without the lapse of time or notice), or (c) Customer is in default under this Agreement or any Related Agreement, Bank may limit Customer's transaction volume or dollar amounts, refuse to execute transactions, or terminate that Service to Customer. In addition, Bank may restrict or limit the types of Instructions Customer may send to Bank for processing or execution. Bank will, to the extent not restricted by Applicable Law, promptly communicate decisions regarding such restrictions to Customer. Bank reserves the right to limit transaction volume or dollar amounts in any other circumstances, provided Bank gives Customer prior notice of any material limitation or decrease in previously communicated limitations. Customer agrees to







provide Bank, upon its request from time to time, with such financial information and statements and other documentation as Bank reasonably determines to be necessary or appropriate to enable Bank to evaluate its exposure or risk.

## **SECTION 17. BANK RIGHT OF SETOFF; SECURITY INTEREST**

Bank has the right to obtain payment of any unpaid amount owed to Bank under this Agreement or any Related Agreement by setting off and debiting any of Customer's Accounts or accounts with any of Bank's affiliates at any time (excluding any Account expressly titled to clearly demonstrate that the Account is held by Customer in a fiduciary or representative capacity for a third party such as, for example, a custodial Account) for the amount owed. Bank's rights are limited to the extent of limitations and restrictions imposed by Applicable Law. Customer grants to Bank a first priority security interest in all Accounts held by Customer now or in the future with Bank or any of Bank's affiliates to secure payment of any and all obligations under the Agreement; provided that this security interest shall be subordinate to any security interest separately agreed to in writing by Bank.

## **SECTION 18. FORCE MAJEURE**

Neither party shall be responsible, and neither shall incur any liability to the other, for any failure, error, malfunction or any delay in carrying out any of its obligations under this Agreement directly resulting from causes beyond such party's reasonable control, including without limitation, fire, casualty, lockout, strike, unavoidable accident, failure of networks, the Internet or telecommunications systems, act of God, act of terrorism, riot, war or the enactment, issuance or operation of any adverse governmental law, ruling, regulation, order or decree, or an emergency that prevents such party from operating normally; provided, however, that Customer shall not be relieved of its responsibility for timely performance of any of its payment obligations to Bank.

## **SECTION 19. TERM AND TERMINATION**

**Section 19.1.Term.** This Agreement shall remain in full force and effect until terminated by either party as provided in this Agreement. Either party may terminate this Agreement or any Service at any time by giving thirty (30) days' prior written notice of termination to the other party.

**Section 19.2.Bank.** Bank may terminate this Agreement or terminate or suspend any Service immediately upon notice to Customer if: (a) Customer breaches a material obligation under this Agreement or Related Agreement, violated any Applicable Law or the Operating Rules in connection with the Services or any Related Agreement; (b) Customer becomes insolvent, is placed in receivership or is adjudicated bankrupt or Customer becomes subject to any voluntary or involuntary bankruptcy proceeding or any assignment for the benefit of its creditors; (c) Customer's financial condition has become materially impaired in Bank's good faith opinion that Customer is likely to be unable to perform its material obligations to Bank; (d) any person or group acting in concert that is not a controlling stockholder of Customer on the date of this Agreement acquires, directly or indirectly (whether by merger, stock purchase or issuance, recapitalization, reorganization or otherwise), a majority of Customer's outstanding equity interests; or (e) the continued provision of Services in accordance with the terms of this Agreement would,





in Bank's good faith opinion, violate Applicable Law or any requirement of any regulatory authority or subject Bank to an unacceptable risk of loss or material security risk.

**Section 19.3.Effect.** Upon any termination of this Agreement, Customer shall: (a) promptly pay to Bank all sums due or to become due under this Agreement; (b) securely destroy or immediately return (if required by the Service Terms) to Bank at Customer's expense, the Security Procedures (if applicable), and all related Implementation Materials, and all copies and reproductions thereof, whether written or in magnetic media and whether received from Bank or otherwise; and (c) have no further right to make use of the Services.

**Section 19.4.Survival.** Termination of a Service or this Agreement does not relieve or excuse Customer's payment obligations for any Services that Bank provides to Customer before or after the Service or this Agreement is terminated, nor does it release Customer or Bank from any of Bank's respective obligations that arose or became effective prior to such termination. In addition, all provisions of this Agreement relating to the parties' warranties, representations, confidentiality or non-disclosure obligations, proprietary rights, limitation of liability and indemnification shall survive the termination of a Service or this Agreement.

## **SECTION 20. ENTIRE AGREEMENT**

This Agreement, together with any Related Agreements constitutes the complete and exclusive statement of the agreement between the parties with respect to the Services and supersedes any prior or contemporaneous agreements between the parties with respect to such Services. Nothing in this Agreement confers a right or benefit on any person or entity other than Bank and Customer.

## **SECTION 21. AMENDMENT**

**Section 21.1.Generally.** This Agreement, including the Service Terms, may be modified by a written agreement executed and signed by the parties. Bank may, however, modify this Agreement, including the Service Terms, by giving Customer thirty (30) calendar days' prior written notice. If Customer continues to use any Service or the affected Service, as the case may be, after the expiration of the thirty-day period or a later effective date specified in such notice, Customer is bound by the Agreement or Service Terms as the case may be, as so modified.

**Section 21.2.Regulatory.** Notwithstanding the foregoing, if a modification to this Agreement or the Service Terms is required by or under Applicable Law or by a regulatory authority with jurisdiction over Bank, Bank may modify this Agreement or the Service Terms by giving Customer notice of the modification by any means permitted by Applicable Law, and the modification will be effective immediately upon Bank giving such notice.

## **SECTION 22. ASSIGNMENT**

Customer may not sell, assign or transfer, or grant a security interest in any of its rights or obligations under this Agreement without Bank's prior written consent. Bank may assign its rights and obligations under this Agreement in whole or in part without Customer's consent (a) pursuant to, or in connection with





any merger, consolidation or amalgamation involving Bank or its parent company, or the sale or transfer of all or substantially all of Bank's assets or stock, or (b) in connection with the sale or other disposition involving a line of Bank's business to which this Agreement relates. Bank will use reasonable efforts to notify Customer of any such assignment. Customer expressly reserves its right to terminate any or all Services in the event of any such transaction.

## **SECTION 23. GOVERNING LAW; VENUE**

This Agreement and any claims or disputes relating to or arising out of this Agreement or the Service shall exclusively be governed by, and construed in accordance with, the laws of the State of Kentucky, without regard to Kentucky's conflict of law principles, and with applicable federal laws and regulations. Customer irrevocably submits to the nonexclusive jurisdiction of the courts of the state and federal courts located in Fayette County, Kentucky and agrees that any legal action or proceeding brought by Bank against Customer with respect to this Agreement may be commenced in such courts. Bank irrevocably submits to the nonexclusive jurisdiction of the courts of the state and federal courts located in Hamilton County, Ohio and agrees that any legal action or proceeding brought by Customer against Bank with respect to this Agreement shall be commenced in such courts.

## **SECTION 24. MISCELLANEOUS**

**Section 24.1.No Extension of Credit.** Except as expressly provided in the applicable Service Terms, nothing in this Agreement or any Related Agreement requires Bank to extend any credit of any type (including, but not limited to any Overdraft), even if Bank has done so in the past.

**Section 24.2.Notices.** Except as otherwise specifically provided in the Service Terms, including the Implementation Materials with respect to a particular Service, notices under this Agreement shall be provided in writing by nationally recognized overnight courier, hand delivery or email. The Bank also reserves the right to provide notice to Customer electronically via email or posting to the Bank's online platform, each of which Customer agrees will be considered "*in writing*." The address for notices to Customer will be the address the Bank has in its records with respect to this Agreement or the particular Service, as applicable. The address for notices to Bank will be as the Bank specifies to Customer in writing, including in the Implementation Materials. Notices shall be deemed effective: (i) when received, if sent by overnight courier or hand delivery; (ii) three (3) days after sending, if sent by U.S. Mail; or (iii) when sent or posted, if provided via email or posting to the Bank's online platform.

Notwithstanding any terms in this Section to the contrary, any addition, deletion or change to any Services or Service Terms requested by Customer (each, a "*Change Request*") must be submitted in a form acceptable to the Bank. No Change Request will become operative or effective until the Bank has had an opportunity to review and respond to such Change Request, which the Bank agrees to do within a reasonable period of time.

**Section 24.3.Information and Audit.** In order for Bank to comply with its obligations under Applicable Law and the Operating Rules, upon Bank's request Customer agrees to: (i) provide the records Customer maintains with respect to Customer's use of Services as required by Applicable Law, the Operating Rules, and this Agreement, (ii) provide internal and external audit reports relating to Customer's use of the Services and Customer's information technology infrastructure and operational processes and





procedures, and (iii) permit the Bank (including its regulators and auditors) reasonable access during normal business hours to audit Customer's (including Customer's Vendors) compliance with the terms of this Agreement, Applicable Law and the Operating Rules.

**Section 24.4. Counterparts.** The Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument.

**Section 24.5. Severability.** If performance of Services in accordance with the terms of this Agreement would result in a violation of any Applicable Law, then this Agreement and any Related Agreement shall be deemed amended to the degree necessary to comply with such Applicable Law, and Bank shall incur no liability to Customer as a result of such violation or amendment. If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision shall be valid, legal and enforceable to the maximum extent permitted by such holding and the validity, legality, or enforceability of the other provisions of this Agreement will not be affected or impaired by such holding.

**Section 24.6. Headings.** Headings are for reference purposes only and are not part of this Agreement.

**Section 24.7. Waiver.** No party's failure or delay in exercising any right or remedy under this Agreement will operate as a waiver of such right or remedy, nor shall any waiver by either party of any breach of the other party's obligations under this Agreement operate as a waiver of any prior, current or subsequent breach. No waiver will be effective unless made in writing.

**Section 24.8. Electronic Execution and Consent.** The parties agree that this Agreement, the Related Agreements and any Service Terms are entered into on an interstate basis and agree that the Agreement and Services are subject to the Electronic Signatures in Global and National Commerce Act and may be executed and delivered by facsimile, electronic mail in PDF or similar format or other electronic method and that the copies or counterpart signature pages so sent shall be treated and have the same force and effect as delivery of an original with a manual signature. Customer agrees and consents that Bank may, at its option, send to Customer any record, notice, disclosure, account statements and other information via electronic means (including through a Channel Service), including information that Bank is required by Applicable Law to provide to Customer in writing. Electronic communication methods include methods Bank employs that deliver visual text or images to be displayed on a computer or mobile device screen (such as e-mail, SMS or other mobile phone text, and posting through a Channel Service). Customer consents to receive account statements and other notices from Bank electronically. Bank may, however, require that Customer deliver an original of this Agreement and any Related Agreement with a manual original signature.

## **SECTION 25. AFFILIATES**

**Section 25.1. Joinder.** By executing this Agreement, Customer, each "Affiliate" of Customer listed below (if any), and Bank agrees that each such Affiliate shall have all of the rights and obligations of, and shall for all purposes be a party under this Agreement as a "Customer." Additional Affiliates can be added through an addendum to this Agreement in the form required by Bank and executed by Customer and Bank.







**Section 25.2. Affiliate Representation, Warranty and Covenant.** An “Affiliate” of Customer is any entity that is directly or indirectly controlled by the Customer indicated on the Signature Page (for purposes of this Section, the “Initial Customer”) through ownership of at least a majority of the equity interests of, or holding voting control over, such entity. Initial Customer represents, warrants and covenants to Bank that (a) each entity signing this Agreement as an Affiliate meets the definition of Affiliate and shall continue to meet such definition as long as the entity receives or uses the Services, (b) the individual signing on behalf of the Initial Customer is duly authorized to execute this Agreement on behalf of each Affiliate, and (c) that each Affiliate hereby agrees to be bound by the terms of this Agreement for the use of the Services.

**Section 25.3. Role of Initial Customer; Responsibility.** Each Affiliate hereby authorizes Initial Customer, and Bank may rely on Initial Customer’s authority, to act as agent for such Affiliate in connection with any and all matters relating to the Agreement, including, without limitation, administering the Services and originating transactions (i.e., ACH, wire or check), executing Implementation Materials, terminating the Agreement, agreeing to modifications and amendments to the Agreement, adding new Affiliates, and receiving notices under the Agreement (which will be effective against the Customer, even if such notices and communications are sent only to Initial Customer); any and all such actions by the Initial Customer shall be binding on the Affiliates. Each Affiliate agrees that it is responsible for the payment of fees or maintenance of required balances for the Services that it receives from Bank, and for all obligations and liabilities it incurs.

**Section 25.4. Single Channel Access.** Initial Customer and any Affiliate acknowledge and agree that the Security Procedures provided by Bank to the Initial Customer shall be used to use the Services. As such, each Customer acknowledges and agrees that (a) Bank may rely on and act on any and all communications and Instructions it receives through a Access Channel using the Security Procedures assigned to the Initial Customer and Bank’s reliance shall not constitute negligence or willful misconduct or bad faith, (b) each Customer shall be bound by such use of the Services and any Instructions (including funds transfers) and liable for any transactions debiting the Account of the Affiliate, and (c) Bank shall have no liability or responsibility for notifying any Affiliate with which Initial Customer shares its Security Procedures. Each Affiliate and Initial Customer understands and agrees that use of the Services and any transactions affecting each Affiliate’s Accounts may be reflected on the records of Bank as initiated by the Initial Customer.

**Section 25.5. Guarantee.** Initial Customer unconditionally and irrevocably guarantees to Bank the full and prompt payment and performance by each Affiliate of all obligations they or any of them may incur under this Agreement, including obligation for fees and charges, indemnification obligations, in any case that any payment to Bank by an Affiliate is set aside, rescinded or otherwise required to be returned in any bankruptcy or similar proceeding. Initial Customer agrees to pay any and all such amounts upon demand by Bank.

## **SECTION 26. DEFINITIONS**

**“Account” or “Accounts”** means one or more commercial demand deposit accounts at Bank that is maintained or controlled by Customer.





**“Affiliate”** means any entity that is directly or indirectly controlled by Customer through ownership of at least a majority of the equity interests of, or holding voting control over such entity.

**“Applicable Law”** means all applicable federal and state laws, rules and regulations as in effect from time to time governing or relating to the Agreement or the Services, including, without limitation, the Operating Rules and the rules of any funds transfer system, and the rules of, and regulations administered by, the Office of Foreign Assets Control of the U.S. Treasury Department.

**“Business Day”** means any day other than a Saturday, Sunday, holiday or other day on which the Bank is not required or permitted to be closed.

**“Commercial Account Rules”** means the agreement provided to Customer and governing Customer’s Accounts.

**“Credentials”** means the user name, personal identification numbers, identification codes, passwords and other identifying and authentication inputs, security token or authentication device, equipment or software that the Customer uses to access the Services.

**“Cutoff Time”** means the time on any Business Day when Bank will no longer accept Instructions or process transactions (including Payment Orders) for that Business day and any such Instructions received after such time, if accepted, and transactions processed on that day will be processed as of the next Business Day.

**“Implementation Materials”** means any documents that facilitate the use of a service, specifications, set-up and sign-up forms provided by Bank, and those completed and submitted by Customer, including electronically.

**“Instruction”** means a Payment Order, other wire transfer instruction, ACH Entry, (as defined in the Operating Rules), file, batch release and other message or instruction or direction to Bank.

**“Losses”** means any and all claims, actions, demands, losses, damages, judgments, liabilities, costs and expenses (including, without limitation, reasonable attorneys’ fees and court costs) and all costs of settlement of claims.

**“Operating Rules”** means the rules, regulations and operating guidelines of the National Automated Clearinghouse Association and those of any regional clearinghouse, payment card association (e.g., MasterCard Incorporated.), or payment network (e.g., ECCHO) in effect from time to time used by Bank to provide the Services.

**“Payment Order”** has the meaning ascribed thereto in Article 4A of the UCC.

**“Processors”** means any third-party processors engaged by Bank to provide any part of the Services.

**“Related Agreements”** means the Service Terms, Service Requests, Account Rules, Account fees and charges, the OCAA, and any resolution or other document establishing Customer’s authority to





engage in the Services and open Accounts with Bank and appoint individuals as Authorized Representatives.

**“Security Procedures”** means the Credentials, call-back protocols, and other systems or procedures provided by Bank or its Processors for authenticating Instructions, transactions and use of the Services.

**“Service Terms”** means the terms and conditions for the Services provided by Bank to Customer under this Agreement, including the Treasury Management Services Terms & Conditions Book available at [53.com/tm-tc](http://53.com/tm-tc) and any Implementation Materials or otherwise incorporated herein.

**“Services”** means the treasury management services described in this Agreement, the OCAA and the Service Terms or otherwise incorporated herein.

**“UCC”** or **“Uniform Commercial Code”** means the Uniform Commercial Code, as enacted in the State of Ohio.

**“Vendor”** means any third-party service provider used by Customer in connection with the Services or to whom Customer give access to any Service, including through an Access Channel or the Channel Services.

[Signature Page Immediately Follows]





In Witness, Whereof, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

**CUSTOMER NAME:**

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**

Tax ID: \_\_\_\_\_

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

Print name: \_\_\_\_\_

Print title: \_\_\_\_\_

**NOTE: If required by resolution, second officer of Customer must sign below:**

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

Print name: \_\_\_\_\_

Print title: \_\_\_\_\_

**Signing as a duly authorized officer or agent of each of the Affiliates listed below:**

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

Print name: \_\_\_\_\_

Print title: \_\_\_\_\_

This Agreement includes the following Affiliates:

**Affiliate Name:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FIFTH THIRD BANK:**

Timothy P Sprague

Print name: Timothy P Sprague

Print title: Two/VP

Date: 9/13/2019

**Tax ID No.:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

