

## CONTROL AGREEMENT

**Control Agreement**, dated as of \_\_\_\_\_, by and among the Superintendent of Financial Services of the State of New York ("Superintendent"), with an address at One State Street, New York, NY 10004 ("Secured Party"); \_\_\_\_\_, with an address at \_\_\_\_\_ (the "Corporation"); and \_\_\_\_\_ with an address at \_\_\_\_\_ (the "Depository").

## RECITALS

The parties have entered into a Deposit and Pledge Agreement dated the date hereof, under which the Corporation may from time to time deposit securities and funds (the "Deposited Assets") as required by Section 202-b of the New York Banking Law ("Section 202-b"), Part 322 of the Superintendent's Regulations ("Part 322") and Part 51 of the General Regulations of the Superintendent ("Part 51") into a securities account (the "Account") with the Depository.

The Corporation has granted Secured Party a security interest in the Account. The parties are entering into this agreement to perfect Secured Party's security interest in the Account.

## AGREEMENT

**Section 1. The Account.** Depository represents and warrants to Secured Party that:

1.1 Depository maintains the Account, account number \_\_\_\_\_, in the name of \_\_\_\_\_.

1.2 Depository does not know of any claim to or interest in the Account, except for claims and interests of the Corporation and the Secured Party.

1.3 All property credited to the Account, and all other rights of Corporation against Depository arising out of the Account, including any free credit balances, will be treated as "financial assets" under Article 8 of the New York Uniform Commercial Code.

**Section 2. Control by Secured Party.** Depository will comply with all notifications it receives directing it to transfer or redeem any financial assets in the Account (each an "entitlement order") originated by Secured Party without further consent by Corporation.

**Section 3. Corporation's rights in Account.** Except as otherwise provided in this Section 3, Depository will comply with entitlement orders (as defined in Article 8 of the New York Uniform Commercial Code) originated by the Corporation in accordance with the provisions of Section 51.2 of Part 51. If Secured Party notifies Depository that Secured Party will exercise exclusive control over the Account (a "notice of exclusive control"), Depository will cease (i) complying with entitlement orders or other directions concerning the Account originated by Corporation, and (ii) distributing to Corporation interest and/or dividends on financial assets in the Account. Until Depository receives a notice of exclusive control, Depository may distribute to Corporation all interest and regular cash dividends on financial assets in the Account. Except as otherwise permitted by this Section 3 and Part 51, Depository will not comply with any entitlement order originated by Corporation that would require Depository to make a free delivery to Corporation or any other person.

**Section 4. Priority of Secured Party's security interest.** Depository subordinates in favor of Secured Party any security interest, lien or right of setoff Depository may have, now or in the future, against the Account or financial assets in the Account.

**Section 5. No third party control.** Depository represents and warrants that no third party has a right to give an entitlement order regarding financial assets in the Account. Depository will not agree with any third party that Depository will comply with entitlement orders originated by the third party.

**Section 6. Statements, confirmations and notices of adverse claims.** Depository will send all statements and confirmations for the Account to Corporation. Depository will use reasonable efforts promptly to notify Secured Party and Corporation if any other person claims that it has a property interest in a financial asset in the Account and that it is a violation of that person's rights for anyone else to hold, transfer or deal with the financial asset.

**Section 7. Depository's responsibility.**

7.1 Except for permitting a withdrawal, delivery or payment in violation of Section 3, Depository will not be liable to Secured Party for complying with entitlement orders from Corporation that are received by Depository before Depository receives and has a reasonable opportunity to act on a notice of exclusive control. Depository will not be liable to Corporation for complying with a notice of exclusive control or with entitlement orders originated by Secured Party, even if Corporation notifies Depository that Secured Party is not legally entitled to issue the entitlement order or notice of exclusive control, unless Depository takes the action after it is served with an injunction, restraining order or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order or other legal process.

7.2 This agreement does not create any obligation of Depository except for those expressly set forth in this agreement. In particular, Depository need not investigate whether Secured Party is entitled under Secured Party's agreements with Corporation to give an entitlement order or a notice of exclusive control. Depository may rely on notices and communications it reasonably believes to have been given by the appropriate party.

**Section 8. Indemnity.** Corporation will indemnify Depository, its officers, directors, employees and agents against claims, liabilities and expenses arising out of this agreement (including reasonable attorneys' fees and disbursements), except to the extent the claims, liabilities or expenses are caused by Depository's gross negligence or willful misconduct.

**Section 9. Termination; survival.** Secured Party may terminate this agreement by notice to Depository and Corporation. Depository may terminate this agreement on 60 days' notice to Secured Party and Corporation; provided that no termination shall be effective except as provided in paragraph (k) of Section 51.2 of Part 51. If Secured Party notifies Depository that Secured Party's security interest in the Account has terminated, this agreement will immediately terminate. Sections 7 ("Depository's responsibility") and 8 ("indemnity") will survive termination of this agreement.

**Section 10. Governing law.** This agreement will be governed by the laws of the State of New York.

**Section 11. Entire agreement; amendments.** Except as provided in the following section, this agreement is the entire agreement, and supersedes any prior agreements and contemporaneous oral agreements, of the parties concerning its subject matter. No amendment of, or waiver of a right under, this agreement will be binding unless it is in writing and signed by the party to be charged.

**Section 12. Construction with Banking Law and regulations; additional rights of Superintendent.**

12.1 The subject matter of this agreement is covered by Section 202-b and Parts 322 and 51. In the event of any inconsistency between this Agreement and Section 202-b or Parts 51 or 322, the provisions of such section or such regulations shall prevail.

12.2 The rights of the Superintendent in and to the Deposited Assets resulting from the security interest granted by the Deposit and Pledge Agreement and the rights granted by this Control Agreement are in addition to, and not in limitation of, the rights of the Superintendent in and to such Deposited Assets arising from the

special deposit created by Part 51 and otherwise under the Banking Law and the regulations thereunder.

**Section 13. Severability.** To the extent a provision of this agreement is unenforceable, this agreement will be construed as if the unenforceable provision were omitted.

**Section 14. Successors and assigns.** A successor to or assignee of Secured Party's rights and obligations under the security agreement between Secured Party and Corporation will succeed to Secured Party's rights and obligations under this agreement.

**Section 15. Notices.** A notice or other communication to a party under this agreement will be in writing, will be sent to the party's address set forth below or to such other address as the party may notify the other parties and will be effective on receipt.

**SECURED PARTY:**

**SUPERINTENDENT OF FINANCIAL SERVICES**

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

**Name:**

**Address for Notices:**

**One State Street**

**New York, NY 10004**

**Attention: Foreign & Wholesale Banks Business Unit**

**CORPORATION:**

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

**Name:**

**Address for Notices:**

**DEPOSITORY:**

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

**Name:**

**Address for Notice:**