



# Staff Report

**TO:** Board of Directors

**FROM:** Jennifer Hanson, General manager

**DATE:** May 25, 2022

**SUBJECT: Amendment to Master Agreement Between District and Wells Fargo (Consent)**

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## *ADMINISTRATION*

### **RECOMMENDATION:**

Approve Amendment to Master Agreement for Treasury Management Services between the Nevada Irrigation District (District) and Wells Fargo, and authorize the General Manager to execute the appropriate documents..

### **BACKGROUND:**

In March 2019, the Board authorized the District to change banking service providers from Well Fargo Bank to Tri-Counties Bank. It is staff's understanding that this decision was based on Board concerns surrounding turmoil that was being experienced by Wells Fargo Bank on a national level. The District entered into a contractual agreement with Tri-Counties Bank in March 2019 for all routine banking services (please note that the District does utilize other banks for investments, fiscal agent funds and some small amount of reserved funds).

Banking transitions for large public agencies are time consuming and complex due to the large number of transactions that occur, and the high level of controls needed in the banking interface system. A typical banking transition includes multiple phases where one area of business is transitioned at a time. For example, utility billing, payroll, accounts payable and accounts receivables would all be transitioned at separate times. At the beginning of the transition to Tri-Counties Bank, it became very apparent that Tri-Counties Bank did not have a sufficient user interface to meet the accounting and reporting requirements of the District.

As such, it was then determined by the District to solicit service proposals from more banks to select another bank to transition to. Based on the selection process,

the District decided to transition from Tri-Counties Bank to Bank of the West. This transition began in March 2020.

All functions, except for payroll, have been transitioned to Bank of the West. Since staff has been utilizing Bank of the West, several major issues have become apparent (summarized below):

- Bank of the West does not have a sophisticated user interface; and as such, complex steps are required for staff to complete daily treasury reporting activities.
- Bank of the West has had a less than acceptable level of customer service.
- Bank of the West does not have many of the automatic notification processes that allow the District to more timely monitor for fraud.
- Bank of the West does not have the ability to separate transactions by sub-account, which creates an increased number of manual calculations in order to ensure transactions are recorded to the appropriate fund and account.
- Bank of the West does not have the level of controls needed for fraud protection and routine security.

Since the banking transition was not entirely completed, staff has still been working with the Wells Fargo Banking system and has determined that it is superior in many ways to Bank of the West. Areas of greater benefit are summarized below:

- Superior reporting interface.
- Superior Customer Service. Wells Fargo provides the District a much higher level of customer service and provides direct lines of contact that staff may utilize for urgent matters.
- Superior controls incorporated into user interface that result in a higher degree of fraud protection.
- Superior accounting functions related that improve reconciliations and allow for transactions to be accounted for at the subaccount level.

**FINDINGS AND ANALYSIS:**

Based on the reasons noted above, staff has determined that it is in the District's best interest to discontinue the transition to Bank of the West and return all banking functions to Wells Fargo. Although this will create additional work for staff, staff that routinely utilize the banking system unanimously agreed that the additional work required does not outweigh the benefit of returning all banking transactions back to Wells Fargo. The resulting efficiencies will save the District money in the long-term.

In consideration of the fact that Bank of the West does have a lower fee structure, staff negotiated with Wells Fargo to obtain a fee reduction. Based on this negotiation, Wells Fargo reduced their fee by about a third. Annual fees paid are based on several factors including number of transactions, type of transactions, and account balances; and as such, fluctuate year to year. The attached

Amendment to Master Agreement for Treasury Services (attached) includes the proposed fee schedule and provides an analysis of the reduction, when compared to the current agreement that the District has with Well Fargo.

Since the District did not fully complete the transition to Bank of the West, there is still an active agreement between the District and Wells Fargo. The Wells Fargo fee schedule provides for a minimum balance that is required to offset current monthly analyzed charges. This balance fluctuates month based on the month's volume of transactions, services, earnings credit rate and pricing.

The typical balance required to completely offset fees is estimated to be around \$14 million, which is more money than is typically retained in the District's bank account. Staff does take into consideration fees, minimum balance requirements, cash flow needs and potential investment revenue when determining whether monies will be held in the District's regular bank account, the Local Agency Investment Fund, or invested on the market. It is anticipated that banking fees will cost the district \$20,000 annually which will be paid for proportionally by each major fund based on volume of transaction.

The Amendment to Master Agreement for Treasury Services includes a term of three years that commences on June 1, 2022 and expires on May 31, 2025. The agreement also allows for three additional one-year extensions. During the course of the term, the fee structure is locked unless there is a material decrease in service usage volume.

**FISCAL IMPACT:**

The proposed action does not require an amendment to the 2022 Annual Budget. Banking fees were incorporated into the original budget.

Attachments: (1)

- Amendment to Master Agreement for Treasury Services

# Amendment to Master Agreement for Treasury Management Services

Treasury Management Services

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## Introduction

This Amendment supplements and modifies the Master Agreement for Treasury Management Services (“Master Agreement”) for Nevada Irrigation District. “You,” “your” or “yours” refers to the customer identified in the immediately preceding sentence. The terms “we,” “us,” or “our” refer to the Bank. Capitalized terms used but not defined in this Amendment are defined in the Master Agreement. This Amendment constitutes part of the Service Documentation as defined in the Master Agreement. If there is a conflict between this Amendment and the Master Agreement or other Service Documentation, this Amendment will control. Except as expressly modified by this Amendment, all terms and provisions of Master Agreement and Service Documentation will continue to apply with full force and effect.

## Amendment

We agree that the Master Agreement governing our relationship with you is amended as follows:

1. The following text is added at the end of Section 3 of the Master Agreement (titled “**Changes to services**”):

“Notwithstanding the immediately preceding paragraph, through the Initial Term End Date (as defined below) Bank will not change the fees for Services reflected on Attachment A, except:

- in order to reflect the impact of any change in Applicable Law;
- in the event your Service usage volume is materially lower than that reflected on Attachment A;
- for changes to Bank’s pricing methodology for Services, including element IDs associated with a Service, so long as the change does not increase the total price of the Services to you (unless permitted under one of the two immediately preceding bullet points).

If you implement additional Services not described on Attachment A prior to the Initial Term End Date, the fees for such additional Services will be as disclosed to you in connection with the implementation of such additional Services.”

2. The following text is added at the beginning of Section 4 (titled “**Term and termination**”) as a new first sentence:

“Subject to the termination provisions below, the initial term of this Agreement will commence on June 1, 2022 and expire on May 31, 2025 (“Initial Term End Date”), and this Agreement may be extended for not more than three additional one-year extension terms by your and our mutual consent.”

3. The text of Section 12 (titled “**Governing Law**”) is deleted in its entirety and replaced with the following:

“**Governing law.** The Service Documentation will be governed by: (a) U.S. federal law and (b) the law of Nevada, without reference to its principles of conflicts of laws (“Governing Law”).”

4. The text of Section 14 (titled “**Jurisdiction**”) is deleted in its entirety and replaced with the following:

“**Jurisdiction.** For any proceedings regarding this Agreement (other than a proceeding subject to arbitration), you and we each hereby irrevocably submits to the jurisdiction of the courts of Nevada or the federal courts located there and irrevocably agrees that all claims relating to the proceeding may be heard or determined in those courts.”

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

**Nevada Irrigation District**

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

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

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

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

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

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

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

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

Attachment A  
Pricing for Specified Treasury Management Services  
See Attached

# Treasury Management Pricing Estimate Summary

Prepared for:

## Nevada Irrigation District

Pricing as of November 2021

	<b>Monthly Analyzed Charges</b>	<b>Net Earnings Allowance</b>	<b>Net Excess/ (Deficit)</b>
<b>Current Pricing - August 2019</b> - Avg. Collected Balance = \$2,528,648.28 - Earnings Credit Rate = 0.40%	<b>(4,439.06)</b>	<b>859.05</b>	<b>(3,580.01)</b>
<b>New Contract Pricing</b> - Avg. Collected Balance = \$2,528,648.28 - Earnings Credit Rate = 0.25%	<b>(2,822.25)</b>	<b>519.59</b>	<b>(2,302.66)</b>





# Treasury Management Pro Forma

Nevada Irrigation District

Pricing as of November 2021

## ANALYSIS SUMMARY

Average Positive Collected Balance	\$	2,528,648.28
Investable Balance Available for Services	=	2,528,648.28
Earnings Allowance @ 0.25%	\$	519.59
Current Monthly Analyzed Charges	-	2,822.25
Current Monthly Position	=	(2,302.66)
Net Shortfall Due	\$	2,302.66

Total Amount Due	\$	2,302.66
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Investable balance required to offset \$1.00 of analyzed charges	\$	4,866.67
Balance required to offset current month analyzed charges.	\$	14,194,886.50

Note: Balance required can vary monthly based on the month's volume, services, earnings credit rate and pricing

## SERVICE DETAILS

WF Code	AFP Code	Service Description	Unit Price	Volume	Service Charges
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### BALANCE & COMPENSATION INFORMATION

IAMTH	000230	RECOUPMENT MONTHLY	0.12750	2,595	330.86
CK905	000321	ACCOUNT ANALYSIS-CREDIT ADJUSTMENT	1.00000	(94.51)	(94.51)
<b>BALANCE &amp; COMPENSATION INFORMATION Subtotal</b>					<b>236.35</b>

### GENERAL ACCOUNT SERVICES

22051	010000	ACCT MAINTENANCE	10.00000	2	20.00
DS585	010021	SUBACCOUNT MAINTENANCE	10.00000	5	50.00
DS001	010021	ZERO BALANCE MONTHLY BASE	10.00000	1	10.00
CK021	010100	DEBITS POSTED	0.10000	83	8.30
<b>GENERAL ACCOUNT SERVICES Subtotal</b>					<b>88.30</b>

### LOCKBOX SERVICES

ED515	059999	E-BOX PAYMENT RETURN	0.35000	1	0.35
ED516	059999	E-BOX PAYMENT REVERSED	0.10000	1	0.10
ED500	050030	E-BOX MONTHLY MAINT (W/CROSS REF)	76.00000	1	76.00
ED470	059999	E-BOX PAYMENT	0.06000	4,794	287.64
ED521	050030	E-BOX REPORTING PACKAGE MTHLY BASE	30.00000	1	30.00
ED524	050030	E-BOX REVERSAL REPORTING MTHLY BASE	5.00000	1	5.00
<b>LOCKBOX SERVICES Subtotal</b>					<b>399.09</b>

### DEPOSITORY SERVICES

CK161	100006	CASH DEPOSITED IN WF BRANCH	0.00250	40,680	101.70
CK197	100040	CASH ORDER FEE IN A WF BRANCH	8.00000	1	8.00
CK131	100040	ROLLED COIN FURNISHED BY WF BRANCH	0.50000	48	24.00
CK141	100040	CURRENCY FURNISHED BY WF BRANCH	0.00250	502	1.26
CK062	100416	CEO RETURN ITEM RETRIEVAL-IMAGE	1.00000	24	24.00
CK064	100416	CEO RETURN ITEM SERVICE MTHLY BASE	0.00000	5	0.00
CK061	100400	RETURN ITEM - CHARGEBACK	6.00000	12	72.00
08052	100006	BRANCH DEPOSIT	3.00000	20	60.00
002	100225	DEPOSITED CHECK	0.10000	7	0.70

741	100220	WF ELEC DEPOSIT-DEPOSITED ITEM ONUS	0.06000	1,745	104.70
746	100224	WF ELEC DEPOSIT-DEPOSITED ITEM	0.10000	6,560	656.00
790	100230	ELECTRONIC DEPOSIT - DEP ADJUSTMENT	14.00000	2	28.00
<b>DEPOSITORY SERVICES Subtotal</b>					<b>1,080.36</b>

**PAPER DISBURSEMENT SERVICES**

22030	150412	STOP PAYMENT - AUTO RENEWAL	3.00000	2	6.00
12812	151352	CEO IMAGE VIEW < 90 DAYS - ITEM	1.00000	2	2.00
12815	151352	CEO IMAGE VIEW > 90 DAYS - ITEM	2.50000	2	5.00
12670	150410	STOP PAYMENT - ONLINE	5.00000	1	5.00
22202	150100	DDA CHECKS PAID	0.10000	420	42.00
<b>PAPER DISBURSEMENT SERVICES Subtotal</b>					<b>60.00</b>

**GENERAL ACH SERVICES**

CK018	250201	ELECTRONIC CREDITS POSTED	0.10000	122	12.20
34342	250400	ACH CEO RETURN SUBSCRIPTION - ITEM	0.10000	53	5.30
34340	250400	ACH CEO RETURN SUBSCRIPTION-ACCOUNT	15.00000	2	30.00
ES280	250000	ACH MONTHLY BASE	75.00000	2	150.00
ES211	250102	ACH FUTURE DATED ITEM	0.10000	2,801	280.10
ES349	250220	ACH RECEIVED ADDENDA	0.03000	0	0.00
ES344	250202	ACH RECEIVED ITEM	0.10000	82	8.20
06505	250302	ACH RETURN ADMIN -ELECTRONIC	1.00000	5	5.00
06502	250302	ACH RETURN ITEM-ELECTRONIC	1.00000	8	8.00
ES801	250501	ACH TRANSMISSION CHARGE	5.00000	5	25.00
ES802	250501	ACH TRANSMISSION SPECIAL	5.00000	2	10.00
06525	250302	ACH NOC - ELECTRONIC	6.50000	1	6.50
34285	250703	CEO ACH HYP ITM DET INQ - PER ITEM	0.50000	54	27.00
<b>GENERAL ACH SERVICES Subtotal</b>					<b>567.30</b>

**EDI PAYMENT SERVICES**

28315	300200	E-BOX PER TRANSMISSION FEE	15.00000	0	0.00
28006	300200	REC MGR OR E-BOX TRANSMISSION	5.00000	22	110.00
28019	300010	RECEIVABLES MANAGER MONTHLY BASE	100.00000	1	100.00
<b>EDI PAYMENT SERVICES Subtotal</b>					<b>210.00</b>

**INFORMATION SERVICES**

34123	40022Z	CEO ALERTS SERVICE - EMAIL	0.10000	68	6.80
34115	400271	CEO PREV DAY REPORTING ITEMS LOADED	0.05000	681	34.05
34100	400052	CEO PREV DAY REPORTING SUBSCRIPTION	40.00000	1	40.00
34100	400052	CEO PREV DAY REPORTING SUBSCRIPTION	20.00000	1	20.00
27707	400340	CEO SEARCH	0.60000	60	36.00
34212	400340	WIRE INQUIRY DETAIL PER ITEM-CEO	1.00000	9	9.00
46100	40005Z	CEO BASIC BANKING - MONTHLY BASE	10.00000	1	10.00
46102	40005Z	CEO BASIC BANKING ADDL ACCT-MO BASE	5.00000	5	25.00
<b>INFORMATION SERVICES Subtotal</b>					<b>180.85</b>

## Disclosures

We created this proposal for you based on our understanding of your requirements and the services in which you expressed interest. This proposal confirms the deposit and treasury management services and the pricing we plan to provide you based on certain assumptions including projected volumes and other relevant information you provided.

This document is confidential. Please do not share it without first obtaining our written permission. The services and pricing contained in this proposal are valid for 90 days. The pricing is subject to change if the actual volume or scope of services differs from the assumptions upon which we based the pricing.

Please let us know if you believe this proposal does not accurately represent the prices or services we discussed with you. If you have questions about the services in this proposal, please contact your Treasury Management Sales Consultant or visit: [www.wellsfargo.com/accountanalysis](http://www.wellsfargo.com/accountanalysis) for additional information about the services.

### Regarding your services

#### Alerts Service

Charges are assessed against the volume of Alerts per user, per company, per month basis. Users are only charged for the first 80 events/alerts per month, per delivery mechanism (email or text). There is no per company cap for billing.

#### Services with No Volumes

Services listed with zero volume are not included in the estimated monthly analysis fee but are included in the event the service is used in the future.



This message may contain confidential and/or privileged information. If you are not the addressee or authorized to receive this for the addressee, you must not use, copy, disclose, or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by reply email and delete this message. Thank you for your cooperation.

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# Master Agreement for Treasury Management Services

The Service Documentation contains the terms under which Wells Fargo Bank, N.A. and the banks, branches or subsidiaries listed in Appendix X (collectively, "Bank") provide you treasury management services (each a "Service"). "You," "your" or "yours" refer to the Bank customer identified on the Acceptance of Services that is signed when you enroll in a Service ("Acceptance"). The terms "we," "us," or "our" refer to the Bank. Other capitalized terms used in this Master Agreement for Treasury Management Services ("Agreement") are defined in this document.

You and we agree:

- 1. Service documentation.** The Service Documentation contains the terms governing each Service and includes:
  - a. The Service Description (which contains terms and conditions applicable to the specific Service),
  - b. The Acceptance (which indicates your acceptance of the Service Documentation),
  - c. This Agreement (which contains terms and conditions applicable to all Services),
  - d. The account agreement governing the account(s) (each, an "Account") you use in connection with the Service,
  - e. The Product Enrollment Form (which contains set-up information for each Service in which you are enrolling), and
  - f. User Guides (which include Terms of Use, software, software licenses, price schedules, specifications, instructions, and notices).

The documents and individual provisions of the Service Documentation are intended to be read together as one agreement between you and us. This Agreement and the Service Descriptions for Services you enroll in are posted at our *Commercial Electronic Office*<sup>®</sup> (*CEO*<sup>®</sup>) portal. If there is a conflict among the documents that are part of the Service Documentation, they will govern in the order listed above. Your use of a Service confirms your receipt of, and agreement to be bound by, this Agreement and all Service Documentation.

- 2. Services.** You and we will agree upon the Services to be provided and the start date for each Service. Each Service is subject to the approval by our applicable branch or subsidiary. We will notify you when you have completed all requirements for enrolling in the Service and the Service is ready for you to use.
- 3. Changes to services.** We may change (or add to) the terms and fees in the Service Documentation at any time. If a change to a Service requires a change to the Service Documentation, we will post the document(s) with the change on the *CEO* portal. When required by Applicable Law, we will notify you of the change. If you continue to use a Service after a change takes effect, you will be bound by the change. As used in this Agreement, the term "Applicable Law" means all applicable laws (including common or customary laws), statutes, constitutions, policies, decrees, judgments, treaties, regulations, directives, by-laws, rulings, orders or operating circulars governing our activities and/or any transaction effected under this Agreement, including, but not limited to, the funds transfer system and clearing and settlement house rules.
- 4. Term and termination.** Unless a Service is terminated in accordance with the Service Documentation, this Agreement and each Service will continue in effect until terminated by either party upon 30 days' prior written notice to the other

party. When a Service is terminated for any reason, the Service Documentation governing the terminated Service is also terminated.

We may suspend or terminate any Service:

- a. After we notify you of a breach of any provision of the Service Documentation or any other agreement with us, and you fail to cure the breach (if it can be cured) within 15 days of the date of the notice; or
- b. Without prior notice to you if:
  - i. We reasonably suspect that an Account associated with a Service has been compromised or otherwise subject to irregular, unauthorized, fraudulent, or illegal activity,
  - ii. You become subject to any insolvency or bankruptcy proceeding, or any receivership, liquidation, reorganization, or other similar proceeding, or you enter into any agreement or proceeding for voluntary liquidation, dissolution, composition with or assignment for the benefit of creditors or other winding up,
  - iii. We determine in our sole discretion that continuing to provide a Service may place us at risk of financial loss or result in an unacceptable credit exposure,
  - iv. Any guaranty of your obligations to us ("Guaranty") is terminated, revoked, or its validity contested by the guarantor ("Guarantor"),
  - v. We determine in our sole discretion that a material adverse change has occurred in your ability to perform your obligations under the Service Documentation, or in the ability of a Guarantor to perform its obligations under a Guaranty, or
  - vi. The Account necessary to provide a Service is closed.

The termination of a Service will not affect your or our respective rights with respect to transactions occurring before the termination. We will not be liable to you for any losses or damages you may incur as a result of any termination of any Service or termination or restriction of any *CEO* portal access rights under section 9(d) below.

**5. Service fees.** You will pay us the fees described in the Service Documentation and any taxes applicable to each Service, however designated, but excluding taxes based on our net income. We may debit your Account for any fees not covered by earnings credits and any taxes that are due, or we may send you an invoice for these amounts, which you will promptly pay. Our charges and fees are in the applicable fee schedule for Services used in connection with your Account.

**6. Security procedures.**

- a. Unless otherwise agreed, you agree that "Security Procedure" is the applicable security procedure described in the Service Documentation for your Initiation Method for the Service, which we will use to verify the authenticity of a Transaction. The term "Initiation Method" refers to the method we offer in the product enrollment form ("Set-up Form") or other Service Documentation for delivering your Transaction instructions to us with respect to the applicable Service and includes any applicable transmission protocols. The term "Transaction" means (i) any funds transfer or payment instruction (including any communication cancelling or amending an instruction), and (ii) any instruction, data or other information which we receive in your name with respect to a funds transfer. The purpose of the Security Procedure is to verify the authenticity of the Transaction. We will not use the Security Procedure to detect an erroneous or duplicate transaction. You will be responsible for any erroneous or duplicate transaction we receive in your name. You agree to be bound by each Transaction, whether or not authorized by you, issued in your name and accepted by us in compliance with the Security Procedure for the Service.
- b. You agree that each Security Procedure for the Initiation Method in the Set-up Form or other Service Documentation for each of the Services (a) best meets your requirements with regard to the size, type and frequency of your Transactions, and (b) is commercially reasonable.

**7. Confidential information.** Unless otherwise stated in the Service Documentation, "Confidential Information" means all (a) User Guides and Terms of Use, and (b) Security Procedures, passwords, codes, security devices and related

instructions. You will not acquire any ownership interest in or rights to Confidential Information as a result of your use of any Service.

You will:

- a. Maintain the confidentiality of the Confidential Information,
- b. Not disclose (or permit your employees or agents to disclose), copy, transfer, sublicense, or otherwise make any of it available to any person or entity, other than your 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.

You will notify us immediately if you know of or suspect any unauthorized disclosure, possession, use, or knowledge (each, an "Unauthorized Use") of any Confidential Information. If you (or your employees or agents) are responsible for the Unauthorized Use, you will, at your expense, promptly take all actions, including initiating court proceedings to recover possession and prevent further Unauthorized Use of the Confidential Information. You will also compensate us for any injury caused to us as a result of the Unauthorized Use.

- 8. Currency conversion.** When your instructions require us to convert the amount of a payment order from the currency in which the Account is denominated ("Account Currency") to another currency ("Foreign Currency"), we will do so using the Applicable Exchange Rate in effect at the time we execute your payment order. "Applicable Exchange Rate" means the exchange rate we set and use for you when we convert one currency to another currency and includes a markup over our cost of sourcing the relevant currency. The markup factors include costs incurred, market risks and our desired return. The exchange rate we provide to you may be different from the exchange rates you see elsewhere. Foreign exchange rates are dynamic, and rates fluctuate over time based on market conditions, liquidity, and risks.

If a financial institution designated to receive the funds does not pay the beneficiary specified in the payment order, and the funds are returned to us, we will not be liable to you for a sum greater than the amount of the payment order after we have converted it from the Foreign Currency to the Account Currency using the Applicable Exchange Rate in effect at the time the funds are returned to us. You accept the risks of any change in the Applicable Exchange Rate between the time you request a payment order and the time the payment order is either completed or is unwound due to a cancellation, an amendment, a rejection, or a return.

**9. CEO portal.**

- a. **Description of the CEO portal.** The CEO portal is our electronic banking portal that is accessed via the Internet. Your Authorized Agents (defined below) may use the CEO portal to access (i) Services in which you have separately enrolled and (ii) third-party sites we may make available through the CEO portal. We offer different channels through which you may access the CEO portal, including personal computers and mobile devices. We may add or eliminate channels at any time. A Service or third party site accessible through one channel may not be accessible through another channel.
- b. **Access to the CEO portal.** When you enroll in the CEO portal, and as we may determine is necessary after enrollment, we will provide Log-On Credentials (defined below) to the persons who are authorized to access the CEO portal on your behalf (each, an "Authorized Agent"). Log-On Credentials mean one or more secure methods we provide to access the Services and may include user IDs, passwords, token IDs, and other methods that we adopt from time to time. We have no obligation to separately verify or authenticate any communication we receive in your name through the CEO portal, whether or not it was actually from an Authorized Agent. You assume the entire risk of (i) unauthorized use of your Log-On Credentials and (ii) unencrypted electronic transmissions.
- c. **Administration of the CEO portal.** We offer two options for administering the CEO portal: (i) Administration and (ii) Bank administration.

- i. **Administration.** If you enroll in the Administration option, there are three categories of Authorized Agents: Company Administrator, Administrator, or User. Unless you and we separately agree, we will provide Log-On Credentials only to your initial Company Administrator(s) who will (a) assign Log-On Credentials to other individuals and (b) designate those individuals as one of the following:
  - (1) A Company Administrator, who may perform all functions of your initial Company Administrator,
  - (2) An Administrator, who may perform all functions of an Administrator including designating other Administrator(s) and User(s), or
  - (3) A User, who may access the Services designated by a Company Administrator or an Administrator, as well as those Services in which we permit a User to self-enroll.

Each Company Administrator and Administrator has the authority to enroll you in additional Services. In addition to your use of Administration as described in this subsection, you may request that we assign Log-On Credentials to Users that you designate in writing to us. Your designation to us will specify the Services which the User is authorized to access in addition to those Services in which we permit a User to self-enroll.

- ii. **Bank administration.** For the Bank administration option, there is one category of Authorized Agent: Users. We will assign Log-On Credentials to each User you designate.

You will promptly revoke the Log-On Credentials of any Authorized Agent or User when that individual is no longer authorized to access the *CEO* portal. If you notify us in writing to revoke the Log-On Credentials of an Authorized Agent or User, we will have a reasonable time after receiving your written notification to revoke the individual's access.

- d. **Terminating access.** We may terminate or restrict any Authorized Agent's access to any Service through the *CEO* portal if we determine such use:
  - i. Does not comply with any term applicable to the *CEO* portal,
  - ii. Is not permitted by Applicable Law,
  - iii. Is not authorized by you or any third party whose authorization we believe is necessary, or
  - iv. Should be denied for your or our protection (without us agreeing to or being required to make this determination in any circumstance).
- e. **Financial information.** Financial market data, quotes, news, research, and other financial information developed by third parties and transmitted to us ("Financial Information") may be available to you at the *CEO* portal. The posting of any Financial Information or any other information or data at the *CEO* portal is not a recommendation by us of any particular Service or transaction. We do not guarantee the accuracy or completeness of any Financial Information, nor are we responsible for (i) the actions or omissions of the third parties developing or transmitting Financial Information or (ii) any decision you make or action you take by relying on any Financial Information.
- f. **Miscellaneous.** For purposes of this section 9 only, "Service" includes each service and product we or any of our affiliates offer that you access through the *CEO* portal. This section 9 will survive the termination of any Service or this Agreement.

## 10. Alerts.

- a. **Non-subscribed alerts.** When you enroll in the *CEO* portal or other channels or Services, you consent to receiving by email or other delivery channels, servicing messages that we determine are important or urgent. You do not need to subscribe to receive such alerts and you do not pay additional service fees.
- b. **Subscribed alerts.** You may also enroll in fee-based alerts for applicable Services so that you can receive messages you subscribe to at the intervals and through delivery channels that you choose.

## 11. Liability and indemnification.

- a. We are not obligated to honor, in whole or in part, any payment order or other instruction that:
  - i. Exceeds the available balance in the Account, unless otherwise provided in the Service Documentation,
  - ii. Does not comply with the Service Documentation or our applicable policies, procedures, or practices made available to you,
  - iii. We have reason to believe may not have been duly authorized, should not be honored for our or your protection, or involves funds subject to a hold, dispute, restriction, or legal process, or
  - iv. Would possibly result in us not complying with Applicable Law.
- b. Neither we nor our software vendors make any express or implied representations or warranties with respect to the Services or any software used in connection with the Services, including any warranty as to the merchantability or fitness for a particular purpose, other than those expressly set forth in the Service Documentation.
- c. Any claim, action, or proceeding against us for losses or damages arising from a Service, must be brought within one year from the date of the act or omission, except as otherwise stated in the account agreement governing the Account.
- d. We will have no liability for our failure to perform or delay in performing a Service if the failure or delay is due to circumstances beyond our reasonable control. If we determine that any funds transfer or communications network, Internet service provider, or other system used to provide a Service is unavailable, inaccessible, or otherwise unsuitable for use by you or us, we may, upon notice to you, suspend or discontinue the affected Service.
- e. We will only be liable to you for actual damages incurred as a direct result of our failure to exercise reasonable care in providing the Services. Reasonable care requires only that we follow standards that do not vary unreasonably from the general standards followed by similarly situated banks. Our policies and procedures are general internal guidelines for our use and do not establish a higher standard of care for us than otherwise established under Applicable Law. A mere clerical error or an honest mistake will not be considered a failure by us to perform any of our obligations. Our liability to you will be limited to an amount not greater than 10 times our fees incurred in the calendar month immediately before the calendar month in which the loss or damages were incurred (or, if no fees were incurred in that month, our fees incurred in the month in which the losses or damages were incurred).
- f. Except in the case of our negligence or intentional misconduct, you will indemnify and hold us, our directors, officers, employees and agents ("Representatives") harmless from all losses or damages that arise out of:
  - i. The performance of a Service in compliance with the Service Documentation, including any warranty we are required to make to a third party in connection with a Service,
  - ii. An act or omission of any of your agents, couriers, or Authorized Agents, and
  - iii. If the Service includes a license or sublicense of any software, any use or distribution of the software by you or any person gaining access to the software through you that is inconsistent with the license or sublicense.

You will promptly provide us with written proof of loss, and notify us if you become aware of any third party claim related to a Service. You will cooperate fully (and at your own expense) with us in recovering a loss. If we reimburse you, we or our designee will be subrogated to all of your rights (i.e., we will be entitled to assert any legal rights you had relating to the claim).

- g. Except as expressly provided otherwise in the Service Documentation, neither party nor its Representatives will be liable to the other party for:
  - i. Any special, consequential, incidental (including court costs and attorneys' fees), indirect, or punitive losses or damages, or
  - ii. Business interruption, loss of profits, loss of business, loss of revenue, loss of goodwill, loss of opportunity, loss or injury to reputation, or loss of anticipated savings, whether any claim is based on contract or tort, or whether the likelihood of these losses or damages was known to the other party and regardless of the form of the claim or action.
- h.



When you send payments on behalf of your third party customers, you agree you are solely liable to your customers for any and all losses those customers may suffer. We exclude all and any liability of whatever nature (including those losses detailed in subsection g above) arising out of your relationship with your customer.

- 12. Governing law.** The Service Documentation will be governed by: (a) U.S. federal law and (b) the law of (i) the U.S. state in which the office of Bank that maintains the Account is located or, if there is no such state or no account associated with such Service, (ii) the State of New York, without reference to its principles of conflicts of laws ("Governing Law").
- 13. Arbitration agreement.** Upon demand by you or us, any dispute or claim arising out of or relating to this Agreement, or the breach thereof, must be submitted to arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, and must be heard before three arbitrators if the amount in dispute is U.S. \$5,000,000 or more or its equivalent in any other currency, and before one arbitrator for amounts in dispute of less than U.S. \$5,000,000 or its equivalent in any other currency. Arbitration will proceed in a location selected by AAA in the state of the applicable Governing Law, and if there is no such state, the place of arbitration must be New York, NY. The language of the arbitration must be English. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This arbitration requirement does not limit the right of you or us to: (a) exercise self-help remedies including setoff or (b) obtain provisional or ancillary remedies such as injunctive relief or attachment, before, during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of you or us to submit any dispute to arbitration hereunder, including those arising from the exercise of the actions detailed in (a) and (b) of this section.
- 14. Jurisdiction.** For any proceedings regarding this Agreement (not subject to arbitration as provided in this Agreement), you hereby irrevocably submit to the jurisdiction of the courts of the Borough of Manhattan, New York City, in the State of New York or the federal courts located there and irrevocably agree that all claims in relating to the proceeding may be heard or determined in those courts.
- 15. Miscellaneous.**
- a. **Severability.** Any portion of the Service Documentation which is inconsistent with Applicable Law or Governing Law will be deemed modified and applied in a manner consistent therewith, and we will incur no liability to you as a result of the inconsistency or modification and application to any dispute regarding the Service Documentation. If any portion or provision of the Service Documentation is deemed unenforceable, it will not affect the enforceability or validity of the remaining Service Documentation nor the enforceability or validity of that portion or provision under the law of any other jurisdiction.
  - b. **Entire agreement.** The Service Documentation (and any documents referred to therein):
    - i. Constitutes the entire agreement between you and us regarding the Services we provide for all Accounts opened with us, and
    - ii. Supersedes and extinguishes all prior agreements, understandings, representations and warranties of any nature (including requests for proposals and other sales material), whether oral or written, between you and us relating to any of our Services (including any other Master Agreement for Treasury Management Services, but excluding the current Commercial Account Agreement or Global Commercial Account Agreement, as applicable).
  - c. **Electronic agreement.** To facilitate execution, the Service Documentation may be executed by a party in the form of an "Electronic Record" (as defined in the Electronic Signatures in Global and National Commerce Act at 15 U.S.C. §7001 et seq. ["ESIGN Act"]). The Service Documentation may be executed in as many counterparts as may be required to reflect all parties' approval, and all counterparts will collectively constitute a single agreement. An "Electronic Signature" (as defined in the ESIGN Act) that can be authenticated will constitute an original and binding signature of a party. The fact that a document is in the form of an Electronic Record or is signed using an Electronic Signature will not, in and of itself, be grounds for invalidating such document.

- d. **No waiver.** Neither our failure nor any delay by us in exercising any right or remedy will be deemed to be a waiver of the right or remedy. No course of dealing or waiver of any right on one occasion will constitute a modification of the Service Documentation or be a waiver of that right on a subsequent occasion.
- e. **Third party beneficiaries.** Except as otherwise provided in the Service Documentation, no person or entity other than the parties to this Agreement will be deemed to be a third party beneficiary under the Service Documentation.
- f. **Financial condition.** You will provide us promptly upon our request any existing financial statements or other information pertaining to your financial condition or any previously unprepared financial statements which we may require you to prepare and/or to be audited or reviewed by independent certified public accountants acceptable to us.
- g. **Your representations and warranties.** You represent and warrant that: (i) you will not use any Service in a manner that would violate any Applicable Law by you or us; (ii) if you employ an agent in connection with its use of any Service, you represent and warrant to us that: (1) your governing body has duly authorized the agent; (2) you will exercise appropriate controls to ensure each authorized agent does not exceed the authority granted to it; and (3) you will preserve the confidentiality of the Log-On Credentials and immediately notify us if you become aware or suspect that any Log-On Credential may have been compromised.
- h. **Use of names.** You and we will not use each other's name or refer to our relationship in any solicitation, marketing material, advertisement, news release, or other written, online or oral communication without specific prior written consent for each such use or release, except that we may use your name as a reference in service proposals if we obtain your prior written approval for such use.
- i. **Notices and communications.** Either party may provide notice to the other party by mail, personal delivery, or electronic transmission.
  - i. You will notify us promptly in writing of any change in your name, Address, legal status, or any other changes relevant to the conduct of the Account or affecting your business relationship with us.
  - ii. The term "Address" as used in this Agreement refers to a mailing or electronic address.
  - iii. You will use the Address where your relationship manager or other manager is located and will address any notice to the attention of the manager.
  - iv. Each party will have a reasonable time after receipt of any notice to act on it.
  - v. Any communication or notice to us from your agent about your use of a Service will be deemed to be a communication from you, and you authorize us to communicate with your agent about any such communication or Service.
  - vi. We are entitled to rely on any communication or notice from you that we believe in good faith was authorized by your authorized representative or Authorized Agent and, we will have no obligation to verify or authenticate an identity of a sender or signature on any notice or communication, except as expressly provided in the Service Documentation.

**16. Survival.** Sections 7, 9, 11 - 15 will survive termination of the Services or this Agreement.

**APPENDIX X**  
**Applicable Branches or Subsidiaries of Bank**

1. Wells Fargo Bank, N.A., London Branch
2. Wells Fargo Bank, N.A., Cayman Islands Branch
3. Wells Fargo Bank, N.A., Canadian Branch