

WIRE TRANSFER AGREEMENT AND TERMS PBNET BUSINESS ONLINE BANKING

1. Information For a Transfer – For each funds transfer, Customer will give the information Preferred Bank (“Bank”) requires to initiate the transfer. This information must include: name and address of Customer, name of person making the request, account number from which funds are to be transferred, the amount to be transferred, and the name and identifying number of the financial institution to which the funds are to be transferred.

2. Recording Conversations – Bank may record all telephone conversations and data transmissions received from or on behalf of Customer about a funds transfer.

3. Acting on Requests – Bank will act on each funds transfer request that meets all of the following conditions: Bank receives the request on a Business Day in the manner and place Bank specifies; Bank is able to verify the request through the security procedure prior to Bank’s applicable cut-off deadline; and Bank accepts the request. Bank will act on the request by making applicable entries or transmitting appropriate instructions no later than the stated value date or on the day the request is received if no value date is stated. The stated value date may not be prior to the day the request is received or more than five (5) Business Days after the day the request is received. Bank may treat any request it receives after the applicable cut-off deadline either as received on that Business Day or as received on Bank’s next Business Day. Bank is not liable for failing to detect any error in a request to transfer funds or other payment order. Bank is not required to act upon any special instructions regarding a funds transfer.

4. Rejecting Requests – Bank may reject any request to transfer funds if the transfer would exceed Customer’s available funds (as determined by Bank) in the applicable account or if Bank is not able to verify the request through the security procedure. Bank will notify Customer of the rejection orally, electronically, or in writing by the end of the Bank’s next Business Day. Bank may send written notices by mail. Bank is not liable for the rejection and is not obligated to pay Customer interest for period before Customer receives the notice of rejection.

5. Canceling or Amending – Customer has no right to cancel or amend a request to transfer funds after its receipt by Bank. If Customer asks Bank to cancel or amend a request and Bank is able to verify the request to cancel or amend through the security procedure, Bank may use reasonable efforts to act on Customer’s request. Bank has no liability if Bank is not able to carry out a cancellation or amendment of a request. Customer will reimburse Bank for any liability Bank incurs in attempting to cancel or amend a funds transfer.

6. Customer’s Payment – Customer will pay Bank the amount of each funds transfer on the date Bank receives the request and Bank’s fees and charges for its services when due. Customer will reimburse Bank for all taxes or other duties imposed on a funds transfer. Bank may, without prior notice or demand, deduct the amount of each funds transfer and the fees and other charges due Bank from any account maintained by Customer with Bank, or any affiliate of Bank. If Customer does not maintain available funds in its accounts sufficient to pay for a funds transfer or Bank’s fees and charges, Customer will immediately deposit or credit to the account sufficient good funds. Customer is bound by and will pay for any funds transfer or other payment order executed by Bank, whether or not authorized, provided that the funds transfer or payment order was verified by Bank by use of the security procedure.

7. No Extension of Credit – Bank is not obligated to create an overdraft to complete a funds transfer even if it has done so previously. If Bank does create an overdraft to complete a funds transfer, Customer will repay Bank immediately without demand. Bank makes no commitment to tender money, extend credit or otherwise advance funds to Customer to pay for any funds transfer or other payment order.

8. Identifying Number – If a funds transfer request or payment order identifies the beneficiary by both a name and an identifying number, and that name and number identify different persons, Customer understands that execution of the request or payment order, payment to the beneficiary, or cancellation of the request or payment order may be made solely on the basis of the identifying number. If a request or payment order identifies any bank by both a name and an identifying number and that name and number identify different banks, Customer understands that any person may rely solely on the identifying number. Bank has no duty to detect any inconsistency between the identifying number and the name.

9. Means of Transmission – Each request or payment order or cancellation of either may be executed using the Fedwire of the Federal Reserve System. If any part of a funds transfer is carried out by Fedwire, Customer’s rights and obligations are governed by Regulation J of the U.S. Federal Reserve Board. Bank may use any means of transmission funds transfer system or intermediary bank reasonably selected by Bank in acting on Customer’s requests, even if it differs from Customer’s instructions. Bank is not responsible for the acts or omissions of these other parties as they are not Bank’s agents.

10. Warranties – Bank represents and warrants that it has the right to furnish funds transfer services described in this Agreement. This warranty by Bank is in lieu of all other warranties expressed, implied or statutory, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Customer represents and warrants that it has the right to give and effect payment of each funds transfer or other payment order (or any cancellation or amendment of the same) made in Customer’s name and that such payment does not violate any law, rule or regulation.

11. Limitation of Liability – For funds transfer requests which are subject to either Division 11 of the California Commercial Code or Regulation J, Bank is not liable for expense, claim, loss, damage or cost (collectively “Damages”) which arise out of or relate to its performance under this Agreement other than those required to be paid under Division 11 or Regulation J, as applicable, except to the extent provided in this Agreement. In all other cases, Bank is not liable for any Damages which arise out of or relate to its performance under this Agreement, except for Bank’s negligence, subject to the following limit. Bank’s liability for its own negligence is limited to direct money damages actually incurred by Customer in an amount not exceeding the greater of the amount, if any, by which funds transferred from Customer’s account exceeded the amount specified in the applicable request or the amount transferred to an account other than the account specified in the request. Bank is not liable for any special, indirect, or consequential damages, even if Bank has been advised by Customer of the possibility of such damages. Unless Customer notifies Bank in writing within a reasonable period of time – no more than fourteen (14) days after the Bank first notified Customer (either by listing it on an account statement or in any notice or report provided to Customer) of an erroneous or unauthorized transfer, Bank will not be liable for interest thereafter as compensation for executing such erroneous or unauthorized transfer.

12. Interest Calculations – If Bank must pay compensation in the form of interest, Bank will calculate compensation for the relevant period as follows: for analyzed accounts, using its account analysis procedures; for interest bearing accounts, using the interest rate(s) for the account; for other accounts, using a rate equal to the average of the Federal Funds rates published by the Federal Reserve Bank of San Francisco, less reserves.

13. Indemnity – Customer will indemnify Bank for all liabilities, costs, losses and damages of any nature, including allocated costs of staff, counsel and other attorney fees, which arise out of or relate to disputes or legal actions by third parties, about any action Bank takes on Customer’s request to initiate, amend or cancel funds transfers. Customer’s obligation under this paragraph survives termination of the Agreement.

14. Dispute Resolution – Any dispute or controversy arising out of or relating to this Agreement, including breach of this Agreement, will be decided by reference under California Code of Civil Procedure Section 638 and related sections. A referee – either active attorney or a retired judge – will be selected according to the procedures for selecting arbitrators of the American Arbitrator Association and then appointed by the court in which the action regarding the dispute or controversy started. The dispute will be submitted to the referee for determination in place of a trial before a judge and jury.

15. General Terms

a. Failure to Perform – Neither Customer nor Bank is liable for its failure to perform its obligations under this Agreement when the failure arises from causes beyond its control, including, but not limited to, natural disaster, equipment failure, system failure, labor disputes, or the failure of a third party vendor to provide any electronic or telecommunication service used to execute or cancel payment orders. Bank is also not liable for its failure to perform if Bank believes its action would violate any guideline, rule or regulation of any government authority.

b. Governing Law – This Agreement is governed by California law (without reference to California principles of conflict of law) except that Regulation J governs a funds transfer if any part is carried out through Fedwire.

c. Amendments and Waivers – Bank may change this Agreement by giving Customer notice in writing before any change becomes effective. If a Customer requests funds transfer after any such change becomes effective, Customer will have accepted the change. Bank or Customer may delay exercising their rights without losing them. Any waiver or partial exercise of one right is not waiver of other rights or the same right at another time.

d. Termination – Either party may terminate this Agreement for any reason upon ten (10) days prior written notice to the other. The 10-day period begins on receipt of the notice. Termination does not affect any claim or cause of action of either party which existed prior to the termination.

e. Other Agreements and Authority – The terms of this Agreement are in addition to, and do not modify or otherwise affect, the terms of any other agreements between Customer and Bank or authorizations of Bank by Customer relating to funds transfers or other services provided by Bank to Customer. For example, this means that each Designated Caller or Authorized Person may alone request a funds transfer even if the person is not authorized to withdrawal funds from the account under the relevant account agreement, or the account agreement requires more than one signature for the withdrawal of funds.

f. Severance – If any provision of this Agreement is not enforceable, the other provisions will still be enforceable. This Agreement is intended to benefit only Bank and Customer.

g. Notices – Each notice related to this Agreement must be addressed to the address of the Customer or Bank appearing in this Agreement until either changes the address by a notice in writing to the other.

h. Business Day – In this Agreement, “Business Day” means Monday through Friday, excluding Bank holidays.

i. Foreign Currency – If a funds transfer involves foreign currency, Bank may exchange Customer’s funds for the foreign currency at any time on or before the transfer date. Customer accepts the risk of changes in these rates after the date on which Bank states it made the exchange.

16. Security Procedure – The purpose of the security procedure is to verify the authenticity of requests to initiate, amend or cancel funds transfers made in Customer’s name. This is not a security procedure to detect errors. The security procedure is as follows:

The customer will maintain two separate persons to initiate and approve wire transfers using PNet Business Online Banking. Both the Initiator and Approver shall be required to use passwords and tokens to verify their identities as authorized wire transfer users. THE BANK WILL HAVE NO LIABILITY TO YOU FOR ANY UNAUTHORIZED PAYMENT OR TRANSFER MADE USING YOUR PASSWORD (OR THAT OF ONE OF YOUR AUTHORIZED EMPLOYEES) THAT OCCURS BEFORE YOU HAVE NOTIFIED US OF POSSIBLE UNAUTHORIZED USE AND WE HAVE HAD A REASONABLE OPPORTUNITY TO ACT ON THAT NOTICE. We may suspend or cancel your Password even without receiving such notice from you, if we suspect your Password is being used in an unauthorized or fraudulent manner.

Customer has reviewed its requirements and determined that the security procedure described above is a satisfactory method of verifying the authenticity of requests made in Customer’s name to initiate, amend or cancel funds transfers. Customer accepts any risk of using this security procedure.



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