



# Atlanta Business Bank

## Addendum 4

### WIRE TRANSFER AGREEMENT

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (the "Effective Date"), by and between **Atlanta Business Bank** ("BANK"), and \_\_\_\_\_ ("USER").

#### RECITALS

WHEREAS, BANK is actively engaged in the business of offering wire transfer services ("Services") by way of the Business Online Banking Service as a convenience to USERS; and

WHEREAS, USER has requested BANK to provide such Services in connection with the transfer of funds from USER's account(s) maintained at BANK; and

WHEREAS, both BANK and USER desire to reduce to writing their understanding respecting the use of the Services.

NOW, THEREFORE. In consideration of the mutual promises hereinafter contained, the parties agree as follows:

#### Section 1. Term and Termination

This Agreement will begin on the Effective Date and shall continue until terminated by either party providing the other party with prior written notice.

#### Section 2. Methods of Issuing Wire Transfer Instructions

USER may issue wire transfer instructions to BANK via the Internet (Business Online Banking Product) or a written request (for contingency purposes only).

#### Section 3. Responsibilities of Bank

- a. **Verify Instructions.** BANK shall make a reasonable effort to verify the validity of instructions BANK receives from USER. The BANK will not be responsible for detecting erroneous instructions described in Section 4A-205 of the Uniform Commercial Code. The USER agrees that security measurements selected by it are commercially reasonable.
- b. **Execute Orders.** BANK shall make a good faith effort to execute wire transfer orders ("orders") according to the instructions issued by USER. However, BANK shall not be obligated to execute an order unless at the time of execution: (1) there are sufficient available funds in USER's account; or (2) BANK has otherwise received full payment in a manner acceptable to BANK.

- c. **Maintain Record of Incoming Calls.** BANK reserves the rights, but shall not be required, to electronically record any oral communications received from the USER.
- d. **Confirmation of Orders.** BANK shall, within a reasonable period of time, provide USER a confirmation of a received order. This confirmation will be sent to USER via email, allowing BANK “commercially reasonable” time to act upon the order.
- e. **Orders Subject to Statute.** International Wire Transfer. If the order is to be handled under any general or specific statute, rule, regulation or license of the United States, or any agency thereof, it is understood that the instruction shall be subject to such statute, rule, regulation or license. International wire transfers are transmitted in U.S. Dollars without regard to exchange rates.
- f. **Refund.** If the bank designated to receive the funds does not pay the beneficiary specified in the order, a refund will be made to USER only after BANK has received confirmation of the effective cancellation of the order and BANK is in possession of the funds debited or earmarked in connection with the order. If the order is payable in Foreign Currency, BANK shall not be liable for a sum in excess of the value of the order after it has been converted from Foreign Currency to U.S. Dollars at the receiving Bank’s buying rate for exchange at such time as the cancellation of the order is confirmed by BANK.
- g. **Authorization to Pay.** If BANK, as a receiving bank, accepts an order that is received in the name of the USER, as sender, the USER authorizes BANK to charge the User’s account with BANK that is specified in the order, even if such action will result in an overdraft of the account to be charged.
- h. **Overdrafts.** BANK shall not be precluded from granting credit to the USER in connection with this Agreement, but this Agreement shall not be so interpreted as to require it to grant credit to the USER, whether by permitting overdrafts to occur or otherwise, notwithstanding the fact that BANK may have previously established a pattern to allowing any such overdrafts.
- i. **System Inaccessibility.** The Bank will follow manual operating procedures in the case of voice-initiated and written requests.

#### 4. Responsibilities of User

- a. **Authorization and Password Protection.** USER shall have sole responsibility for controlling the distribution and maintaining the confidentiality of the password(s) assigned. If USER becomes aware of the unauthorized use of a password(s), or suspects that an unauthorized use may occur, USER is to immediately communicate this information to the company’s supervisor. The supervisor may communicate such information to BANK at (678) 742-9990. Upon receipt of this Information, BANK shall promptly remove the existing USER password and assign A new password to USER if required. HOWEVER, IN NO EVENT SHALL BANK BE RESPONSIBLE FOR ANY DAMAGES RESULTING, EITHER DIRECTLY OR INDIRECTLY, FROM THE UNAUTHORIZED USE OF THE SUPER USER PASSWORD PRIOR TO SUCH NOTICE AND A REASONABLE TIME THEREAFTER REQUIRED TO CANCEL SUCH PASSWORD.
- b. **Notify BANK of Unauthorized Instructions.** USER shall be fully responsible for promptly reviewing all confirmations of orders and bank statements received from BANK. An unauthorized instruction must be reported to BANK within thirty (30) days of the date USER receives either a confirmation of the order or a bank statement on which the debit resulting from the unauthorized instruction is reflected, whichever is earlier.
- c. **Supply BANK with Information.** USER agrees to supply BANK with any information that BANK may reasonably request, including but not limited to, money amounts, accounts to be affected, date of transfers, supplemental instructions, and further evidence of any authorized representative's authority to transfer funds or to perform any other act contemplated under the procedure required by this Agreement.
- d. **System Inaccessibility.** USER agrees to notify BANK to inact manual operating procedures for voice-initiated and written requests.

## 5. Liabilities: Risk of Loss or Delay

- a. **Unauthorized Instruction.** An "unauthorized instruction" is an instruction that is executed without the actual or apparent authority of USER. The term does not include an instruction: (1) issued by a person who provides BANK with a valid PASSWORD(S) of USER, unless such person obtained the PASSWORD(S) through the gross negligence or willful misconduct of BANK; or (2) in which the immediate benefit of the transfer of funds accrues to USER, an affiliate or subsidiary of USER, a principal or employee of USER, or a partnership or association in which USER is a member.
- b. **Individuals Having Access to PASSWORD(S) :** Unauthorized Use: Risk of Loss. USER acknowledges that anyone with knowledge of the PASSWORD(S) will be able to issue an instruction. USER acknowledges that BANK relies on the USE OF THE PASSWORD(S) and is otherwise unable to distinguish between authorized and unauthorized individuals. USER authorizes BANK to execute orders pursuant to the instructions of anyone who has provided BANK with a proper PASSWORD(S). USER ACKNOWLEDGES THE RISKS ASSOCIATED WITH UNAUTHORIZED USE OF THE PASSWORD(S) AND AGREES TO BEAR ANY AND ALL LOSSES RELATED THERETO.
- c. **Failure of Other Entities to Execute Orders.** Bank's sole responsibility under this Agreement is to make a reasonable effort to execute User's instructions. USER ACKNOWLEDGES THAT BANK WILL INCUR NO LIABILITY IN CONNECTION WITH THE FAILURE OF ANY OTHER ENTITY OR ENTITIES TO PROPERLY EXECUTE AN ORDER AS INSTRUCTED BY BANK.
- d. **Delays in Execution.** Absent willful misconduct or gross negligence, BANK shall incur no liability in connection with any delays in execution of an order.
- e. **Failure to Transfer Proper Amount.** If BANK is notified that an order executed by BANK did not transfer the full amount stated in User's instructions, Bank's sole liability shall be to promptly execute a second order in the amount of the stated deficiency. If BANK executes an order in excess of the amount stated in User's instructions, to the extent that USER does not receive the benefit of the order, the amount shall be treated as an unauthorized transfer and User's rights and obligations shall be governed by Section 5.H. of this Agreement.
- f. **Finality of Orders.** All orders executed by BANK in accordance with the terms of this Agreement shall be final and shall not be subject to stop payment or recall, except that BANK may, at User's request, endeavor to effect such stop payment or recall. In such a case, BANK will incur no liability for its failure or inability to do so.
- g. **Indemnity.** The USER agrees to indemnify and hold BANK harmless from any loss, claim or damage including without limitation attorney fees and expenses at trial and through appellate action to person or property arising out of this Agreement or USER'S use of the services or materials provided as a result of the services provided under this Agreement, provided that such loss, claim or damage was not caused solely by the gross negligence or willful misconduct of BANK. This indemnification will survive the termination of this Agreement.
- h. **Limitation of Liability.** Bank should have no liability for damages to any party regarding the transactions contemplated by this AGREEMENT unless the willful misconduct or gross negligence of BANK causes such damages. If, due to the willful misconduct or gross negligence of BANK, BANK executes an order in the name of the USER as sender which is not authorized and not effective as the order of the USER or is not enforceable in whole or in part, against the USER, BANK shall refund any payment of the payment order received from the USER to the extent BANK is not entitled to enforce payment and shall pay interest on the refundable principal amount for a period not to exceed 20 days or from the date the bank received payment to the date of the refund, whichever period is less. The USER is not entitled to receive interest from BANK on the amount to be refunded if the USER failed to exercise ordinary care to determine that the order was not authorized by the USER and to notify BANK of the relevant facts in accordance with section 4. C. of this Agreement. USER ASSUMES FULL RESPONSIBILITY FOR ALL TRANSFERS MADE BY BANK IN GOOD FAITH IN ACCORDANCE WITH THIS AGREEMENT AND AGREES THAT BANK SHALL BE CONCLUSIVELY DEEMED TO

HAVE EXERCISED ORDINARY CARE IF IT HAS FOLLOWED THE PROCEDURES REQUIRED BY THIS AGREEMENT. IN NO EVENT SHALL BANK BE LIABLE FOR DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM THE ERRORS OF USER, ITS EMPLOYEES, AGENTS, OR CUSTOMERS. NOR SHALL BANK BE LIABLE FOR DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM ORDERS EXECUTED BY BANK IN GOOD FAITH IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. REGARDLESS OF THE FORM OR NATURE OF ANY CLAIM OR ACTION, USER AGREES THAT IN NO EVENT SHALL BANK BE LIABLE TO USER OR ITS CUSTOMERS OR AGENTS FOR PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFIT, WHETHER OR NOT BANK SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING OR PERFORMANCE OF THE SERVICES CONTEMPLATED HEREIN. BANK shall have no further liability beyond that which is set forth in this section.

## 6. FEES

**Service Fees.** BANK reserves the right to charge a service fee for the Services provided hereunder. BANK shall provide USER with advance notice of any applicable fees. Additionally, such service fees may be increased by BANK upon prior notice to USER.

## 7. GENERAL

- a. **Applicable Law.** This Agreement and performance hereunder shall be governed by Article 4A of the Uniform Commercial Code and the laws of the State of Georgia. All transfer instructions issued by BANK in the name of the USER shall also be subject to the rules and regulations of any funds transfer system used by BANK and where applicable, Subpart B of Regulations J (112 CFR Part 210).
- b. **Entire Agreement.** This Agreement shall constitute the entire Agreement between the parties and shall supersede any and all prior oral or written representations, understandings, proposals or agreements between the parties regarding the Services to be provided hereunder.
- c. **Amendment.** The USER agrees that BANK may change the terms of this Agreement upon prior written notice to the USER.
- d. **Assignment.** No rights or interest in this Agreement may be assigned by the USER.
- e. **Severability.** Any invalidity, in whole or in part, of any provision of this Agreement, shall not affect the validity of any other provision of this Agreement.
- f. **Paragraph Headings.** Paragraph headings are provided for convenience of reference and do not constitute a part of this Agreement.
- g. **Force Major.** BANK shall be excused by USER for delays in performing and failures to perform this Agreement to the extent that any such delay or failure results from any cause beyond the reasonable control of BANK, including, solely by way of example and without limitation, delays caused by USER, acts of God, strikes, and other labor disputes, civil disorder, catastrophes of nature, fire, explosion, natural or man-made floods or any severe weather, war, failure of a communications or computer system, nuclear attack, embargoes, actions or inactions of governmental authorities affecting either BANK or suppliers to BANK. BANK agrees to make reasonable efforts to prevent such occurrences from affecting the execution of this Agreement.
- h. **Confirmation and Bank Statements Presumed Received.** A confirmation of the order or a bank statement, sent by any reasonable method, is conclusively presumed to have been received by USER five (5) days after such order confirmation or bank statement was sent by BANK.

**This Agreement is subject to the terms and conditions appearing on all pages of this Wire Transfer Agreement.**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and do each hereby warrant and represent that their respective signatory, whose signature appears below, has been and is on the date of this Agreement, duly authorized by all necessary and appropriate corporate action to execute this Agreement.

*Agreed to and Accepted by:*

(The USER)

Signature: \_\_\_\_\_

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

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

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

*Agreed to and Accepted by:*

(The BANK)

Signature: \_\_\_\_\_

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

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

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