



## **MASTER TREASURY MANAGEMENT AGREEMENT**

This Master Treasury Management Agreement (“*Agreement*”) governs the provision of Treasury Management Services (“*Services*”) to the undersigned “*Customer*” by Fifth Third Bank (“*we*” or “*us*”) and is effective when, and as of the date executed by us. The parties acknowledge that this Agreement amends, replaces and restates in their entirety the Authorization Form for treasury Management Services and the Fifth Third Bank Treasury Management Terms and Conditions.

### **Services**

Customer desires to obtain, and we agree to provide the Services as provided in this Agreement and the applicable Terms and Conditions for the Services (“*Terms and Conditions*”). Customer may request a Service by any means we approve (“*Service Request*”). If we accept and approve a Service Request, we and Customer are subject to the Terms and Conditions for that Service. If Customer uses a Service before the Service Request is approved by us, Customer’s first use of the Service shall be deemed to be Customer’s agreement to the Terms and Conditions for that Service.

Customer acknowledges receiving a copy of the Terms and Conditions for the Services it desires. Once a Service Request is approved by us or Customer is deemed to have accepted Terms and Conditions for a particular Service, the applicable Terms and Conditions are incorporated into, and made a part of this Agreement. Customer is not bound by or subject to the Terms and Conditions for any Service Customer does not use.

We provide the Services for the sole and exclusive benefit of Customer, and if we approve in writing, Customer’s Subsidiaries (as defined below). The Services may only be used for business purposes and not for personal, household or consumer purposes.

For some of our Services, we may provide in hard copy or make available online an operating manual or user guide (“*User Guide*”) to assist Customer in using the Service.

### **Customer Information**

Customer agrees to provide any information that we reasonably require to enable us to provide the requested Services to Customer. For some of our Services, Customer may be required to complete a set up and implementation process and complete related information forms. We will rely on the information provided to us by Customer in this process and the Service Request in providing the Services to Customer. Any changes by Customer to the information provided to us must be made in writing and will be effective after we have had a reasonable opportunity to act on the changed information.

We are entitled to rely upon the accuracy of all information and authorizations received from an officer or authorized employee or representative of Customer (an “*Authorized Agent*”), and on the authenticity of any signatures purporting to be of an Authorized Agent. Customer agrees to notify us immediately of any change in the status of an Authorized Agent. Customer acknowledges that we may require a reasonable time period before we act upon any such change. Customer agrees that we may refuse to comply with requests from any individual until we receive documentation reasonably satisfactory to us confirming the individual’s authority.

### **Fees and Taxes**

We and Customer have agreed to the fees and pricing for Services set forth on Exhibit A attached to this Agreement and that the fees and pricing shall remain in effect until December 31, 2014. In addition, Customer agrees to pay our standard fees and charges for any requested or required special service or handling. Customer is responsible for all taxes attributable to its use of the Services or this Agreement (excluding taxes based on our employees, property or net income).

If you request and we agree to provide a new Service not provided to you prior to the date this Agreement is executed by us, we agree that we will waive the fees for the new Service for the first 90 days of the Service. This waiver would

not apply to any interest, advance, overdraft, late payment or other credit related fees and charges.

### **Instructions**

Each payment order, wire transfer instruction, ACH entry, file, batch release and other message or instruction to us (an “*Instruction*”) that is sent to us electronically in accordance with this Agreement or the applicable Terms and Conditions shall be considered to be an original writing and to have been signed by an Authorized Agent. Neither party will contest the validity or enforceability of the Instructions on the ground that it was not in writing, not signed by an Authorized Agent or not an original. A valid digital signature shall, at all times, be deemed to be conclusive proof of due authorization by Customer of the communication, Instruction or document to which it relates.

### **Our Representations and Warranties**

We represent and warrant to Customer that: (a) we are duly organized, validly existing, and in good standing in the jurisdiction in which we are 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 our behalf are duly authorized to do so; (d) this Agreement represents our legal, valid and binding obligation; and (e) our execution and performance of this Agreement does not and will not violate any Applicable Laws (as defined below), or entity governing documents.

We agree to provide the Services in accordance with reasonable commercial banking standards prevailing for similarly situated financial institutions.

Except as expressed elsewhere in this Agreement or in the applicable Terms and Conditions, we make no other representations or warranties, either express or implied, of any kind with respect to any Service or our 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.

### **Customer Representations and Warranties**

Customer represents and warrants to us 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; (b) the execution, delivery and performance by Customer of this Agreement and the Related Agreements (as defined below) have been authorized by all necessary entity and governmental action; (c) the persons signing this Agreement and the Related Agreements 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 any Applicable Law, Customer’s entity governing documents, or any material agreement by which Customer is bound; and (f) each transaction Customer conducts, and each account Customer has with us is conducted or maintained for a business or commercial purpose and not a personal, family or household purpose.

Customer reaffirms these representations and warranties each time it uses a Service. In addition, Customer agrees to immediately notify us if any representation or warranty made by Customer is no longer true.

### **Security Procedures; Operating Procedures**

Establishment. Access to our Access Channels (described below) and to some of our Services is subject to Security Procedures (“*Security Procedures*”). Our Security Procedures include the use of identification codes, personal identification numbers and passwords (“*Identification Codes*”), call back protocols, tokens and other systems or procedures. The Security Procedures enable the use of the Access Channels and verify the origin of Instructions and communications sent to us. We and Customer will agree on the Security Procedures for a particular service in the set up process for that Service. The Security Procedures are not designed to detect errors in any Instruction to us. Customer is solely responsible for the accuracy and completeness of each Instruction or communication sent to us.

Verification. If we accept and act in good faith on a payment order issued to us in Customer's name and in accordance with the Security Procedures and any written agreement between Customer and us, the payment order is effective as Customer's payment order whether or not it is authorized, and Customer is bound by it. Any other Instruction communicated to us in Customer's name in compliance with the Security Procedures and all access to, and use of Services using the Security Procedures are considered authorized by Customer.

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. We may continue to rely upon such authority and we are authorized to act upon Instructions received from persons acting pursuant to such authority. Customer is bound by any authorized payment order or other Instruction.

Other Procedures. In addition to the Security Procedures, we may, in our discretion, use additional procedures to verify the authenticity of Instructions communicated to us. We will not be responsible for our refusal to act upon any Instruction received that does not comply with this Agreement or the applicable Terms and Conditions, including where our reasonable efforts to verify Instructions in accordance with the Security Procedures have failed or where such action is delayed until verification can be obtained.

Safeguarding the Security Procedures. Customer agrees to (a) maintain the complete security and confidentiality of the Security Procedures, and (b) institute and use prudent 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 us immediately if there has been a breach of its security, or any Security Procedure has been lost, stolen, misused or compromised.

Breach Incidents. We notify customers of security breach incidents involving their information in accordance with the "Federal Banking Interagency Guidance on Response

Programs for Security Breaches dated March 23, 2005", as amended, and applicable state laws.

### **Access Channels**

*Fifth Third Direct* is our internet access portal and Account Management & Payments ("AMP") is our internet-based suite of Services available through Fifth Third Direct. The features and options available through Fifth Third Direct and AMP (together with any other means to access our Services electronically, "Access Channels") are described in greater detail below and in the User Guide for these Services.

Administration. As part of the set up process for Fifth Third Direct, Customer will appoint a person ("Administrator") with authority to manage Customer's use of Fifth Third Direct including the authority to: designate personnel ("Users"), including the Administrator, with access to some or all of the Services or Service features through Fifth Third Direct; establish approval processes and limitations (such as dollar amount and transaction type) on the User's authority for certain Services; enable the assignment of Identification Codes; and, accept and act on all communications from us regarding Fifth Third Direct and AMP.

Security Procedures. Customer's use of the Access Channels and the accessed Services are subject to Security Procedures. The Fifth Third Direct Service generates unique Identification Codes for each User. The use of Identification Codes and where applicable, Access Devices (as described below) together with any additional measures agreed to by the parties constitute the Security Procedure for the Access Channel and the Service accessed through that Access Channel.

Access Devices. Access to some Services may require the use of a security token or other security or authentication device and related software (an "Access Device"). Proper use of the Access Device is part of the Security Procedure for these Services. Since an Access Device facilitates access to our Services, it is critical that Customer carefully control the distribution and use of the Access Devices to ensure that they are only available to, and used by personnel authorized by Customer. The use of the Access Device is subject to any terms of use accompanying the Access Device or any required license, and may only be used as and

where delivered to Customer and only for the purpose of accessing our Services. Each Access Device and the related technology, documentation and materials at all times remain our or our vendor's property.

Customer Responsibilities. In addition to using the Security Procedures, Customer agrees to: (a) institute and use reasonable measures to mitigate the risks of conducting banking transactions through the internet; (b) institute and enforce effective policies and procedures to ensure that its personnel use the Services only as authorized and within the limits of their permission or authority; (c) incorporate and use reasonable security features and technology in its computer software, hardware and systems; and (d) educate and update itself and its employees on the proper and secure use of the internet, and the existing and emerging threats from computer viruses and attacks, email scams, cybercrimes and other attempts to gain Customer's banking information, and use reasonable efforts to address these threats.

Equipment and Software. Customer is solely responsible for having and maintaining at its expense proper functioning hardware, software, communication devices and Internet access and service necessary for use with the Access Channels.

Intellectual Property. All software related to the provision of the Access Channels, the content, pages, and other materials, and other works of authorship and material displayed or utilized in connection with the Access Channels, the names, trademarks, logos, slogans and service marks used, displayed and found on our websites, and all other intellectual property relating to the Access Channels (collectively, "*Intellectual Property*") are owned by and proprietary to us or our vendors or licensors, except as otherwise specified. No Intellectual Property may be copied, modified, disassembled, reproduced, used in any way (other than as authorized in connection with the Services) or publicly displayed, or distributed in any medium of expression without our prior written permission.

**While our websites include encryption and other data protection features, Customer understands that the Internet is inherently insecure and that there is a risk that data communications and transfers will be compromised or intercepted. Except where**

**these risks occur as the direct result of our failure use industry standard data security measures, we are not liable if these risks occur or for the use of such data by others, or if privacy is not maintained, in any case, prior to Customer establishing a secure connection to our designated portal or after properly terminating that connection.**

## **Account Management & Payments**

AMP enables Customer to manage daily cash balances, research and reconcile account activity, and initiate funds transfers. Customer may elect to enable one or more or all of the modules for Customer or a particular User. The features and options available through AMP are described in greater detail below and in the User Guide for AMP. AMP is only available through Fifth Third Direct.

Administration. AMP is administered on behalf of Customer by the Administrator. In addition to any other authority the Administrator may have with respect to Fifth Third Direct and other Services, the Administrator has the authority with respect to AMP to:

- designate Users with authority for some or all features of AMP,
- appoint other Administrators with the authority of an Administrator,
- give us Instructions and access reports relating to AMP,
- elect to enable email Alerts as further described in this Agreement,
- elect to enable access to our ACH Service, Wire Transfer Service and account transfers between deposit accounts and commercial loan accounts ("*Funds Transfers*") and designate Users (including the Administrator) with authority to execute Funds Transfers, and
- establish approval protocols and limitations for Funds Transfers and other transactions.

AMP Administrator's Authority. Customer may authorize the Administrator to have non-functional authority (i.e., authorized only to add and administer Users) or functional authority (i.e., authority to use the Service including for Funds Transfers). In the set up process for AMP, the Administrator will have the option to

require “Dual Control Administration”, meaning that the approval of a second Administrator is required to verify the designation and authorization of a designated User. We recommend that Customer elect to require Dual Control Administration. We will rely on the authority of the Administrator and Users designated by the Administrator until we receive written notice of a change and we have a reasonable opportunity to act on the notice. Customer is solely responsible for the actions, instructions and decisions of the Administrator and the designated Users.

Funds Transfers. The use of our Funds Transfer Services through AMP is subject to the Security Procedures for those Services, including the use of an Access Device. The Security Procedures include a variety of approval options, User limitations and controls which are described in greater detail in the User Guide. We recommend that Customer establish an approval protocol appropriate for Customer’s particular circumstances. If Customer does not establish and require adherence to an approval protocol for Funds Transfers or if Customer selects a “no approval” option, Customer assumes the risks of all transactions that could have been prevented by requiring approval. Customer acknowledges that Customer has considered the various Security Procedures available to Customer and that the Security Procedures Customer selects are suitable for Customer for the size, type and frequency of transactions Customer will initiate. Funds Transfers involving only internal account transfers may not be subject to all of the Security Procedures for other Funds Transfers.

Account Information. Depending upon the service level 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. We assume no responsibility for Customer’s reliance on any account or Service information subsequently updated, verified or corrected.

#### **Email Alerts**

Some of our Services including AMP offer an email alerts feature. If Customer elects to use this feature, our system will send an email alert (an “Alert”) to Users designated by the Administrator that an activity, status or action

selected by the Administrator regarding a selected account has occurred. The Alerts feature is set up by the Administrator.

Informational Use. Alerts are provided for Customer’s information and convenience only. An Alert does not constitute a bank record for the account to which it pertains. The Alerts feature is meant to assist Customer in managing Customer’s accounts, but is not intended as a substitute for proper account management or regular use of our AMP and other information Services.

Delivery Risks. Alerts may be delayed or prevented by a variety of circumstances beyond our control. We do not guarantee the delivery of any Alert. Alerts are sent via the internet without being encrypted or otherwise coded in any way. We will not be liable in any way for non-delivery, delayed or wrong delivery of an Alert, the content in an Alert, or Customer’s use of, or reliance on the absence of any Alert for any purpose.

Replies. Customer is not permitted to reply to email Alerts. Any reply Customer sends will not be read or acted upon. **Customer should never respond to any request purportedly from us to provide Customer’s account numbers or information, or security details such as passwords.** Any such purported request or other unusual emails purportedly part of any Service shall be reported to us immediately.

#### **Compliance**

This Agreement, the Terms and Conditions and the use and provision of our Services are subject to all applicable state, federal, local and foreign laws, rules, regulations and other laws including, without limitation, rules, regulations and operating rules and operating guidelines established by NACHA - the Electronic Payment Association (“*Operating Rules*”) and any money transfer system, check clearing organization and payment clearinghouse used by us in providing the Services to Customer and the regulations and operating circulars of Federal Reserve Board (collectively, “*Applicable Law*”). 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, including any control or sanction administered by the Office of Foreign Asset Control. Customer will not make or accept any

payments in any accounts with us in connection with unlawful internet gambling.

### **Business Continuity**

We maintain off-site business continuity capabilities designed to permit us to recover from a disaster and continue providing Services in accordance with our business continuity plan and capabilities. Our business continuity capabilities will permit the recovery from a disaster and resumption of the provision of the Service to Customer within a commercially reasonable period as dictated by the particular recovery rating of the system or application in question. A copy of a summary of the Fifth Third Bank Business Continuity Plan as in effect from time to time will be provided to Customer upon written request.

### **Limitation of Liability**

CUSTOMER AGREES TO THE MAXIMUM EXTENT PERMITTED BY LAW THAT IN NO EVENT WILL WE BE LIABLE OR RESPONSIBLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL (INCLUDING ATTORNEYS' FEES) PUNITIVE OR INDIRECT LOSS OR DAMAGE THAT CUSTOMER OR ANY OTHER PERSON MAY INCUR OR SUFFER IN CONNECTION WITH ANY OF THE SERVICES PROVIDED BY US, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

Customer further agrees, to the maximum extent permitted by law, that our liability to Customer arising from any Service will be limited to actual monetary damages that are the direct result of our failure to exercise reasonable care in providing the Service. Notwithstanding the foregoing, for Instructions which are subject to UCC Article 4A, we are liable only for damages required to be paid under UCC Article 4A.

### **Indemnification Obligations**

Customer agrees to indemnify and hold us and our officers, directors, employees, affiliates, shareholders and agents harmless from and against any and all losses, liabilities, damages, actions, claims and expenses including court costs and reasonable attorneys' fees and expenses ("*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 Terms and Conditions or any other agreement with us relating to the Services; (b) Customer's violation of Applicable Law; or, (c) Customer's use of the Services and our complying with or carrying out any Instruction or other direction given to us in accordance with this Agreement. Customer is not, however, obligated to indemnify us for any Loss directly resulting from our gross negligence or bad faith.

We agree to indemnify and defend at our 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 us 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 us at our expense in the defense or settlement; and (d) gives us sole control and authority over all aspects of the defense or settlement of such claim.

### **Recordings; Imaging Records**

Customer authorizes us (but we are not obligated) to record electronically and retain telephone conversations between Customer and us. Imaging and electronic records will be retained by us in accordance with our policies and procedures and copies of such records will be available at Customer's request and expense.

### **Confidentiality**

Subject to Customer's duties under Applicable Law, Customer agrees to keep confidential and not disclose to any third party (other than its agents) our fees and charges, terms of Service, User Guides, software, programs and other proprietary information and systems we or our Processors provide and disclose in connection with the Services. Customer acknowledges the exclusive ownership by us or our Processors of such information, and agrees to use such information solely for purposes of using the Services.

We acknowledge that non-public information we obtain from Customer in connection with providing a Service to Customer may be confidential. We will maintain the confidentiality of such information in accordance with our normal procedures for safeguarding customer information. Notwithstanding the foregoing, we may disclose Customer's information as provided in our Fifth Third Privacy Notice for Commercial Customers.

### **Duty to Inspect**

Information regarding transactions with the Services is reported on Customer's periodic account statement and is also available with one or more of our reporting Services or Access Channels. Customer is responsible for monitoring its use of our Services and all activity in its accounts with us including individual transactions. Customer agrees to: (a) regularly review the account information we make available to Customer through our reporting services; (b) promptly review the account statements we send to Customer; and (c) notify us 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.

Customer acknowledges that we offer a variety of tools, including positive pay, transaction controls and filters and monitoring services that can be effective in assisting Customer in reducing the incidence of fraud and other unauthorized activity in Customer's accounts. To the extent Customer chooses not to utilize such tools, Customer will be deemed to have assumed the risks of the activities that could reasonably have been prevented by the proper use of such tools.

### **Checks and Forms**

We reserve the right to test and approve any proposed check stock, deposit slips and similar forms and documents not provided by us that Customer proposes to use. We are not responsible for any costs or delays incurred by Customer with respect to checks and other forms and documents not approved by us in advance of use.

### **Overdrafts**

We may delay or refuse to process any item, transaction or Instruction that exceeds the amount of available funds in the account on which it is drawn or presented or would reduce the balance in such account below any required minimum balance (i.e., the item, transaction or Instruction would create an "*Overdraft*"). If we decide in our discretion to process an item, transaction or Instruction despite the Overdraft, Customer agrees to reimburse us upon demand 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 or restored; and (d) all Losses we incur in collecting from Customer the Overdraft, or any fees, charges or interest relating to it.

### **Transaction Limits**

If we in good faith determine that providing any Service to Customer will result in unacceptable credit exposure or other risk to us, or will cause us to violate any Applicable Law, we may, without prior notice, limit Customer's transaction volume or dollar amounts, refuse to execute transactions, or terminate that Service to Customer. In addition, we may restrict or limit the types of Instructions Customer may send to us for processing or execution. We will, to the extent not restricted by law, promptly communicate our decisions regarding such restrictions to Customer. Customer agrees to provide us, upon our request from time to time, with such financial information and statements and other documentation as we reasonably determine to be necessary or appropriate to enable us to evaluate our exposure or risk.

Except as expressly provided in the applicable Terms and Conditions, nothing in this Agreement requires us to extend any credit, provisional or otherwise, even if we have done so in the past.

### **Limited Audit**

General. We reserve the right for ourselves and our regulatory authorities to audit, inspect and, if warranted, test Customer's equipment, IT infrastructure, workflow and processes, and security policies and procedures relating to a Service (collectively, "*Processes*") and

Customer's books and records relating to the origination of payment orders to us. Customer agrees to reasonably cooperate with us and make its facilities, Processes and all relevant records, reports, information and personnel relating to the Processes and the origination of payment orders available to us.

**Limitations.** The purpose of any audit we may conduct is limited to assessing the security and compliance with applicable standards of the Processes in connection with Customer's use of our Services and, with respect to payment orders, to assess Customer's compliance with Applicable Law including the Operating Rules. We will not exercise this right except to the extent required by our regulatory authorities or we are made aware of actual or potential incidents of material weaknesses or security breaches in the Processes relating to the Service or a violation of Applicable Law. If we desire to conduct an audit, we will give Customer at least five (5) days' advance notice, conduct the audit only during business hours and strive to avoid any disruption or interference with Customer's operations. The results of any audit or the fact that we do not conduct an audit are not to be taken as an assessment of the Processes or Customer's compliance with any standards including Applicable Law. We and Customer will each bear our own costs in connection with the audit.

**Confidentiality.** We will keep confidential the information Customer provides us in connection with the audit, as well as the results and our findings with respect to the audit, except to the extent disclosure is required by our regulatory authorities or Applicable Law or legal process. We will not seek access to any information Customer is prohibited by law or contract from providing or making available to us, including personal financial and other confidential or protected information of its customers.

**Recommendations.** If, as a result of an audit, we make a material recommendation relating to Processes and Customer fails to institute any such recommendation, we have the right to terminate or suspend each affected Service pending satisfactory resolution of the circumstances giving rise to the recommendation.

## **Processors**

Customer acknowledges and agrees that we may arrange for certain or all of the aspects of the Services including software and processing to be performed or provided by third-party processors expressly engaged by us ("*Processors*"). To the extent we have engaged a Processor, we are responsible for the aspects of the Service provided by them.

## **FTPS**

If Customer is using the services of Fifth Third Processing Solutions, LLC (including its successors, "*FTPS*"), Customer understands that FTPS is no longer a division of us and is a separate, independent legal entity. Customer acknowledges and agrees that FTPS is not our Processor and that we are not responsible for the actions or obligations of FTPS, or any agent or vendor engaged or used by FTPS.

## **Vendors**

Any third party servicer or vendor used by Customer in connection with the Services ("*Vendor*") is Customer's agent and not ours, and Customer will be liable and solely responsible for: (a) any Vendor's failure to comply with this Agreement, the Terms and Conditions or any Security Procedures or operating requirements relating to the Services; and (b) all fees, costs and expenses owed to each Vendor for its services.

## **Use of System**

If a Service involves the use of software, hardware, processing, or databases provided by or through us or a Processor to Customer (a "*System*"), we or the System vendor may require Customer to execute a license or other agreement to use or acquire the System. Customer agrees to treat the System as strictly confidential at all times. Customer is solely responsible for the use or misuse of the System and assumes the risk of all consequences of the use or misuse of the System by Customer, its personnel or third parties (other than us and our personnel).

## **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, 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 us.

### **Termination**

Either party may terminate this Agreement or any Service at any time by giving 30 days' prior written notice of termination to the other party.

We may terminate or suspend immediately any Service without notice to Customer if Customer fails to maintain sufficient available funds in any account maintained for such Service. In addition, we may terminate this Agreement or terminate or suspend any Service immediately upon notice to Customer if: (a) Customer closes any account established in connection with the Services without establishing a replacement account; (b) Customer breaches a material obligation under this Agreement, any Applicable Law or any other agreement with us; (c) 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; (d) Customer's financial condition has become impaired in our good faith opinion; or (e) the continued provision of Services in accordance with the terms of this Agreement would, in our good faith opinion, violate Applicable Law or subject us to an unacceptable risk of loss.

You may terminate this Agreement if a material Service that you use fails to incorporate material technology you wish to use and pay for that is generally available through out the commercial banking industry from similarly situated providers of commercial banking services. You will provide notice of the exercise of your termination right as soon as practical.

Upon any termination of this Agreement, Customer shall: (a) promptly pay to us all sums due or to become due under this Agreement; (b) return immediately to us at Customer's expense, the System (if applicable), and all related materials, and all copies and reproductions thereof, whether written or in magnetic media and whether received from us or otherwise and shall pay us for any damages to any such materials (ordinary wear and tear excepted); and (c) have no further right to make use of the System or the Services.

Termination of a Service or this Agreement does not relieve or excuse Customer's payment obligations for any Services that we provide to Customer before or after the Service or this Agreement is terminated, nor does it release Customer or us from any of our 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.

### **Entire Agreement**

This Agreement, together with the Terms and Conditions, any applicable User Guide, the Service Requests, the signature card, Pricing Agreement, account fees, terms of use and any resolution or other document establishing Customer's authority to engage in the Services and open accounts with us (collectively, the "*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. If there is a conflict between this Agreement and the Terms and Conditions, the Terms and Conditions shall prevail to the extent necessary to resolve the conflict. Nothing in this Agreement confers a right or benefit on any person or entity other than us and Customer except for our Processors.

### **Amendment**

This Agreement and the Terms and Conditions may be modified by a written agreement executed and signed by the parties. Except for the provisions of the section entitled "**Fees and**

**Taxes,”** we may modify this Agreement or the Terms and Conditions by giving Customer thirty (30) calendar days’ prior written notice. You have the right to request that we change the proposed modification and if the parties are unable to agree upon the change, you may terminate this Agreement by giving us written notice within such thirty day period. 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 Terms and Conditions, as the case may be as so modified.

Notwithstanding the foregoing, if a modification to this Agreement or the Terms and Conditions is required by or under Applicable Law or by a regulatory authority with jurisdiction over us or is, in our good faith opinion, necessary to preserve or enhance the security of a Service, we may modify this Agreement or the Terms and Conditions by giving Customer notice of the modification by any means permitted by Applicable Law, and the modification will be effective immediately upon us giving such notice.

#### **Assignment**

Customer may not sell, assign or transfer, or grant a security interest in any of its rights or obligations under this Agreement without our prior written consent. We may assign our 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 us or our parent company, or the sale or transfer of all or substantially all of our assets or stock, or (b) in connection with the sale or other disposition involving a line of our business to which this Agreement relates. We will use reasonable efforts to notify Customer of any such assignment.

#### **Governing Law; Venue**

This Agreement shall be construed in accordance with, and governed by the laws of the State of Illinois.

#### **Waiver of Jury Trial**

Customer agrees that any suit, action or proceeding, whether as part of a claim or counterclaim, brought or instituted by Customer

on or with respect to this Agreement or any event, transaction or occurrence arising out of or in any way connected with this Agreement shall be tried only by a court and not by a jury. CUSTOMER EXPRESSLY, KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING.

#### **Miscellaneous**

**Notices.** Except as otherwise specifically provided in the Terms and Conditions or User Guide with respect to a particular Service, all notices and other communications by either party relating to this Agreement or the Services shall be given promptly in writing or electronic medium and shall be effective either on the date it is actually received. The address to which all notices (other than notices given electronically as permitted in this Agreement) concerning this Agreement or a Service shall be sent to Customer is that address we have in our records with respect to this Agreement or that Service, respectively. The address for notice to us will be as we specify to Customer in writing.

**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.

**Severability.** If performance of Services in accordance with the terms of this Agreement would result in a violation of any Applicable Law or governmental policy to which we are subject, then this Agreement and any Related Agreement shall be deemed amended to the degree necessary to comply with such Applicable Law, and we 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.

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

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.

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\*\*\*SIGNATURE PAGE FOLLOWS\*\*\*

**SIGNATURE PAGE TO MASTER TREASURY MANAGEMENT AGREEMENT**

**CUSTOMER NAME:**

**FIFTH THIRD BANK**

\_\_\_\_\_

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

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

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

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

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

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

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

**DATE:** \_\_\_\_\_

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

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

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

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

**Exhibit A**  
**Fees and Pricing Schedule**  
**(attached)**