

Presenting a live 90-minute webinar with interactive Q&A

Deposit and Security Account Control Agreements Under the UCC

Perfecting Security Interests in Special Collateral Types

THURSDAY, DECEMBER 20, 2012

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service at 1-800-926-7926 ext. 10.**

DEPOSIT ACCOUNT CONTROL AGREEMENT

version 1 dated February 13, 2006

available from the American Bar Association's Business Law Section at
<http://www.abanet.org/dch/committee.cfm?com=CL710060>¹

Executed and Delivered as of _____, 20__

PARTIES

This Agreement is among the persons signing this Agreement as the "Secured Party", the "Debtor" and the "Bank".

BACKGROUND

The Debtor is the Bank's customer with respect to one or more demand deposit accounts identified by the account numbers specified below (individually and collectively, as re-numbered and including any funds in the account or accounts, the "*Deposit Account*"). The Debtor has granted the Secured Party a security interest in the Deposit Account. The Debtor is requesting that the Bank enter into this Agreement. The Bank is willing to do so upon the terms contained in this Agreement.

This Agreement includes the General Terms, the Specific Terms and the Exhibit, each as defined or referred to below.

AGREEMENTS

A. GENERAL TERMS. This Agreement is subject to the General Terms for Deposit Account Control Agreement version 1 dated February 13, 2006, developed by a special task force of the American Bar Association's Business Law Section and available from the Business Law Section at <http://www.abanet.org/dch/committee.cfm?com=CL710060> (the "*General Terms*"). The General Terms are incorporated in this Agreement by reference and without modification except as may be provided in Section 10 of the Specific Terms.

¹ This document is a model form produced by the Joint Task Force on Deposit Account Control Agreements of the Business Law Section of the American Bar Association. The provisions of the form have not been approved by the House of Delegates or Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

B. SPECIFIC TERMS. The following terms (the “*Specific Terms*”) complete, supplement or modify the General Terms:

1. Deposit Account (see “Background” above). The following account or accounts comprise the Deposit Account [*list by account number*]:

2. Business Day (see definition of “Business Day” in Section 1 of the General Terms):

A day will not be considered as a “Business Day” if commercial banks in the following city or cities are closed on that day:

_____. If the preceding sentence is not completed, no additional days are excluded from the definition of “Business Day”.

3. Outside Time (see definition of “Outside Time” in Section 1 of the General Terms):

If the Outside Time is to be based on a period of less than two Business Days, the following is the earlier period:_____. If an earlier period is not inserted in the preceding sentence, then the Outside Time will be based on two Business Days.

4. Disposition of less than all or multi-disposition of funds (see Section 4(a)(ii)(E) of the General Terms):

The following is any computation or formula by which a Disposition Instruction originated by the Secured Party may provide for a disposition of less than all of the funds in the Deposit Account and whether there may be multiple recipients of the funds:

_____.

If the preceding paragraph is not completed to permit a disposition of less than all of the funds in the Deposit Account, then a Disposition Instruction originated by the Secured Party must be for a disposition of all of the funds. If the preceding paragraph is not completed to permit a disposition of the funds in the Deposit Account to multiple recipients, then a Disposition Instruction originated by the Secured Party must require that the funds be sent to a single recipient.

5. Reimbursement Claim Period (see Section 6(b) of the General Terms):

The number of days following the termination of the Agreement in which a reimbursement claim must be made against the Secured Party under Section 6(b) of the General Terms is _____. If a number is not inserted in the preceding sentence, the number is 90.

6. Electronic Records (see definition of “writing” in Section 1 of the General Terms):

Checking this line ___ means that the parties permit a writing to include an electronic record and permit communications by email. Otherwise, the parties do not permit a writing to include an electronic record and do not permit communications by email.

7. Governing Law (see Section 13(a) of the General Terms):

The jurisdiction whose law governs this Agreement is _____. If a jurisdiction is not inserted in the preceding sentence, the jurisdiction will be determined by applicable law.

8. Bank’s Jurisdiction for UCC Purposes (see Section 13(b) of the General Terms):

The Bank’s jurisdiction for purposes of part 3 of UCC Article 9 is _____. If the Bank’s jurisdiction for such purposes is not inserted in the preceding sentence, the Bank’s jurisdiction for such purposes will be determined by applicable law.

9. Delivery of Executed Copy (see Part D):

Checking this line ___ means that the delivery of an executed copy of this Agreement may be made by electronic transmission in addition to a transmission by facsimile. Otherwise, delivery of an executed copy of this Agreement may not be made by a form of electronic transmission other than facsimile.

10. Additional Provisions (see Section 12(b) of the General Terms):

The following provisions modify or supplement the General Terms:

If no provisions are inserted above in this Section 10, then there are no modifications to or supplements of the General Terms.

C. EXHIBIT. The parties have completed and attach hereto the Exhibit to be used as the form of the Initial Instruction. [*Note to person completing this Agreement: the Exhibit requires the designation of the person or persons or department at the Bank to receive the Initial Instruction. See Note 1 to the Exhibit.*]

D. SINGLE AGREEMENT; COUNTERPARTS. The General Terms, the Specific Terms and the Exhibit shall be read and construed together with the other provisions of this Agreement as a single agreement. Delivery of executed copies of this Agreement may be made by facsimile or, if so permitted in Section 9 of Part B, by another form of electronic transmission. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which collectively shall constitute a single agreement.

[remainder of page intentionally left blank]

SIGNATURES

Debtor:

By:_____

Name:

Title:

Address:

Attention:

Telephone Number (for information only):

Facsimile Number:

Electronic mail address (if Section 6 of Part B permits):

Secured Party:

By:_____

Name:

Title:

Address:

Attention:

Telephone Number (for information only):

Facsimile Number:

Electronic mail address (if Section 6 of Part B permits):

Bank:

By: _____

Name:

Title:

Address:

Attention:

Telephone Number (for information only):

Facsimile Number:

Electronic mail address (if Section 6 of Part B permits):

Exhibit

[LETTERHEAD OF THE SECURED PARTY]

DEPOSIT ACCOUNT CONTROL AGREEMENT

INITIAL INSTRUCTION

[Date]

[Name of Bank]

[Address of Bank]

Attention:

[Person or Persons or Department] *[See Note 1 below]*

Ladies and Gentlemen:

This is the Initial Instruction as defined in the Deposit Account Control Agreement dated _____, 20__, among you, us and [Debtor] (the “*Debtor*”) (as currently in effect, the “*Control Agreement*”). A copy of the Control Agreement as fully executed is attached. Capitalized terms used in this Initial Instruction have the meanings given them in the Control Agreement

This Initial Instruction directs the Bank no longer to comply with the Debtor’s Disposition Instructions.

[As an included Disposition Instruction, we direct you to send the funds in the Deposit Account to us by the method and at the address indicated below. We recognize that, as a condition to your complying with this Disposition Instruction and to the extent that we have not already done so, we must provide to you evidence reasonably required by you as to the authority of the person giving this Disposition Instruction to act for us. We also recognize that your obligation to comply with this Disposition Instruction is subject to the other provisions of Section 4(a)(ii) of the General Terms. *[See Note 2 below]*

Funds transfer instructions:

Receiving bank: _____.

ABA routing number for domestic wire: _____.

ABA routing number for ACH transaction: _____.

International: Swift Code No. _____.

Reference details: _____.]

Very truly yours,

[SECURED PARTY]

By: _____

Title: _____

Notes to the person completing this form of Initial Instruction:

1. The "attention" line should be completed with particular care. Until the Initial Instruction is actually received by the person or persons or department at the Bank designated in the "attention" line, the time period by which the Bank must comply with the Initial Instruction will not commence. Accordingly, it is advisable to provide in the "attention" line a specific department or specific officer or officers at the Bank by title rather than by name. If an individual at the Bank is to be designated by title or even by name, it is advisable that one or more additional individuals at the Bank be designated as alternatives to receive the Initial Instruction if the first individual is not available.

2. The bracketed language relating to a Disposition Instruction (including funds transfer instructions) is optional. Not including this language does not preclude the Secured Party from subsequently giving a Disposition Instruction.