

This Master Agreement (as amended from time to time, the "Agreement") governs the use of one or more Treasury Management Services (as defined below) as provided by Bank (as defined below) to a Customer ("Customer"). This Agreement shall be effective and binding upon Customer when Customer submits and Bank accepts a written request ("Enrollment Request") from Customer to enroll in a Service governed by this Agreement. The Enrollment Request must acknowledge and accept this Agreement and must be signed by Customer's authorized representative. Upon acceptance by Bank, each Enrollment Request attaches to and becomes a part of this Agreement, and together the two documents constitute one service agreement that controls the terms and conditions governing the Service named in the Enrollment Request. Enrollment Requests for multiple services may attach to this Agreement in this manner. As used in this Agreement, the terms "we," "us" and "our" refer to Bank and the terms "you" and "your" refer to Customer.

## I. General Terms and Conditions

The terms and conditions enumerated in these General Terms and Conditions apply to any and all Treasury Management Services in which Customer has enrolled.

**1. Definition of Bank.** The term Bank refers to Whitney Bank, a Mississippi state chartered bank doing business through its locations in Mississippi, Alabama and Florida as Hancock Bank and doing business as Whitney Bank through its locations in Louisiana and Texas. The Services governed by this Agreement may be used to access or effect transactions in Customer's accounts at branches doing business as either Hancock Bank or Whitney Bank. Notwithstanding the provision of any Services under the trade name Hancock Bank, for contractual purposes this Agreement is entered into by and between Customer and Whitney Bank.

**2. Definition of Treasury Management Services.** For the purposes of this Agreement, Treasury Management Services (each a "Service" or collectively, the "Services") shall mean any of a suite of banking services as may be offered by Bank from time to time, in its sole discretion, to its business customers to facilitate commercial payments and receipts, to facilitate Customer's management of its accounts, to facilitate Customer's receipt of account and transaction information, and/or to assist Customer in securing its accounts and account information against unauthorized access.

**3. Additional Definitions.** Unless specified otherwise with respect to a particular Service, for the purposes of this Agreement the following terms shall have the meanings provided below:

- a. "Accounts" means all Eligible Accounts Customer has designated in the Enrollment Request for any Service as the accounts which you want to have enrolled in a Service.
- b. "Business Day" as used in this Agreement means Monday through Friday, excluding bank and Federal holidays.
- c. "Credentials" has the meaning provided in Section I.8 of this Agreement.
- d. "Deposit Account Agreement" has the meaning provided in Section I.18 of this Agreement.
- e. "Eligible Account" means any checking account, deposit account, credit card account or loan account that we deem eligible, in our sole discretion, to establish or use any Service.
- f. "Fee Schedule" shall mean the Schedule of Fees for each Service and/or the "Business and Nonprofit Account Service Fee Information", as amended and published by Bank from time to time.
- g. "Personal Financial Management (PFM) Software" means a computer program such as Quicken®, QuickBooks®, Turbo Tax®, or other software we may allow to link to our online banking systems from time to time, through which you may access your Accounts and certain Bank information related thereto via a direct interface with certain Bank systems. Bank shall provide Customer directions for linking currently supported Personal Financial Management Software programs and versions.
- h. "Portal" shall mean a specified gateway used to provide access to a designated Service.
- i. "Security Administrator" shall mean the person appointed by Customer on the Enrollment Request for a Service as having the authority to create and revoke access privileges for other Users and assigning and maintaining Credentials as more fully set forth in this Agreement.
- j. "Security Procedures" shall have the meaning provided in Section I.8 of this Agreement.
- k. "Third Party Agent" shall mean any third party appointed by Customer to perform any activity related to a Service and shall include any vendor or provider of PFM Software purchased and used by Customer.
- l. "Third Party Vendor" shall mean any third party vendor providing Third Party Software (as defined in Section 10 (k) of this Agreement) used in connection with any service provided by the Bank pursuant to this Agreement.
- m. "Treasury Solution" refers to Bank's commercial online banking service described in Section II of this Agreement.
- n. "Transfer Day" means Monday – Friday, to 7:00 p.m., Central Time. Holidays are not included.
- o. "Users" shall have the meaning set forth in Section 8(c)(ii) of this Agreement.

**4. Account Access and Linkage.** To have access to the Services, Customer must have at least one Eligible Account with Bank. The following conditions apply to Eligible Accounts:

- a. All Eligible Accounts enrolled with respect to any Service are subject to this Agreement. We reserve the right to determine the eligibility and/or ineligibility of any account as an Eligible Account at any time, in our sole discretion and without notice to you, subject to the requirements of applicable law.
- b. Customer shall set forth in the Enrollment Requests for any Service the Accounts that may be accessed using such Service. Generally, accounts with Customer's taxpayer identification number as designated on the Enrollment Requests may be linked.
- c. At Customer's request and at Customer's risk, Customer may enroll accounts with different taxpayer identification numbers than that designated on the Enrollment Request, however such enrollment is at our discretion and subject to our reasonable satisfaction that Customer is an owner of or signer on such linked accounts, or is otherwise affiliated with such accounts or authorized to view or conduct transactions on such accounts. In such cases Customer will be allowed access to all Accounts through a common set of Credentials (otherwise known as "single sign on").

- d. Customer should only request accounts to be linked which are owned by common owners, have one or more common signatories, or are otherwise affiliated. Personal accounts may not be designated for use with the Services or linked with designated Accounts. By requesting access to any account Customer is thereby certifying to Bank that Customer is authorized to link the accounts of the different businesses and to use the Services for such businesses. Bank reserves the right at any time to deny or remove linked access to any Account for any reason or no reason.
- e. Subject to the specifications set forth in the Enrollment Requests, we will permit Users to access and view all Accounts together, to make transfers between and from such accounts, and to otherwise use the Services with respect to such Accounts, all without regard for the ownership of such accounts.
- f. Customer agrees to notify Bank promptly if Customer's authority over any Account is decreased or if there are any changes in ownership, affiliation or signatories of any Accounts. Customer further agrees that Bank is not liable if Customer's authority over any Account decreases until Bank is informed of the change in authority and has a reasonable opportunity to act on such information.
- g. Accounts designated by Customer in any Enrollment Request(s) for any Service may be changed by Customer, provided Bank reasonably believes the request to have been made by Customer, and subject to Bank's having a reasonable amount of time in which to take action on the request.

**5. Establishment of Services.**

- a. Customer must submit a separate Enrollment Request for each Service selected. Customer may not use a Service until its Enrollment Request has been accepted by Bank. Execution of an Enrollment Request or other acknowledgement by Customer of its enrollment in any Service and each use of a Service under an existing Enrollment Request (including any Enrollment Request or similar type of document submitted by Customer to Bank or Bank's predecessor in interest) shall be deemed an affirmation of Customer's agreement to be bound by the terms of this Agreement.
- b. To the extent that Bank appoints a subcontractor or other third party to perform any activities relating to a Service, Bank shall be responsible for all actions and obligations of such third party as if they were the direct actions and obligations of Bank itself. Bank acknowledges that, among other things, this means that Bank is liable for the third party's breaches of warranties and obligations, including liability for indemnification for such breaches, if applicable, as if Bank breached such warranties and/or obligations itself. Customer shall undertake all appropriate due diligence of and investigation into the business, operations, intellectual property and other rights, financial and other conditions, or rights and creditworthiness, of any subcontractor or other third party based upon documentation and other information it has deemed appropriate and made its own decision to enter into a relationship with any subcontractor or other third party.
- c. Bank represents that (i) the Services shall be provided to Customer in conformity with all applicable federal and state laws and regulations.; (ii) Bank shall regularly monitor the access, use and security of the operating systems used by Bank to provide Services to Customer and will promptly notify Customer in writing as required by applicable laws and regulations of any actual, attempted, or suspected unauthorized access or breach of any such operating systems or Security Procedures; and (iii) To the extent that Bank utilizes any third party to perform any activities relating to any Services utilized by Customer, Bank shall, as between Customer and Bank, be solely responsible for all actions and obligations of such third party as if they were the direct actions and obligations of the Bank itself.

**6. Fees.** Customer shall pay Bank for the Services as set forth in the Fee Schedule for each Service. Customer acknowledges receiving the current Fee Schedule for the Services for which Customer has enrolled. These fees may be changed by Bank on thirty (30) days' notice to Customer and will be binding upon expiration of such period. Customer shall maintain sufficient collected and available balances in the Account(s) to pay all fees and charges, and/or Bank may debit any fees due and owing hereunder from the Account(s). If Customer does not maintain sufficient funds in the Account(s) to pay all fees and charges when due, Customer shall, upon demand, immediately pay all outstanding fees and charges. Notwithstanding the foregoing, Bank may, without notice, set off against any other accounts maintained by Customer with Bank or any of its affiliates, for all amounts due hereunder. In addition to fees specifically related to the Services, all Accounts shall be subject to other customary account charges and fees, as disclosed in Bank's then current Fee Schedule applicable to such Account. Charges to Customer do not include any taxes relating to the Services, and Customer shall be responsible for the payment of such taxes. Customer may also incur additional expenses for additional items, including but not limited to telephone service or Internet service charges related to the use of the Services. Customer is responsible for any costs or expenses associated with meeting and maintaining technical requirements or additional items necessary to use any of the Services

**7. Customer Representations and Warranties.** Customer represents, warrants and agrees as follows:

- a. (i) Customer is a business entity duly authorized, validly existing and in good standing under the laws of the United States, or the laws of the state or country in which Customer was organized, and (ii) customer has full authority and power to enter into this Agreement and to perform its obligations under this Agreement; (iii) its performance of its obligations under this Agreement will not violate any applicable law or regulation or any agreement to which Customer may now or hereafter be bound; (iv) that all necessary corporate or other actions required to authorize the Customer to enter into this Agreement have been taken; (v) that the execution and performance of this Agreement does not contravene Customer's articles of incorporation or charter, bylaws, partnership agreement, operating or any agreement to which Customer is a party or by which it is bound; (vi) that this Agreement represents a valid obligation of Customer and is fully enforceable against Customer, and (vii) Bank, in accepting this Agreement, is expressly acting and relying upon the aforesaid representations and warranties.
- b. Customer warrants that the Services and all information obtained therefrom shall be used only for the legal business purposes of Customer and not for any unlawful or illegal purpose or activity.
- c. None of Customer's employees are a national of a designated blocked country or a "Specially Designated National," "Blocked Entity," "Specially Designated Terrorist," "Specially Designated Narcotics Trafficker," or "Foreign Terrorist Organization," as defined by the United States Treasury Department's Office of Foreign Assets Control (OFAC), and Customer agrees to always practice reasonable diligence and control to ensure ongoing compliance with this warranty.
- d. None of the Accounts is a consumer purpose account as defined by the Electronic Funds Transfer Act ("EFTA") and its implementing regulation ("Regulation E"), and Bank, by providing the Services does not assume any of the Customer's obligations, if any, under EFTA or Regulation E, or any other applicable federal or state law or regulation unless Bank has agreed in writing to do so.
- e. Customer shall follow commercially reasonable practices and procedures to ensure the integrity and security of its operating systems used in conjunction with a Service.

- f. To the extent that Customer appoints a Third Party Agent to perform any activities relating to a Service, Customer shall be solely responsible for all actions and obligations of such Third Party Agent as if they were the direct actions and obligations of Customer itself. Customer acknowledges that, among other things, this means that Customer is liable for the Third Party Agent's breaches of warranties and obligations, including liability for indemnification for such breaches, as if Customer breached such warranties and/or obligations itself. Customer shall undertake all appropriate due diligence of and investigation into the business, operations, intellectual property and other rights, financial and other conditions, or rights and creditworthiness, of any Third Party Agent based upon documentation and other information it has deemed appropriate and made its own decision to enter into a relationship with any Third Party Agent. Customer's agreement with any Third Party Agent must include a provision allowing Bank to conduct, upon reasonable notice and during normal business hours an on-site inspection of Third Party Agent's books, records and premises, to ensure compliance with the requirements of this Agreement as it relates to any Service with regard to which such Third Party Agent act's on Customer's behalf.

**8. Security.** In connection with providing access to any Service, Bank may provide or make available to Customer certain information, processes or technologies, including but not limited to access codes, security devices, tokens, certificates and other methods of user identification or authentication ("Credentials"). Customer acknowledges and agrees that the Credentials and other safeguards, procedures, and monitoring as Bank may require or offer from time to time for any Services (together "Security Procedures") are designed to prevent unauthorized payment orders, unauthorized entries and requests, and unauthorized access to private customer information. Customer agrees to comply with all such Security Procedures. Bank reserves the right to modify, amend, supplement or cancel any or all Security Procedures (including any Credentials or any type of security device), at any time in Bank's discretion. Customer's implementation and use of any Security Procedure, including, any modified Security Procedures after receipt of notice thereof shall constitute Customer's acceptance of such Security Procedures as a commercially reasonable means of preventing unauthorized activity and adequate for the purposes intended. To maintain the privacy, integrity, and accessibility of the Services, Customer agrees as follows:

- a. For any of the Services requiring the use of Credentials, Customer agrees:
- i. to ensure that all Credentials are maintained and safeguarded in a secure manner;
  - ii. that providing any Credentials to any person effectively constitutes a grant of authority to access the Services and Customers accounts;
  - iii. to provide Credentials only to those persons authorized by Customer to use the Service(s);
  - iv. to promptly revoke Credentials for any person whose job duties no longer require access to the Service(s), including employees who have been terminated;
  - v. to adopt and enforce policies that prohibit the sharing of Credentials by multiple persons;
  - vi. to notify Bank immediately if you believe that any Credentials or Security Procedures have been stolen, compromised or otherwise become known to unauthorized persons or if you believe that any transaction or activity through any of the Services is unauthorized or in error;
  - vii. that the initiation of any transaction or instructions using applicable Security Procedures for the Service constitutes sufficient authorization for Bank to execute such transaction or instruction and Customer agrees that it shall be bound by any and all transactions initiated through the use of such Security Procedures, whether authorized or unauthorized, and by any and all transactions and activity otherwise initiated using Customer's Credentials and the applicable Security Procedures for such Services, to the fullest extent allowed by law; and
  - viii. that notwithstanding any instructions or agreements that require two or more signatures to access your accounts or the funds therein, that any User (as such term is defined below) acting alone can access your accounts and initiate banking transactions using the Services.
- b. The Bank offers various Security Procedures, which may be required or recommended:
- i. In order to access Treasury Solution (or Services accessed through Treasury Solution) the Bank requires at a minimum that each user designated by Customer shall order, maintain and utilize a security token provided by the Bank for all logins. The security token must be utilized to access Treasury Solution or initiate transactions from either ACH or Wire Transfer services. In addition, initiation of ACH items or wire transfers – outgoing shall require "dual control" before the Bank will complete those transactions. Dual Control requires two separate parties representing the Customer to review and authorize the ACH or Wire request before the Bank will accept the request and proceed with the transaction.
  - ii. To manage the increased the risk of account takeover and fraudulent activity that arises with electronic account activity, the Bank strongly recommends the Customer perform periodic internal audits over its processes, procedures, systems and personnel to aid in the timely detection of cyber and check fraud.
  - iii. The Bank also makes available to our Customers materials, services and software to assist Customers with implementing defenses the Customer deems appropriate based on its business practices and personnel. The Bank strongly recommends the Customer (a) review the *Security Matters Briefing Paper* that the Bank makes available to Customers for guidance on how to review security procedures, (b) install "Rapport Account Protection" software (additional information on this optional protection is set forth in Section 10(f) below) to help combat cyber-fraud, and (c) use the Bank's Positive Pay service to help prevent check fraud, and ACH Fraud Prevention Services and Safe Wire services to protect against ACH and wire fraud.
- c. For any Service (s) requiring or providing Customer the option to designate one or more Security Administrators, Customer agrees:
- i. to designate as Security Administrators only those individuals deemed by Customer to possess the business knowledge, authority, technical capability, and trustworthiness appropriate for an individual charged with controlling the rights of individual users to view Customer's banking information or to conduct financial transactions on Customer's behalf;
  - ii. that any Security Administrator shall have the power and authority to appoint designated users or authorized representatives or other administrator(s) (each a "User," collectively "Users") who may be granted any and all authority to perform transactions and initiate inquiries using the Services, including, but not limited to, the authority to designate or authorize other users of such Services and to set with regard to such other Users the level of functionality, access and transactional capabilities and limits available to User and to add and delete Users, and to modify the rights granted to any User from time to time;
  - iii. that each Security Administrator shall have the authority on Customer's behalf to accept and approve, electronically, or otherwise, any and all agreements and amendments to agreements by and between the Bank and Customer, including, but not limited to this Agreement;
  - iv. to immediately terminate the Security Administrator rights of any individual who no longer qualifies to act in that role for any reason; and;
  - v. to compel any Security Administrator to add and remove user rights according to legitimate business needs and to assign limits on transaction amounts according to each user's business responsibilities as assigned by Customer.
  - vi. that Bank offers and recommends the use of a dual-control security procedure for the authorization and release of transactions, including, without limitation, "Dual Administration" of all additions, revisions or deletions made by a Security Administrator in Treasury Solution. as recommended and described in Section II (9.) of this Agreement. If Customer chooses to use a single-user control procedure where a dual control option is available, Customer accepts the increased risk of loss and liability arising from that choice.

- d. If Bank and Customer agree to security controls and procedures with respect to a Service other than those Security Procedures generally required or recommended by Bank to be used in connection with such Service, those security controls and procedures shall be applicable only if they are specifically incorporated into this Agreement in writing.
- e. Customer shall be liable for any and all claims, losses, and/or damages arising from use of the Services, whether authorized or unauthorized, by any person who utilizes the Credentials or who gains access by any other means. Customer shall be obligated to monitor all transactions conducted through the Services frequently and regularly, and to notify Bank promptly of any actual, attempted, or suspected unauthorized access or breach of any Security Procedure. Failure by Customer to monitor and report suspicious activity timely shall relieve Bank from any and all liability (if any) for any unauthorized activity. Notwithstanding anything to the contrary contained herein, in no event shall Bank be liable for any activity in the Customer's accounts if the activity was initiated or accomplished using the Credentials or if Customer failed to comply with applicable or recommended Security Procedures.

**9. Service Content.** The contents of any Service website, any software used in connection with the operation and maintenance thereof, and the information provided through any Service (collectively, the "Content") are the property of Bank or its service providers, or are licensed to Bank and/or its service providers and subject to contractual limitations on its use. Customer shall use the Content for the consummation of Service transactions pursuant to the terms of this Agreement and for Customer's own use as contemplated by this Agreement, and for no other use or purpose whatsoever. Subject to Customer's own permitted use of the Content as contemplated by this Agreement, Customer shall not reproduce, copy, retransmit, disseminate, sell, distribute, publish, broadcast, circulate, commercially exploit, or create derivative works based upon the Content without Bank's written consent. Customer agrees to comply with all terms and conditions relating to the use of the Content in order to protect the contractual, statutory and common law rights of Bank and/or its service providers with respect to the Content. . Customer solely and exclusively owns all right, title and interest in and to any data of Customer, its Affiliates, and their respective customers that Bank has access to under this Agreement, including the Items (collectively, "Customer Information"). Bank shall use, and shall cause its affiliates and subcontractors to use, Customer Information solely for the purposes of and to the extent necessary to provide the Services.

**10. Computer-Based Services.** For services accessed by computer or which involve the exchange of computer data between Customer and Bank:

- a. Customer's computer systems must meet certain current minimum technical specifications. These technical specifications and requirements may be described elsewhere in this Agreement or in a user guide that applies to any particular feature or functionality available as part of the Services from time to time.
- b. Customer possesses and shall maintain in working order all computer hardware, communications facilities and other supporting components (including software) ("Supporting Components") necessary to support proper use of the Services. Customer may also incur additional related expenses for additional items, including but not limited to telephone service or Internet service charges related to the use of the Services.
- c. Customer is responsible for any costs or expenses associated with meeting and maintaining technical requirements or additional items necessary to use any of the Services.
- d. Customer might be required to accept Web site Cookies to use one or more of the computer-based Services.
- e. Customer hereby grants Bank access to its Supporting Components for any purposes reasonably related to Bank's delivery of the Services. Customer agrees to follow commercially reasonable practices and procedures to ensure the integrity and security of its operating systems used in conjunction with a Service, including but not limited to the installation, routine updating, and use of anti-virus software and other available malicious software detection, the application of all applicable security patches, and the use of a firewall.
- f. Bank strongly recommends Customer install Rapport Account Protection software to increase Customer's protection from cyber-fraud. Rapport Account Protection is available from the Bank website and may be downloaded by any Customer on their internet-connected computers.
- g. We do not guarantee that the Services will be compatible with all modem types, computer systems, internet browsers, hardware and/or software.
- h. Bank is not responsible for any errors or failures resulting from defects in or malfunctions of Customer's computer hardware or software.
- i. When required to facilitate Customer's use of a computer-based service, Customer shall transmit or deliver data and other information in the format and on the media as required by the Bank in conjunction with rendering such Service. Customer shall have the sole responsibility of ensuring the accuracy and correctness of the data transmitted. Customer acknowledges and agrees that Bank shall not examine the data for correctness and the Bank shall not have any responsibility for detecting errors in the data transmitted by the Customer. The data transmitted by Customer must be legible, correct and complete. Bank shall not process, and Bank shall not be liable to Customer for failure to process, the data if it is not in the format specified by Bank or if the data is incomplete. Bank shall not be liable for errors or omissions caused by data that is rejected as the result of Customer's failure to provide the data in accordance with the standards specified in this Agreement and the applicable operating instructions or user guides.
- j. Customer shall deliver or transmit all data or information to Bank by the deadline(s) specified by Bank for any applicable Service. Bank shall have no obligation to process data or perform the Service if the data is not received by the Bank by the specified deadline.
- k. Some of the Services provided to Customer by Bank pursuant to this Agreement utilize a third party client application software that is licensed by Bank from a third party and all documentation related thereto ("Third Party Software"). Bank hereby grants to Customer a non-exclusive, nontransferable, sublicense to use any Third Party Software provided by Bank in connection with any Service covered by this Agreement, provided that such use shall be solely for business purposes. Customer's sublicense of any Third Party Software is valid only for the latest version of the software that has been provided to Customer by Bank. Customer acknowledges that Third Party Software is sublicensed, not sold and the original licensor retains ownership of all copies of the software. Customer agrees to the following terms and conditions applicable to its use of Third Party Software: (i) Customer will not reverse engineer, decompile, disassemble, modify, translate, create derivative work, or make any attempt to discover source code of Third Party Software provided to Customer by Bank in order to implement any Service; (ii) Customer will not copy Bank's software or Third Party Software, except for archive purposes consistent with Customer's back up procedures and practices and shall not violate the proprietary rights of such Third Party Vendor or its supplies, ; (iii) Customer agrees to upgrade Third Party Software with new releases made available by Bank; (iv) Customer will not use Third Party Software other than in connection with the use of Bank's Services; and (iv) Customer agrees to be bound by limitations of liability set forth herein and agrees that Bank's Third Party Vendor with respect to Third Party Software, is a third party beneficiary of this Agreement, the end user license agreement and the provisions related to the Third Party Software are made expressly for the benefit of, and are enforceable by Bank's Third Party Vendor. Bank's Third Party Vendor, its affiliate, and their respective directors, officers, employees, agents, suppliers and contractors shall have no direct liability to Customer under this Agreement.

**11. Service Output.** Customer shall inspect all reports, journals, statements and other material evidencing the output of the Service(s) performed by Bank as necessary to detect errors or unauthorized activity. Customer must report all errors or unauthorized activity within a reasonable time not to exceed thirty (30) days from the date that the error or unauthorized activity is discovered or discoverable by

Customer. Failure of Customer to promptly report errors within such specified time shall preclude Customer from asserting against the Bank any claims arising from the error or any loss caused by the error.

**12. Continuation or Renewal of Services.** Bank may from time to time request information from Customer in order to evaluate a continuation of the Service(s) to be provided by Bank hereunder and/or adjustment of any limits set by this Agreement. Customer agrees to provide the requested financial information immediately upon request by Bank, in the form required by Bank. If Customer refuses to provide the requested financial information, or if Bank concludes in its sole discretion that the credit risk of Customer is unacceptable, Bank may terminate any Service as provided in this Agreement. Customer authorizes Bank to investigate or reinvestigate at any time any information provided by Customer in connection with this Agreement or any Services and to request reports from credit bureaus and reporting agencies for such purpose.

**13. Liability; Limitations on Liability.**

- a. In the performance of the Services, Bank will be entitled to rely on the information, representations and warranties provided by Customer pursuant to the Enrollment Request(s) and this Agreement and will not be responsible for the accuracy or completeness thereof.
- b. Bank shall have no duty or obligation to inquire as to the appropriateness, correctness, or authenticity of any entry, instruction, transaction or order in connection with the Services, whether or not it will result in payment to any officer, employee, or agent of Customer or is otherwise tendered in payment of such person's individual obligations.
- c. Notwithstanding any other provision of the Agreement, to the fullest extent permitted by law, Bank's liability to Customer under this Agreement shall be limited to damages, losses, expenses or claims resulting solely from the gross negligence or willful misconduct of Bank, its agents, employees, officers or directors and only to the extent set forth below.
- d. For any Service provided by Bank using an internet site:
  - i. Bank shall not be responsible for any liability, loss, claim, or damage related to malicious code or other defects in the internet site, incompatibility between the internet site and Customer's browser or from other causes or events beyond the control of Bank.
  - ii. **TO THE FULLEST EXTENT ALLOWED BY LAW, CUSTOMER AGREES THAT BANK SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOST PROFITS, LOSSES OR EXPENSES ARISING OUT OF OR IN CONNECTION WITH THE INTERNET SITE, THE USE OR INABILITY TO USE THE INTERNET SITE BY ANY PARTY; OR ANY FAILURE OR PERFORMANCE, ERROR, OMISSION, INTERRUPTION DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS OR LINE OR SYSTEM FAILURE, EVEN IF BANK, OR ITS REPRESENTATIVES, ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR EXPENSES.**
  - iii. Hyperlinks to other internet resources are used at Customer's own risk. Bank makes no representation or warranties of any kind, express or implied, as to the operations conducted at other internet sites provided by way of hyperlinks or the accuracy or completeness of any information, content, materials or products included thereat, including, but not limited to, the warranties of non-infringement of third party rights, title, merchantability and fitness for a particular purpose.
  - iv. The information and material contained in the internet site, including, but not limited to text, graphics or links are provided on an "as is" and "as available" basis.
  - v. Bank does not warrant that the internet site, its servers or e-mail sent from Bank is free of viruses or other harmful components. Customer acknowledges its awareness and acceptance of the risks associated with the use of the internet.
- e. Bank does not make any representations or warranties with respect to the legal effect or sufficiency, under any federal, state or local statute or regulation or other law, of any forms, documents, or other matters provided by Bank from time to time in connection with this Agreement, or of the Services.
- f. **NEITHER BANK NOR CUSTOMER SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE WHICH BANK OR CUSTOMER MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT OR THE USE OF ANY SERVICE EVEN IF BANK OR CUSTOMER HAVE BEEN NOTIFIED OF THE PROBABLE OR CERTAIN CONSEQUENCES TO BANK, CUSTOMER OR ANY OTHER PERSON OF SUCH POSSIBLE DAMAGES.**
- g. Bank shall not be responsible or liable for any errors or failures resulting from defects in or malfunctions of Customer's computer hardware or software, for the quality of performance or lack of performance of any computer software or hardware supplied by Bank to Customer in connection with this Agreement, or for the transmission or failure of transmission of any information from Customer to Bank or from Bank to Customer. Bank shall not be responsible for notifying Customer of any upgrades or enhancements to any of Customer's computer hardware or software.
- h. Bank shall not be responsible for the acts or omissions of Customer, its agents, employees, officers or directors, any Third Party Agent, or any other person, except as otherwise provided herein.
- i. Bank shall be excused from failing to act or for delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Bank's reasonable control ("Force Majeure").
- j. **EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, BANK MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, OR SUITABILITY. CUSTOMER AGREES THAT NO WARRANTY OR REPRESENTATION OBTAINED FROM A BANK EMPLOYEE OR REPRESENTATIVE SHALL CREATE A WARRANTY OR REPRESENTATION FOR PURPOSES OF THIS AGREEMENT OR ANY SERVICES TO BE PERFORMED PURSUANT HERETO.**
- k. In consideration of the nominal rates and fees charged for the Services, in no event shall Bank's liability under this Agreement exceed the sum of all fees paid to Bank for the Services during the past twelve (12) months. Customer shall not have the right to bring any claim against Bank more than one (1) year after the claim arises.
- l. In the event of any possible loss to Bank or Customer under this Agreement, Bank and Customer agree to undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any action that either party may be obligated to defend or elects to pursue against a third party.

**14. Security Interest.** To secure the payment and performance of Customer's liabilities and obligations to Bank under this Agreement, including, without limitation, interest, attorneys' fees, expenses of collection and costs, Company grants to Bank a continuing security interest in and a right of set-off and compensation against and pledges and assigns to Bank all of Customer's right, title and interest in and to the following described property (the "Collateral"), whether now owned or hereafter existing or acquired and wherever located, (a) all cash, deposit accounts, CDs, financial assets, instruments, investment property and financial assets that are now or in the future in Bank's custody or control; (b) any other collateral described in any security instrument securing the obligations of Customer to Bank under this Agreement or securing any other obligations of Customer to Bank; (c) all cash and non-cash proceeds and products of the forgoing as well as any replacements, accessions, substitutions and additions to any of the above. Upon the written request of Bank, and at the sole expense of Customer, Customer shall promptly and duly execute and deliver all further instruments and documents and take such further action as Bank may deem necessary to obtain the full benefits arising under this Agreement. Customer hereby acknowledges the obligations owed under this Agreement and agrees that, in the event of default thereof, Bank shall be entitled to all of the rights, powers and remedies afforded a secured party by the Uniform Commercial Code as enacted in Bank's state of organization with reference to the personal property in which Bank has been granted a security interest herein, including the right to take possession of any part of the Collateral without judicial process. This security interest shall survive the termination of this Agreement.

**15. Indemnification.** Customer agrees to reimburse, indemnify, protect, defend and hold Bank, its affiliates and its officers, directors, employees and agents harmless, from and against, any losses, claims, liabilities, fees (including attorneys' fees, costs and investigatory fees) fines or penalties, of any kind whatsoever arising out of or in connection with any third party claims arising from (a) any actions or omissions taken by Bank, its employees, officers, directors or agents in reliance upon the instructions of any employee, officer or agent of Customer; (b) any claim of any person that Bank is responsible for any act or omission of Customer or any other persons; (c) any failure on the part of Customer, its officers, employees or agents to comply with this Agreement, the Enrollment Request(s) or any other applicable law, rule or regulation; (d) any damage or injury to Customer or any third parties asserted to have arisen out of the Bank's performance of its duties and obligations under this Agreement; (e) any negligence or willful misconduct of Customer, its employees, directors, officers and agents; and (f) any unauthorized use of the Credentials by unauthorized persons, unless the action complained of was caused by Bank's gross negligence or willful misconduct. This indemnification shall survive the termination of this Agreement.

**16. Data Recording.** Customer hereby agrees on behalf of itself, its officers, employees and agents that Bank may (but, except as required by law, rule or regulation, need not) record, retain or monitor any information, data, or communications (including, without limitation, telephone conversations) furnished, exchanged or made in connection with this Agreement or the Services without further notice to any person. All such information, data, and communications recorded, retained, or monitored by Bank shall be and remain the property of Bank. Customer acknowledges that Customer is responsible for the maintenance and storage of Customer's own data and other information created through Customer's use of the Services.

**17. Documentation.** Customer shall execute and deliver to Bank all documentation required by it in a form acceptable to Bank. Bank may delay implementation of the Services until receipt of satisfactory documentation. Customer will notify Bank promptly of any changes affecting the documentation delivered to Bank and agrees to execute and deliver any additional documentation as Bank, in its sole discretion, may require. The Bank shall not be liable for any action or inaction taken as the result of any such change until Bank receives written notice and has had a reasonable opportunity to act thereon.

**18. Governing Documents.** Customer acknowledges and agrees that Customer's demand deposit account(s) maintained with Bank are an integral part of the Services offered by Bank and that all transactions and Services initiated or processed pursuant to this Agreement are subject to the terms and conditions of the rules, regulations and agreements ("Deposit Account Agreement") governing accounts in effect from time to time between Customer and Bank. The Deposit Account Agreement and any schedules or exhibits annexed thereto are expressly incorporated herein by reference. If any inconsistency exists between the Deposit Account Agreement and this Agreement then this Agreement shall control, but only to the extent necessary to resolve the inconsistency.

**19. Entire Agreement, Amendments.** Bank reserves the right to amend the terms of this Agreement and to alter, change or modify the Services provided under the terms of this Agreement (including the fees and charges for any Services) or any supplemental agreement at any time in its sole discretion by giving written notice to Customer, except that modifications for clarification or reasonable security purposes may be made without prior notice. Except as otherwise provided herein, any amendment or modification of this Agreement shall be effective on the date specified in any such notice or immediately in the case of an amendment made for clarification or reasonable for security purposes. If required by agreement or by applicable law, notice will be given for the required applicable number of days in advance of such amendments. Customer's continued use of the Services shall constitute Customer's agreement to such amendment. This Agreement, the Enrollment Request(s), the Deposit Account Agreement and any schedules or exhibits, as any of the foregoing may be amended from time to time, shall constitute the complete agreement between Bank and Customer with respect to the subject matter hereof and supersede any prior agreement between Bank and Customer with respect to such subject matter.

**20. Notices Related to This Agreement.** Except as otherwise specified below and agreed to between Customer and Bank with respect to Electronic Notices, all notices related to this Agreement shall be in writing and delivered to the following addresses:

To Bank:  
Treasury Management Department  
228 St. Charles Avenue  
New Orleans, LA 70130

To Customer:  
At the latest primary address shown on Bank's books and records for Customer, as reasonably determined by Bank.

Legal notices may be delivered, or sent, at sender's election only by: (i) written notice delivered by hand, (ii) by first class mail, or (iii) by a nationally recognized overnight delivery service.

**21. Electronic Notices. THIS SECTION CONTAINS IMPORTANT INFORMATION ABOUT ELECTRONIC NOTICES. PLEASE READ CAREFULLY.** By signing and submitting to Bank an Enrollment Request for any online Services, Customer thereby gives its consent for us to deliver to Customer any required disclosures and other notices concerning such Services by e-mail or other appropriate electronic means. Customer may withdraw such consent to receipt of electronic notices and required disclosures or change Customer's e-mail address or electronic contact information by a message to Bank by mail at Bank's notification address above, or by fax or email using Bank's fax, telephone number or email address as communicated to Customer at the time, subject to Bank's confirmation of receipt. If Customer withdraws consent, we reserve the right to terminate Customer's participation in these Services. Before Bank will send to Customer electronically any disclosures or notices that would otherwise be required by applicable law or regulation to be made available to Customer in writing, Bank may send Customer an e-mail message and ask Customer to confirm that Customer can access the electronic information in the form in which it will be provided. After providing this confirmation, Customer may still request a paper copy of a disclosure or notice

provided to Customer electronically by writing to Bank at the address above and identifying the disclosure or notice Customer is requesting. A fee may be charged for a paper copy of the electronic information. Customer may use e-mail to contact us about inquiries, maintenance and/or some problem resolution issues. E-mail may not be a secure method of communication. Thus we recommend you do not send confidential personal or financial information by e-mail. There may be times when you need to speak with someone immediately (especially to report a lost or stolen Credential, or unauthorized activity). In such cases, **do not use e-mail**. Instead, Customers should contact Bank's Treasury Management Support Center at its telephone number published from time to time.

**22. Termination and Assignment.** Bank shall continue to provide the Services until the earliest of (i) cancellation by either party on thirty (30) days' notice to the other, (ii) cancellation by either party because of the other party's failure to comply with these terms and conditions in all material respects, or (iii) cancellation by Bank if required by governmental authority. Notwithstanding the foregoing, Bank may immediately terminate this Agreement without notice, if, in Bank's sole discretion, Bank determines that Customer has abused the Services, or if Bank has reason to believe that it may suffer a possible loss or other damage if the Agreement is not terminated, for any reason, including, without limitation, (a) an adverse change in the financial condition of Customer; (b) Customer ceasing to conduct business in the ordinary course; (c) the filing by or against Customer of a proceeding under the U.S. Bankruptcy Code or for any other relief afforded debtors or affecting rights of creditors generally under the laws of any jurisdiction; (d) the default by Customer under this Agreement or under any other obligation owed by Customer to Bank; and (e) any judgment, garnishment, seizure, tax lien or levy against any assets of Customer.

Upon termination of this Agreement, (i) Customer will promptly pay to Bank all sums due or to become due under this Agreement, (ii) then and thereafter, Customer shall have no further right to make use of the Services or any system or software program which may have been provided in connection with the Services. Bank's termination of this Agreement is in addition to other remedies that may be available to Bank, and will not affect any obligations Customer may have to Bank arising prior to such termination.

Bank may assign its rights and liabilities hereunder with no further liability upon thirty (30) days' notice to the Customer. The Customer may not assign its rights hereunder.

**23. Binding Agreement; Benefit.** This Agreement shall be binding upon and is for the benefit of the parties hereto and their respective successors and assigns except as expressly provided otherwise herein. This Agreement is not for the benefit of any other person, and no other person shall have any right against Bank or Customer hereunder.

**24. Arbitration, Waiver of Jury Trial and Governing Law.** CUSTOMER AND BANK AGREE THAT THE TRANSACTIONS PROCESSED UNDER THIS AGREEMENT OR ANY SERVICES PROVIDED HEREUNDER INVOLVE "COMMERCE" UNDER THE FEDERAL ARBITRATION ACT ("FAA"). ANY CONTROVERSY OR CLAIM BETWEEN CUSTOMER AND BANK, OR BETWEEN CUSTOMER AND ANY OF BANK'S OFFICERS, EMPLOYEES, AGENTS OR AFFILIATED ENTITIES, THAT ARISES OUT OF OR IS RELATED TO ANY SERVICE PROVIDED UNDER THIS AGREEMENT, WHETHER BASED ON CONTRACT OR IN TORT OR ANY OTHER LEGAL THEORY, INCLUDING CLAIMS OF FRAUD, SUPPRESSION, MISREPRESENTATION AND FRAUD IN THE INDUCEMENT (COLLECTIVELY, ANY "CLAIM"), WILL BE SETTLED BY BINDING ARBITRATION UNDER THE FAA. THE ARBITRATION WILL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES ("THE ARBITRATION RULES"). IF A CLAIM IS SUBMITTED TO ARBITRATION, (A) CUSTOMER WILL NOT HAVE THE RIGHT TO GO TO COURT OR TO HAVE A JURY TRIAL; (B) CUSTOMER WILL NOT HAVE THE RIGHT TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE RULES; (C) CUSTOMER WILL NOT HAVE THE RIGHT TO HAVE ANY CLAIM ARBITRATED AS A CLASS ACTION UNDER THE RULES OR UNDER ANY OTHER RULES OF CIVIL PROCEDURE; (D) THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING WITH LIMITED RIGHTS TO APPEAL; AND (E) THIS AGREEMENT SUPERSEDES ANY PRIOR ALTERNATIVE DISPUTE RESOLUTION AND/OR ARBITRATION AGREEMENT THAT MAY EXIST BETWEEN CUSTOMER AND BANK WITH RESPECT TO THIS AGREEMENT AND THE SERVICES. THIS AGREEMENT TO ARBITRATE DISPUTES WILL SURVIVE THE CLOSING OF ANY OF CUSTOMER'S ACCOUNT AND THE TERMINATION OF THIS AGREEMENT OR ANY SERVICE. Except as otherwise provided herein with respect to a Service, this Agreement shall be construed in accordance with and governed by the laws of the State where Bank is organized and existing, without reference to its conflict of law provisions and applicable federal law.

**25. Independent Contractor.** Except as expressly provided in this Agreement, the acceptance by Bank of this Agreement is subject to the express condition and understanding that Bank shall act solely as an independent contractor and not as Customer's agent or in any other representative capacity except with respect to the Services. Neither Customer nor its representatives shall make any representations to any other person or governmental authority to the contrary.

**26. Severability.** If any term, covenant or condition of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**27. Construction.** This Agreement is an agreement between parties who are experienced in sophisticated and complex matters similar to the transactions contemplated by this Agreement, is entered into by both parties in reliance upon the economic and legal bargains contained herein, and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument or drafted any provision thereof, the relative bargaining powers of the parties, or the domicile of any party.

**28. Counterparts.** Enrollment Requests, which become a part of this Agreement when executed, may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute only one original.

**29. Waiver.** No delay or failure of Bank in exercising any right, remedy or privilege hereunder, and no partial or single exercise thereof, shall be deemed a waiver of any such rights, remedies or privileges. Only written waivers executed by an expressly authorized officer of Bank shall be effective under this Agreement.

**30. Headings.** Headings are used for reference purposes only and shall not be deemed a part of this Agreement.

**31. Confidential Information and Proprietary Right in Data.** The parties acknowledge that their officers, employees and agents may have access to certain confidential information of the other party (including, without limitation, any nonpublic personal information of any employee or customer of Bank or Customer). Each party warrants that it, its officers, employees and agents shall not disclose any such confidential information of the other party except as required by applicable law and shall use such confidential information only in connection with the Services contemplated by this Agreement. It is the express intent of the parties that these warranties of confidentiality be construed broadly and comprehensively. All warranties set forth in this Section shall survive termination of this Agreement for any reason. Additionally, both parties will destroy the confidential information in a commercially reasonable manner so that no third party can view or recreate the Confidential Information, electronically or otherwise, after the retention of the confidential information is no longer reasonably necessary. In

addition, should Customer at any time receive or acquire any information relating to another Customer of Bank, Customer shall promptly return such information to Bank and not reveal such information to any other party and shall not make use of such information for its own benefit. Bank's and Customer's obligations and agreements hereunder shall not apply to any information supplied that was known to either party prior to the disclosure by the other, or is or becomes generally available to the public other than by breach of this Agreement, or otherwise becomes lawfully available on a non-confidential basis from a third party who is not under an obligation of confidence to either party. Notwithstanding anything to the contrary contained herein, it is authorized and agreed by Bank and Customer that the performance of one or more selected Services is or may be subject to regulation and examination by authorized representatives of the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, and/or a State regulatory agency and the Customer agrees to the release of the Customer's confidential information or other data as may be required by them under applicable laws and regulations. Customer agrees that any specifications, programs or software developed by Bank in connection with this Agreement or supplied or made available to Customer by Bank, are the exclusive property of Bank, its agents, supplies, or contractors and further agrees that such material shall not be copied or used in any manner or for any purpose without the express written consent of Bank. This Section shall survive the termination of the Agreement.

**32. Media Releases.** Neither party may use the name or service marks of the other in connection with any advertising or publicity materials or activities without the prior written consent of the other party.

**33. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement, or to enjoy any of its benefits because of a Force Majeure event, the party who has been so affected shall immediately give notice to the other party and shall do everything possible to take such steps as are necessary to overcome and mitigate the cause of the defaults or delays as promptly as possible in order to resume its performance.

\* \* \* End of General Terms and Conditions \* \* \*



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## II. Treasury Solution

The terms and conditions enumerated below apply to Bank's Treasury Solution Service and its Cash Solution Service (each individually and collectively referred to as the "Service"). These terms apply to Customer if and only if Customer enrolls in the Service, as evidenced by the submission to Bank of an Enrollment Request signed by Customer's duly authorized representative.

1. **Statement of Service.** Bank shall provide to Customer commercial online banking services selected by Customer. You may currently use the Service to access the following information or perform the following transactions through the internet:
  - View current balance and transaction information on your linked Eligible Account(s); Your Account balance is generally current as of 7 a.m. Central Time of each Business Day, but may not include current transactions (such as checks cashed at a teller on the Business Day). In addition, your Account balance may show funds that have been credited to your Account but are not yet available for withdrawal;
  - Self-service account maintenance such as initiating stop payments.
  - Transfer funds between linked Eligible Account(s);
  - View check images, deposit images or e-statements;
  - Use the Commercial Bill Pay Service to make a payment to a payee from your Account(s);
  - Communicate directly with Bank via secure electronic messaging;
  - Download account information in various formats; and
  - Execute payments, paydowns or draws against a commercial loan or line of credit.

Further, subject to Bank's approval you may enroll in additional Services and access these additional services using Treasury Solution. Such additional Services may include the following:

- ACH Origination Services
- Account Reconciliation Services
- Positive Pay Services
- Remote Deposit Capture Services
- Wire Transfer Services

From time to time Bank, in its discretion, may alter features, functions or transaction capabilities of the Service to meet the changing business needs of Bank and its customers. Enhancements or new features will be governed by and subject to the terms and conditions of this Agreement. Applicable user guides may provide additional details and information regarding the functionality and features of the Service.

Cash Solution is a special package offering of our Treasury Solution Service that features transaction limitations and special pricing for companion services such as ACH, Remote Deposit Capture and Commercial Bill Pay. Cash Solution offers all the features and functionality of the Treasury Solution Service. Please refer to the Treasury Services Fee Schedule for limitations and pricing.

2. **Impact of Customer Elections on the Cost of Services.** Customer may choose to receive reports about various aspects of account activity ("Reports") or electronic notifications based on account events defined by Customer ("Alerts"). Certain selections made by Customer within the Service, such as selections of Alerts and Reports may impact the overall cost of the Service. Customer should refer to the Fee Schedule for the Service as well as consult with Customer's Banker or Treasury Management representative to determine the most cost effective configuration of the Service to meet Customer's business needs. Customer should adopt and communicate policies to its Users addressing the selection of various Alerts and Reports, including advising them that the volume of Alerts or Reports requested via the Service may affect Service costs, and care should be taken that any selections made should meet a business requirement of Customer.

3. **Book Transfers.** Security Administrators and designated Users will be able to transfer funds between your Eligible Accounts ("Book Transfers") up to the Maximum Available Balance in such account as that phrase is defined in the Deposit Account Agreement. We can process a Book Transfer until 7 p.m. Central Time on a Transfer Day. If you schedule a Book Transfer for a future date, we will process the transaction after the close of business on that date, if that day is a Transfer Day. Your Book Transfer will be deducted on the date you instruct us to process them. If the date you schedule a transfer falls on weekend or holiday we will process your transaction on the next Transfer Day. We reserve the right to refuse to complete a Book Transfer between certain accounts for any reason, including, without limitation, if there are insufficient funds in your Account to make a transfer. We will promptly notify you if we refuse to complete your transfer instructions. If we process your Book Transfer and sufficient funds, including funds available under any overdraft protection plan, are not available in your Account on the date you want us to make the Book Transfer, you are responsible for any non-sufficient funds ("NSF") charges that may apply. Customer may cancel a pending transfer, provided however, that Bank must receive your instruction to cancel prior to the cutoff time on the Transfer Day the transaction is scheduled to proceed. If we don't receive your instruction to cancel a transaction before that time, we may process the transaction.

4. **Alerts.** If the email address of any System Administrator or User receiving Alerts changes, Customer is responsible for updating this information within the Service. Changes to any User's email address will apply to all Alerts directed to that User. Bank is not liable for the delay or failure in the delivery of any Alert. Alerts will not contain Customer Account numbers, but may contain other confidential Customer information. Any person with access to the email address to which an Alert is directed may view the contents of the Alert.

5. **Stop Payments.** Unless otherwise specified with respect to any applicable Service, any stop payment order which Customer wishes to place on a check drawn on an Account that is enrolled in this Service must be placed in accordance with the Bank's normal stop payment procedures and provisions in effect at that time, as set forth in Deposit Account Agreement. If Customer has elected to electronically issue stop payment entries ("Stop Payment Request") via the Service, the following provisions shall also apply:

- a. You may only submit Stop Payment Requests for checks that have not yet posted to the Account.
- b. You understand and agree that Stop Payment Requests will not take effect unless you provide all the information requested by the Stop Payment screens and provide such information exactly as it appears on the check, including, but not limited to, the account number, check number, amount, payee and date. You acknowledge that even minor errors in providing the exact information requested may prevent payment from being stopped.
- c. Stop Payment Requests that we receive prior to 7:00 PM Central Time on a particular Business Day, will be effective on that Business Day. Conversely, Stop Payment Requests that we receive after that cut-off time will take effect on the next Business Day. The Business Day on which the Stop Payment Request takes effect is referred as the "Stop Payment Effective Date." We shall not be liable to you for items otherwise properly payable that we pay prior to the Stop Payment Effective Date of your Stop Payment Request or any loss arising out of such payment.

- d. Upon electronic receipt of a proper Stop Payment Request from you, we will electronically send back an acknowledgement of the request.
- e. You hereby authorize us to automatically charge the Account against which the check was drawn for applicable Stop Payment fees for each Stop Payment Request and any renewal thereof.
- f. If a Customer uses Positive Pay services the Customer must **also** place any Stop Payment request at a branch or in Treasury Solution or the Stop payment request will not be valid and the Bank will not be liable for the payment of that item.

**6. Commercial Loan Module.** The Commercial Loan Module ("CLM") within Treasury Solution allows Customer to view balances and transactions in their commercial loan and line of credit accounts at Bank, with optional features to enable manual or automated payments to or draws from such accounts.

- a. **Authority to Use the Service.** Customer's ongoing access to CLM and any of its features requires the approval of a Bank officer with sufficient authority to manage Customer's credit relationship with Bank. This approval may be revoked at any time in Bank's sole discretion.
- b. **Viewing Features.** The CLM enables Customers to view activities in their loan/line account through Treasury Solution. Customer agrees to exercise the same administrative responsibilities and security controls as apply to all other account types and services accessed through Treasury Solution.
- c. **Interactive Features.** Interactive features of the CLM include the ability to obtain credit advances from the available, pre-approved credit on a line of credit and/or the ability to make payments from a Customer-owned depository account at Bank to a loan or line of credit. The following terms apply to interactive features:
  - (i) Advances from any line of credit will be allowed only from such lines in which advances are permitted by the credit agreement that governs the line, and will be limited to the amount of the approved credit limit remaining available under the line at the time the request is submitted.
  - (ii) Payments to any loan or line of credit will be limited to the available balance of the deposit account from which the payment is drawn.
  - (iii) Interactive features will be established according to Customer's written instruction as either manual, Customer-initiated transactions or automated, Bank-initiated transactions.
    - 1. Customer-initiated transactions shall be conducted through Bank's Treasury Solution Service.
    - 2. Customer-initiated transactions shall be in the amounts entered by Customer at each use of the Service.
    - 3. Bank-initiated transactions shall be in the amounts necessary to maintain Customer's designated depository account at the target balance specified by Customer in writing to Bank.
    - 4. Manual controls shall be disabled for any loan or line designated by Customer for automated, Bank initiated transactions.
- d. **No Obligation to Extend Credit.** The use of the CLM does not obligate Bank to extend credit to Customer. The establishment and ongoing provision of any credit facility shall be governed by Bank's normal credit criteria and shall be documented separately from this Agreement.

**7. Other Agreements.** When the Service is used to access other Bank services, any agreements governing such other services remain in full force and effect and may contain terms and conditions in addition to the terms and conditions of this Agreement.

- a. Except as explicitly stated herein, nothing in this Agreement shall be construed as altering or canceling any such terms and conditions. Examples include but are not limited to any agreements establishing and governing services such as depository accounts, loan accounts, wire transfers, or the origination of transactions through the automated clearinghouse (ACH).
- b. If there is a conflict between the terms of this Agreement and any such other agreements, then the terms of the more specific agreement governing the Service shall prevail.
- c. **This Agreement does explicitly modify any funds transfer agreement that may be in place between Customer and Bank at the time the Enrollment Document for the Service was executed or that may be established between Customer and Bank in the future, as follows:**
  - i. By enrolling in the Service Customer establishes wire transfer service for any Accounts, whether or not such Accounts are specifically listed in Customer's funds transfer agreement.
  - ii. The Security Administrator named on the Enrollment Request for the Service and any other Security Administrator established by Customer via the Service shall be entitled to act as the "Funds Transfer Security Administrator" as such term or similarly equivalent function is defined in Customer's funds transfer agreement, whether or not such persons are named in such funds transfer agreement.
  - iii. Changes made through this Agreement or the Service to the wire transfer authority of any User, including without limitation, changes to account access or limits on the amount of funds transferred, are deemed to be authorized changes, and transactions performed pursuant to such changes, are deemed to be authorized regardless of any authority, access or limits set forth in any Enrollment Request or in the funds transfer agreement in effect between Customer and Bank.

**8. Online Security.** Bank and Customer acknowledge that the use of any banking services via an online channel introduces risks that may not be present in other service channels, requiring additional diligence by each party. Customer warrants that its use of the Service shall be undertaken with a full understanding of and in compliance with the provisions of the General Terms and Conditions dealing with "Security" and "Computer Based Services," and agree that those terms and conditions describe a commercially reasonable approach to securing the Service from unauthorized use.

**9. Actions of the System Administrator.** Customer acknowledges that Treasury Solution requires Customer's appointment of a Security Administrator and allows the Customer the option of setting up "Dual Administration" pursuant to which any changes made by a Security Administrator will require the approval of a second Security Administrator. Dual Administration allows the Customer, at its option and discretion, to require dual review of all additions, revisions or deletions to the permissions assigned to any Authorized User in Treasury Solution. Customer agrees to comply with the requirements set forth herein regarding Security Administrators.

**10. User Entitlements to Conduct Transactions.** If Customer appoints one or more System Administrator(s) to grant transaction initiation capabilities to any User, Customer acknowledges that such activity is solely within the control of Customer's System Administrator(s), and agrees transactions initiated by such Users are deemed to be authorized transactions, even if such User is not named as an account signer or

authorized initiator in Bank's records. Examples of such transactions include but are not limited to the following:

- a. A User authorized by a System Administrator to initiate book transfers between Customer's Accounts may do so even if the User is not a signer on the accounts.
- b. A User authorized by a System Administrator to initiate wire transfers from Customer's Accounts may do so even if the User is not designated as an "Authorized Initiator" or similarly equivalent function in Customer's funds transfer agreement with Bank.

11. **Transactions Conducted Outside of the Service.** Customer and Bank acknowledge that certain types of transactions that can be conducted using the Service can also be conducted by a method other than the Service. If Customer adds or removes the ability of a User to conduct transactions through the Service, the User's ability to conduct transactions using another method is unchanged unless the Customer takes affirmative action to ensure that the different methods of initiating transactions ("delivery channels") are synchronized. It shall be Customer's responsibility to contact Bank in order to synchronize additional delivery channels with the Service. Examples of such synchronization include but are not limited to the following:
- a. **User Entitlements:** For example, removing the authority of a User to initiate funds transfers through the Service does not remove that User's authority, if it exists, to initiate funds transfers by telephone.
  - b. **Transaction Parameters:** If Customer establishes repetitive funds transfer order templates ("template(s)"), parameters for such templates (such as payee and destination) are not automatically synchronized across multiple delivery channels. For example, if Customer maintains a template on the Service and also maintains the same template for telephone initiation, changing the parameters of the template in the Service will not change the template used to initiate the same repetitive funds transfer order in the telephone wire system, unless Customer instructs the Bank to synchronize the two delivery channels.
12. **Limitations.** Bank reserves the right to establish, and Customer agrees to abide by, limits with respect to transaction amounts, frequency of transactions, and other matters based on the balance of Customer's credit card, loan and deposit account(s) with Bank, the terms and provisions of other agreements between Bank and Customer, applicable law and regulations, systems limitations, and other factors. Customer acknowledges that balance or transaction information obtained through the Service may not include transactions still subject to verification and/or processing by Bank ("transactions in process") and may differ from Customer's records. Customer agrees to recognize the effect of transactions in process before performing transactions on the basis of Account information obtained through the Service. Customer acknowledges that transaction processing requirements may delay the immediate processing of a transaction effected using the Service.
13. **Service Hours.** Customer may log in to the Service twenty-four hours a day, seven days a week, subject to maintenance periods and the terms and provisions of this Agreement. Customer acknowledges and agrees that the performance and completion of Service transactions are subject to Bank's business days and hours of operation, Bank's published policies and procedures, the hours of operation of departments within Bank performing Service transactions, applicable law and regulations, the provisions of this Agreement, and the provisions of other Bank customer agreements governing specific types of transactions to be performed under this Agreement. Customer agrees that Bank shall not be liable for any delay in the processing or settlement of Service transactions resulting from the foregoing.
14. **Third Party Personal Financial Management Software.** Customer may, at its option and in its discretion, access certain Accounts and Bank information related thereto via PFM Software which Customer has purchased from a software manufacturer, or a retailer of Customer's choice. Customer's use of PFM Software is at Customer's risk and is governed by the software license agreements between Customer and the third party from whom it was acquired. Customer agrees to use the PFM Software according to the license agreement and any instructions or guidance from such third party. Customer is responsible for the correct set-up and installation of the PFM Software and use of the PFM Software according to any and all instructions or guidance provided. Customer may download information into your PFM Software from certain Accounts. Some but not all Account information may be downloaded into your PFM Software. The Accounts for which these options are available will be identified by Bank. The Bank may also add to, modify, or delete, or limit any feature of your ability to access Account and related Bank information via an interface through PFM Software, in its sole discretion from time to time. The following additional terms and conditions apply to any use of PFM Software to access your Accounts:
- (i) Account statements that we generate are the official record of account information, including transactions and balances, and the information you download in to your PFM Software is for your informational purposes only and is not considered an official record of your Account.
  - (ii) Account information won't necessarily reflect banking, financial, or investment activities and transactions that have not yet been completed or settled, and will only reflect the account information in your Accounts at the exact point in time that you download the information.
  - (iii) Account information in your Accounts may reflect transactions as of a prior time period and may not be current when you download the information.
  - (iv) The Bank won't automatically update Account information that you download to your PFM Software. You will have to update applicable Account information by downloading more current information from your accounts.
  - (v) Customer's use of any PFM Software is subject to provisions of this Agreement regarding information security, indemnification and limitations of liability.
- In addition, Customer agrees that Bank makes no warranties and assumes no responsibility or liability for (a) the PFM Software's fitness for a particular purpose and non-infringement of any third party rights; (b) any loss, damages or expenses of any kind as a result of your inability to download information into the PFM Software or your reliance upon the Account information in your PFM Software; (c) unauthorized access of (x) PFM Software or any Account information you download and store in your PFM Software or (y) to any Account using the PFM Software; (d) the loss, corruption, interception, or mis-delivery of any Account information as a consequence of your use of a PFM Software; and (e) your failure to properly follow the instructions for using the PFM Software.

\*\*\* End of Terms and Conditions for Treasury Solution \*\*\*

### III. Treasury Access

The terms and conditions enumerated below apply to Bank's Treasury Access gateway (the "Service"). These terms apply to Customer if and only if Customer enrolls in the Service, as evidenced by the submission to Bank of an Enrollment Request signed by Customer's duly authorized representative.

1. **Statement of Service.** Treasury Access refers to a commercial online banking gateway offered by Bank which provides a secure entry point through a secure dedicated browser. Treasury Access allows access to certain Treasury Management Services, including information reporting, electronic payment and file transfer processing services. Treasury Access leverages a strengthened browser with multiple layers of security to enhance the safety and security of Customer's transactions and data.

2. **Available Services through Treasury Access.** Treasury Access is only available to Customers who have enrolled in the Treasury Access service. Once enrolled in Treasury Access, the Customer may access certain Treasury Management Services including but not limited to enhanced information reporting services, Sunrise Report which is a daily snapshot of a relationship and all its accounts, operational reports from other services such as EDI Reports or ACH Notification of Change Report, and certain treasury products such as ACH Fraud Prevention Services.
3. **Treasury Access Exchange.** Treasury Access Exchange provides multiple delivery channels for data, files, reports, alerts and notices. Files and reports are available by a) logging into Treasury Access, b) Secure Transfer which facilitates sending or receiving data files between Bank and Customer through an icon on your desktop, or c) Direct Send, using a secure FTP file transmission between Bank and Customer. Alerts and notices are also available through e-mail or SMS/text messages. Additional file receipt and delivery options may be provided.
4. **Terms and Conditions.** While the functionality and services offered through Treasury Access may differ from those offered through Treasury Solution or other treasury products, the terms and conditions applicable to Customer's use of Treasury Solution and all other treasury products as shown in this Agreement shall also apply to Customer's use of Treasury Access services.

\* \* \* End of Terms and Conditions for Treasury Access \* \* \*

#### IV. Bill Pay Service

The terms and conditions enumerated below apply solely to Bank's Bill Pay Service. These terms apply to Customer if and only if Customer enrolls in this Service, as evidenced by the submission to Bank of an Enrollment Request signed by Customer's duly authorized representative.

1. **Statement of Service.** Bank shall provide to Customer a secure online method of issuing payments from its deposits accounts to third parties. Pursuant to the Service Customer can establish payees to whom payments can be made, schedule such payments to occur in advance at Customer's convenience, and set up recurring payments. The Service is accessed through a link from Treasury Solution (which as used in this section shall refer to either Treasury Solution or Cash Solution, as applicable) and Customer must be enrolled in Treasury Solution in order to enroll for the Service. Each User shall access the Service through a separate, secure login Portal using a unique User ID and password. After login, the User will be directed to a special landing page for the Service. Payments are initiated either as an electronic payment or as a check depending on whether the payee can accept electronic payments. From time to time Bank, in its discretion, may add and/or eliminate types of accounts that are eligible to use the Service, and may alter features or functions of the Service to meet the changing business needs of the Bank and its customers.
2. **Definitions.** In addition to the definitions contained in the General Terms and Conditions, the following definitions shall apply with respect to the Bill Payment Service:
  - a. "Bill Payment" or "Payment" means the remittance of funds, initiated through the Service, from an Account to a Payee.
  - b. "Bill Payment Service" means the Bill Payment Service offered by Bank, through our Bill Payment Service provider.
  - c. "Electronic" means electrical, digital, magnetic, wireless, optical or electromagnetic technology, or any other technology that entails similar capabilities.
  - d. "Treasury Solution" means the commercial online banking service(s) described in this Agreement.
  - e. "Payee" means any person or entity to which you direct a Payment through the Service.
  - f. "Payment Account" is the checking account(s) from which bill payments will be debited, whether one, or more than one.
  - g. "Payment Instruction" is the information provided by you to the Service for a Bill Payment to be made to the Payee (such as, but not limited to, Payee name, Payee account number, and Scheduled Payment Date).
  - h. "PC" means personal computer (including any personal data assistant or other wireless access device) that meets the requirements for use of Bank's Treasury Solution Service.
  - i. "Prohibited Payments" include Payment for taxes, Payments that are court-ordered, government payments, Payments to Payees outside of the United States or its territories and any Payment to any unlawful Internet gambling web site or other enterprise that engages in activities prohibited by local, state or federal law.
  - j. "Scheduled Payment Date" is the day you want your Payee to receive your Payment and is also the day your Payment Account will be debited (unless we choose to send a check), unless the Scheduled Payment Date falls on a non-Business Day in which case it will be considered to be the previous Business Day.
  - k. "Scheduled Payment" is a Payment that has been scheduled through the Service but has not begun processing. Scheduled Payments are often referred to as Pending Payments.
  - l. "User Name" means the name assigned by the system or selected and used by Customer to gain access to Bank's Treasury Solution Service.

#### 3. **Bill Payment Service Terms and Conditions.**

- a. **Permissible Payees.** Your Payee list for the Service may include utility companies, merchants, financial institutions, insurance companies, individuals, and other etc. within the United States whom you wish to pay through Bill Payment Service. Please include a complete mailing address and telephone number for each Payee, along with your account number. The Bank reserves the right to decline to make Payments to certain persons and entities. You agree that you will not attempt to use the Service to make Prohibited Payments. The Service will notify you promptly if it decides to refuse to pay a Payee designated by you. This notification is not required if you attempt to make a Prohibited Payment. Customer also agrees that Bank shall have no liability to Customer for refusal to process any transaction or to act on any request by Customer that exceeds the limits or restrictions established by Bank. Payments are posted against your ledger balance, plus the available credit on your overdraft protection, if any, or other line of credit.
- b. **Payment Scheduling.** The earliest possible Scheduled Payment Date for each Payee (typically four (4) or fewer Business Days from the current date) will be designated within the application when you are scheduling the Bill Payment. Therefore, the application will not permit you to select a Scheduled Payment Date less than the earliest possible Scheduled Payment Date designated for each Payee. Scheduled Payment Dates must be prior to any late date or grace period. You may schedule Payments to be initiated on a future date or on the same date of each month. Changes to previously Scheduled Payment Date must be made the Business Day before the day it is to be initiated. Although you can enter Payment information through the Service twenty-four (24) hours a day, seven (7) days a week, the Bank only initiates on Business Days. Funds will be deducted from your account on the effective date of the Payment. If you direct the initiation of a Payment or a Recurring Payment to occur on a day other than a Business Day, it will be initiated on the following Business Day. Because of the time it takes to send your Payment, sufficient time

should be allowed for the Payee to receive the Payment. A Payment should be initiated 5-7 Business Days prior to the date your Payment is due, excluding any applicable grace periods. There may be a limit on the dollar amount of the transactions you can make using the Service. Security reasons limit the dollar amount of transactions and these limits are subject to change from time to time. Payments can only be made with U.S. currency.

- c. **Recurring Payments and Transfers.** Recurring Payments and Transfers are those made for the same amount, on the same date, on a weekly, bi-monthly, monthly basis, etc. Once started, recurring Payments and Transfers will be made automatically until you delete the Payment or upon expiration. On recurring Payments, it is the responsibility of the account owner or designated authorized users to update Payee account information such as address changes, account numbers, etc.
- d. **Payment Authorization and Payment Remittance.** By providing the Service with names and account information of Payees to whom you wish to direct Bill Payments, you authorize the Service to follow the Payment Instructions that it receives through the payment system. In order to process Bill Payments more efficiently and effectively, the Service may edit or alter payment data or data formats in accordance with Payee directives. When the Service receives a Payment Instruction, you authorize the Service to debit your Payment Account and remit funds on your behalf so that the funds arrive as close as reasonably possible to the Scheduled Payment Date designated by you. You also authorize the Service to credit your Payment Account for Bill Payments returned to the Service by the United States Postal Service or Payee, or Payments remitted to you on behalf of another authorized user of the Service. The Service will use its best efforts to make all your Bill Payments properly. However, the Service shall incur no liability if the Service is unable to complete any Payments initiated by you because of the existence of any one or more of the following circumstances:
- i. If, through no fault of the Service, your Payment Account does not contain sufficient funds to complete the transaction or the transaction would exceed the credit limit of your overdraft account;
  - ii. The payment processing center is not working properly and you know or have been advised by the Service about the malfunction before you execute the transaction; and/or
  - iii. You have not provided the Service with the correct Payment Account information, or the correct name, address, phone number, or account information for the Payee.
- e. **Payment Methods.** The Service reserves the right to select the method in which to remit funds on your behalf to your Payee. These payment methods may include, but may not be limited to, an electronic payment, an electronic check payment, or a laser draft payment (funds remitted to the Payee are deducted from your Payment Account when the laser draft is presented to Bank for payment).
- f. **Payment Cancellation Requests.** You may cancel or edit any Scheduled Payment (including recurring payments) by following the directions within the application. There is no charge for canceling or editing a Scheduled Payment. Once the Service has begun processing a payment it cannot be cancelled or edited, therefore a stop payment request must be submitted. Normal Stop Payment fees apply. Electronic transactions require an affidavit.
- g. **Stop Payment Requests.** The Service's ability to process a stop payment request will depend on the payment method and whether or not a check has cleared. Stop payment requests must be for a specified amount and cannot be set as a range of values. The Service may also not have a reasonable opportunity to act on any stop payment request after a payment has been processed. If you desire to stop any Bill Payment that has already been processed, you must contact Bank's Treasury Management Response Center. Although the Service will make every effort to accommodate your request, the Service will have no liability for failing to do so. Stop payment requests will only be accepted if we have a reasonable opportunity to act on such request. The Service may also require you to present your request in writing within fourteen (14) days after you call in a stop payment. The charge for each stop payment request will be the current charge for such service as set out in the applicable fee schedule in effect at the time of the request. A stop payment through Treasury Solution (not through the Bill Payment Service) can be processed until 7:00 p.m. Central Time. A stop payment cannot be placed on an electronic Bill Payment transaction.
- h. **Bill Delivery and Presentment.** This feature of the Service is for the presentment of electronic bills only and it is your sole responsibility to contact your Payees directly if you do not receive your statements. In addition, if you elect to activate one of the Service's electronic bill options, you also agree to the following:
- i. **Information provided to the Payee.** The Service is unable to update or change your personal information such as, but not limited to, name, address, phone numbers and e-mail addresses, with the electronic Payee. Any changes will need to be made by contacting the Payee directly. Additionally it is your responsibility to maintain all usernames and passwords for all electronic Payee sites. You also agree not to use someone else's information to gain unauthorized access to another person's bill. The Service may, at the request of the Payee, provide to the Payee your e-mail address, service address, or other data specifically requested by the Payee at the time of activating the electronic bill for that Payee, for purposes of the Payee informing you about Service and/or bill information.
  - ii. **Activation.** Upon activation of the electronic bill feature the Service may notify the Payee of your request to receive electronic billing information. The presentment of your first electronic bill may vary from Payee to Payee and may take up to sixty (60) days, depending on the billing cycle of each Payee. Additionally, the ability to receive a paper copy of your statement(s) is at the sole discretion of the Payee. While your electronic bill feature is being activated it is your responsibility to keep your accounts current. Each electronic Payee reserves the right to accept or deny your request to receive electronic bills.
  - iii. **Authorization to obtain bill data.** Your activation of the electronic bill feature for a Payee shall be deemed by us to be your authorization for us to obtain bill data from the Payee on your behalf. For some Payees, you will be asked to provide us with your user name and password for that Payee's Web site. By providing us with such information, you authorize us to store and use the information to obtain your bill data.
  - iv. **Notification.** The Service will use its best efforts to present all of your electronic bills promptly. In addition to notification within the Service, the Service may send an e-mail notification to the e-mail address listed for your account. It is your sole responsibility to ensure that this information is accurate. In the event you do not receive notification, it is your responsibility to periodically log on to the Service and check on the delivery of new electronic bills. The time for notification may vary from Payee to Payee. You are responsible for ensuring timely payment of all bills.
  - v. **Cancellation of electronic bill notification.** The electronic Payee reserves the right to cancel the presentment of electronic bills at any time. You may cancel electronic bill presentment at any time. The timeframe for cancellation of your electronic bill presentment may vary from Payee to Payee. It may take up to sixty (60) days, depending on the billing cycle of each Payee. The Service will notify your electronic Payee(s) as to the change in status of your account and it is your sole responsibility to make

arrangements for an alternative form of bill delivery. The Service will not be responsible for presenting any electronic bills that are already in process at the time of cancellation.

- vi. **Non-Delivery of electronic bill(s).** You agree to hold the Service harmless should the Payee fail to deliver your statement(s). You are responsible for ensuring timely payment of all bills. Copies of previously delivered bills must be requested from the Payee directly.
- vii. **Accuracy and dispute of electronic bills.** The Service is not responsible for the accuracy of your electronic bill(s). The Service is only responsible for presenting the information we receive from the Payee. Any discrepancies or disputes regarding the accuracy of your electronic bill summary or detail must be addressed with the Payee directly. This Agreement does not alter your liability or the obligations that currently exist between you and your Payees.

i. **Returned payments.** In using the Service, you understand that Payees and/or the United States Postal Service may return Payments to the Service for various reasons such as, but not limited to, Payee's forwarding address expired; Payee account number is not valid; Payee is unable to locate account; or Payee account is paid in full. The Service will use its best efforts to research and correct the returned payment and return it to your Payee, or void the Payment and credit your Payment Account. You may receive notification from the Service.

j. **Failed or Returned Transactions.** By using the Service, you are requesting us to make Payments for you from your Payment Account. If we are unable to complete the transaction for any reason associated with your Payment Account (for example, there are insufficient funds in your Payment Account to cover the transaction), the transaction will not be completed. In some instances, you may receive a return notice from Bank. In such cases, you agree that:

- i. You will reimburse Bank immediately upon demand the transaction amount that has been returned to Bank;
- ii. For any amount not reimbursed to Bank within fifteen (15) days of the initial notification, a late charge equal to 1.5% monthly interest or the legal maximum, whichever rate is lower, for any unpaid amounts may be imposed;
- iii. You will reimburse Bank for any fees imposed by your financial institution as a result of the return;
- iv. You will reimburse Bank for any fees it incurs in attempting to collect the amount of the return from you; and
- v. Bank is authorized to report the facts concerning the return to any credit reporting agency.

k. **Information Authorization.** Through your enrollment in the Service, you agree that Bank and/or its Bill Payment Service provider reserve the right to request a review of your credit rating at its/their own expense through an authorized credit reporting agency or bureau. In addition, you agree that the Bank or its Bill Payment Service provider reserves the right to obtain financial information regarding your account from a Payee or Bank (for example, to resolve payment posting problems or for verification).

l. **Disputes.** In the event of a dispute regarding the Service, you and Bank agree to resolve the dispute by looking to this Agreement. You agree that this Agreement is the complete and exclusive statement of the agreement between you and Bank with regard to the Bill Payment Service, and that this Agreement supersedes any proposal or prior agreement, oral or written, and any other communications between you and Bank relating to the subject matter of this Agreement. If there is a conflict between what an employee or agent of Bank says and the terms of this Agreement, the terms of this Agreement will prevail. The parties acknowledge that Bank's third party service provider for Bill Payment Services is an intended third party beneficiary of this Agreement with respect to Bill Pay Services.

\* \* \* End of Terms and Conditions for Bill Pay Services \* \* \*

## V. e-Statement Service

**The terms and conditions enumerated below apply solely to Bank's e-Statement Service. These terms apply to Customer if and only if Customer enrolls in this Service, as evidenced by the submission to Bank of an Enrollment Request signed by Customer's duly authorized representative.**

1. **Statement of Service.** The e-Statement Service offers you the option to elect to replace your mailed (paper) statement for eligible deposit and loan accounts, as may be determined by Bank in its sole discretion from time to time, with an electronic version of the statement (an "e-Statement") in an electronic format that you can view, save to your computer or print at your convenience. Any legal notices that would normally have accompanied your mailed statement will only be delivered to you electronically once you have selected to receive e-Statements. We reserve the right, however, in our discretion, to deliver by mail certain legal and other notices.

2. **Features of Bank's e-Statement Service.** Bank's e-Statement Service provides you with the ability to view the fronts of your checks and other paper items, print such images, or save them to your computer. Images will be available during Bank's image archival period, as determined by Bank from time to time. We may add to, modify, or delete any feature of Bank's e-Statement Service, at any time, in our sole discretion. We may also at any time, in our discretion, deem a particular type of account eligible or disqualify from eligibility for Bank's e-Statement Service any type of account. Please note that once you activate Bank's e-Statement Service for a particular account, that neither you nor any of your co-owners for such account will receive any further mailed, paper statements for such account (or any of the cancelled checks or check images that might accompany a paper statement, unless otherwise agreed to by Bank) and the e-Statement will replace your mailed statement in its entirety. We note, however, that you may continue to receive paper statements for one or two statement cycles following your activation of e-Statement Services with regard to a certain account. You can switch back to paper statements and turn off the e-Statement delivery option with respect to any account at any time by contacting your banking officer or calling Bank's published Customer Service telephone number. When you turn off e-Statements, you will automatically begin receiving mailed (paper) statements with your next statement cycle after the current one ends.

3. **Activation of Bank's e-Statement Service.** The e-Statement Service may be activated once you have enrolled in Treasury Solution by selecting the e-Statement delivery option for any account available to you through Treasury Solution for which e-Statements are available and confirming your ability to retrieve and view documents by following the online instructions that we provide. Neither enrollment in nor continued use of Bank's e-Statement Service is required in order to use the Treasury Solution Service, however, you must be enrolled in Treasury Solution to use Bank's e-Statement Service. You may request a paper copy of electronic notices required by federal regulations within sixty (60) days of the availability of the electronic disclosure.

4. **Accessing Your e-Statements.** Your periodic statements for each account for which you have selected the e-Statement delivery option together with any enclosures ("Enclosures") or legal notices and disclosures that are required to accompany such periodic statements (referred to as "Disclosures") will be posted online through Treasury Solution. You acknowledge and agree that it is your responsibility to download and save in

electronic form, or to print and retain, your e-Statements for your records. There is no fee for this download. Except as otherwise required by applicable law, you acknowledge and agree that it is your responsibility to access your periodic e-Statements as they are made available to you without any notification from us. We may, however, at or discretion or if required by applicable law, send an e-mail notification to the e-mail address you provided to us in connection with the Services advising you that your e-Statement is ready and available for review.

**5. e-Statement Archive.** As long as you continue to receive e-Statements on an account you will be able to view the current month's statement and other e-Statements furnished to you through Treasury Solution (for all open and active accounts) for such e-Statement archival period as may be made available by Bank from time to time in its discretion. Once you cease to receive e-Statements for a particular account, your e-Statements archive for such account will no longer be accessible online. You will continue to have the option to request copies of back statements not available to you through Treasury Solution by calling Bank's published Customer Service number. Please refer to the fee schedule applicable to your Account for applicable fees.

**\*\*\* End of Terms and Conditions for e-Statement Service \*\*\***

## **VI. Positive Pay and Reconciliation Services**

**The terms and conditions enumerated below apply solely to Bank's Positive Pay and Reconciliation Services. The terms in this section apply to Customer if and only if Customer enrolls in any of these Services, as evidenced by the submission to Bank of an Enrollment Request for such Service(s) signed by Customer's duly authorized representative.**

- 1. Statement of Service.** Bank shall provide Customer with certain Positive Pay, Reverse Positive Pay, Payee Positive Pay, Partial Reconciliation, Full Reconciliation, Deposit Reconciliation, and Image Archive services as selected by Customer in one or more written Enrollment Request (s) **according to Customer's instructions or service selections in such documents. These various "Positive Pay" services are designed to aid in the detection** of check fraud.
- 2. Definitions.** In addition to the definitions contained in the General Terms and Conditions, the following definitions shall apply with respect to the Service:
  - a. "Partial Reconciliation" means a service in which Bank provides data or reports about transactions that occur in Customer's designated Accounts at the end of each statement cycle. Bank is not responsible for obtaining from Customer any data from Customer's account register or for comparing transaction data from Bank's records against such a register.
  - b. "Full Reconciliation" means a service in which Bank provides certain reconciliation reports to Customer at the end of each statement cycle based on a comparison between checks issued by Customer and checks paid by Bank.
  - c. "Positive Pay" means a service in which Bank compares the check serial number and exact dollar amount of checks issued by Customer against checks presented to Bank on a daily basis, reports to Customer any discrepancies relative to Customer's acceptance criteria, and provides Customer an Exception Report for review and a mechanism for accepting or rejecting final payment of the check. All Positive Pay services include an automatic "teller line interface" which identifies potentially fraudulent items throughout the Bank's branch network. Check Issue Files are updated hourly to the Bank's Teller system. Checks presented at the window for encashment are matched to the information in Customer's Check Issue File. If the information doesn't match, the teller will refuse to cash the item and refer the presenter back to the issuer.
  - d. "Reverse Positive Pay" means a service in which Bank will not upload check issue files into the system and all items presented are suspects, placed on an Exception Report and referred to Customer for review. This Service alerts the Customer if there is check activity on the account. Customer reviews each check and informs the Bank whether each check is to be accepted for final payment or rejected.
  - e. "Payee Positive Pay" is similar to "Positive Pay" however in addition to check serial number and dollar amount the Payee name as it appears on the checks is included in the Check Issue File. This data is compared to the file of checks presented to the Bank for posting and any discrepancies relative to Customer's acceptance criteria including the Payee Name are provided to Customer on an Exception Report. Customer reviews the Exception Report and advises Bank whether each Exception Check is to be accepted for final payment or rejected.
  - f. "Check Issue File" means a record in an electronic readable format provided by the Customer to Bank and describing checks drawn by the Customer; the check details contained within the Check Issue File (for example, the check number) constitute Customer's acceptance criteria for payment of the check.
  - g. "Exception Check" means a Presented Check that does not match a check included in a Check Issue File or appears to be a duplicate of another check in the Check Issue File.
  - h. "Exception Check Item" means a record describing Exception Checks which is provided by Bank to the Customer on each Banking Day, provided the Account the Check is drawn on is enrolled for Positive Pay or Enhanced Positive Pay services.
  - i. "Presented Check" means a check drawn on an Authorized Account and presented to Bank for payment through the check collection system which provides for collection and payment of checks by automated processes. For purposes of this Agreement, a Presented Check includes the Customer's written checks and does not include any other debits or credits to the Customer's Authorized Account.
  - j. "Disposition" means an instruction from the Customer to Bank requesting the payment or return of an Exception Check reported under a Positive Pay service, whether entered by Customer via Bank's online banking service ("explicit disposition") or in accordance with Customer's Default Disposition specified above.
- 3. Positive Pay Process and Data Transmission.** The Positive Pay process occurs daily and requires certain Customer actions in order to work properly. The first step is uploading the Check Issue File. The Issue Import Module provides a means for loading issued check data plus any void and/or stop information exported from Customer's accounting system to the Bank's reconciliation system. The Issue Import Module also has a self-service feature to enable the Customer to import data and reduce the amount of support needed. (Issues and voids are not used for Reverse Positive Pay).
  - a. Positive Pay Exceptions – The Positive Pay system reports to Customer any discrepancies relative to Customer's acceptance criteria. An email is sent to the Customer daily for any presented checks that post to their account that may be termed a 'discrepancy' and need an exception decision. Exception Checks presented to the Bank that do not appear on or match to the Check Issue File are identified, presented to the Customer and must be "decisioned" each day. All presented checks for a Reverse Positive Pay account are treated as Exception Checks.
  - b. Positive Pay Decisions – Online each morning, the Customer will need to review Exception Checks and make pay or return decisions. Decisions must be made by 12:30 PM central time. If decisions are not made by 12:30 PM central time, the Bank will pay or return Exceptions Checks in accordance with the default selection (return default or pay default) selected by Customer. In the event a check is

rejected with a reason of "check outside of all ranges", a default to pay will not apply and each presented Check will be returned unless an explicit decision to pay is made by the Customer.

- c. Holiday Schedule – Positive Pay customers need to monitor the Bank's holiday schedule and be aware there are processing days on which the Bank may be open and the Customer's business is closed. The Treasury Solution "welcome screen" will display alerts pertaining to this possibility. Exception Checks must be reviewed and decided by Customer even on days when the Customer may be closed. If Customer fails to make decisions to pay or return items, then the system will utilize the default decision specified by the Customer. Any presented Checks that are rejected as "check outside of all ranges" will be returned.
- d. Data Transmission - The use of some reconciliation services may require the establishment of a data transmission process between Bank and Customer for the conveyance of information about checks issued and/or posted transactions. A separate Data Transmission Setup Document is required to establish this process.

**4. Limit of Liability.** In addition to the limits of liability set forth in the General Terms and Conditions, the following additional terms apply to the Service governed by this section:

- a. Without liability to any party, Bank shall be entitled to cease reconciliation services if the quality of the checks, including the quality of the magnetically encoded characters on the face of each check, is below a commercially reasonable standard for processing on Bank's equipment.
- b. The term "Full Reconciliation" should not be construed as relieving Customer of their normal due diligence responsibilities regarding the examination of account statements and individual checks to detect errors or alterations. Bank shall not be liable for any loss arising from Customer's failure to exercise due diligence.
- c. Payee names reported by Bank to Customer in any Full Reconciliation report or database are derived from the Customer-provided database of checks issued, and not from the face of the check. Therefore, such reports cannot be used to detect fraudulent alteration of the payee name and Bank shall have no liability for losses arising from Customer's reliance on the reconciliation service for this purpose.
- d. Pursuant to Bank's provision of any Positive Pay service, Bank's liability for wrongful honor or wrongful dishonor shall be as follows:
  - i. Wrongful honor shall be deemed to have occurred if Bank pays any check for which Customer's explicit or default disposition was for the check to have been returned unpaid. In this event Bank shall be liable to Customer for the lesser of the amount of the wrongfully paid item or the amount of actual damages incurred by Customer as a result of the payment of the check.
  - ii. Wrongful dishonor shall be deemed to have occurred if Bank returns unpaid any check for which Customer's explicit or default disposition was for the check to have been paid. In this event Bank's liability to Customer shall be as specified by the normal provisions of the Uniform Commercial Code regarding the wrongful dishonor of checks.
  - iii. A valid check number range for an account on Positive Pay is 1 – 9999999999 unless otherwise specified. When a check is presented as a suspect item with a reason of "Check outside of all ranges", it will be returned unless an explicit decision to pay the check is made, regardless of your designated default disposition.
  - iv. Optional Dual Approval Security Procedure -- If Dual Approval for exception items is requested, every exception decision will require two approvals, regardless of the entitlement level of the approver. If only one person makes the positive pay decision on the exception (even if they are an approver listed on the Positive Pay Service record), the exception will be processed based on the default decision. If Dual Approval for issue uploads is requested, every upload file will require an approval prior to the submission to the bank.
  - v. While the Positive Pay Service has a "Stop Payment" feature, If a check listed in the Check Issue File has been lost or stolen or otherwise cannot be accounted for, Customer must also place a timely Stop Payment order on such check through either the Bank's branch system or through the Treasury Solution "Check Management" feature. Unless Customer properly places a timely Stop Payment order through these channels, Bank is not liable for any check that is paid from the Account even if a "Stop Payment" was indicated on a check through the Positive Pay Service.
  - vii. Bank shall be liable for any actual and direct losses, but no consequential, indirect, punitive or special losses or damages, proximately caused by its honor of a check that was not properly payable, or its dishonor of a check that was properly payable, if the honor or dishonor occurred because Bank should have reported the check as an Exception Check Item but failed to do so, or reported the check as an Exception Check Item but referenced the wrong check number, unless Bank provided the Customer with timely information that disclosed the error.
  - viii. If Bank returns any check unpaid in accordance with a valid explicit or default disposition instruction from Customer, such dishonor shall not be deemed wrongful and Customer agrees to hold Bank harmless from any and all liability regarding such checks.

**\*\*\* End of Terms and Conditions for Positive Pay and Reconciliation Services \*\*\***

## **VII. Commercial Sweep Services**

**The terms and conditions enumerated below apply solely to Bank's Commercial Sweep Services, which include an Investment Sweep, Credit Line Sweep, and Relationship Sweep, each of which may be used singly or in combination. The terms in this section apply to Customer if and only if Customer enrolls in any of these Services, as evidenced by the submission to Bank of an Enrollment Request, setup form, or other document requesting such service(s) signed by Customer's duly authorized representative.**

**1. Statement of Service.** The Commercial Sweep Service is an integrated financial service in which Customer's excess collected funds above Customer's designated target balance in the Account(s) specified on an Enrollment Request shall be transferred by the Bank daily from the Account(s) and into an investment, credit line and/or deposit account sweep selection designated by Customer in such Enrollment Request.

**2. Investment Option Terms and Conditions.**

- a. **Repurchase Agreement investment option.** If Customer has elected the Repurchase Agreement investment option, in addition to establishing the Service the Enrollment Document for Commercial Sweep Services and this Agreement also constitutes a Master Repurchase Agreement with the following terms:
  - i. "Repurchase Agreement" shall be defined as Bank's transfer to Customer of securities or financial instruments ("Securities") in return for the transfer of funds, with a simultaneous agreement by the Bank to repurchase the Securities at the start of the next business banking day, or on demand, upon the transfer of funds representing the market value of the Securities at the time of repurchase into the Customer's Account(s).
  - ii. Bank shall promptly, and no later than the end of the processing day on which a Repurchase Agreement transaction was initiated (the settlement date), send a confirmation of the transaction to Customer. The confirmation shall list each Security that is the subject of the transaction and shall set forth the issuer, maturity date, coupon rate, market value and CUSIP number of each such Security.



- iii. Bank, as principal, may be the counterparty on the repurchase agreements.
  - iv. **The transfer of funds to a Repurchase Agreement is a securities transaction. While invested, these funds are not a deposit or obligation of any bank, are not guaranteed by any bank, and are not guaranteed by the Federal Deposit Insurance Corporation or any other government agency.**
  - v. Pursuant to this Repurchase Agreement Customer is granted an interest in the Securities which will be recognized by the FDIC in the event of bank failure. Customer may instruct the Bank, acting as agent for Customer, to transfer or deliver the Securities in accordance with Customer's orders. In event of Bank failure, Customer shall have the right to direct a successor bank or the receiver, as applicable, to liquidate any and all investment securities purchased hereunder and apply the proceeds thereof to the satisfaction of any repurchase transaction seller liabilities existing under this Repurchase Agreement such that funds representing Customer's then-current repurchase transaction would be returned to Customer's Account(s) with the successor bank appointed by the FDIC. If Bank fails outright and there is no successor bank, the receivership established by the FDIC would give the Customer the market value of the securities in Customer's then-current repurchase transaction up to the amount of Customer's principal investment.
  - vi. Bank, as seller, is not permitted to substitute other securities for those under sale to Customer prior to the settlement of a repurchase transaction and therefore must keep buyer's securities segregated at all times.
  - vii. Although the parties intend that all transactions hereunder be sales and purchases and not loans, in the event any transactions are deemed to be loans, seller shall be deemed to have pledged to buyer as security for the performance by seller of its obligations under each such transaction, and shall be deemed to have granted to buyer a security interest in all of the purchased Securities with respect to transactions hereunder and all income thereon and other proceeds thereof.
- b. **Relationship Sweep (also referred to as the Deposit Account investment).** If Customer has elected the Deposit Account investment option (Relationship Sweep), the following terms shall apply.
- i. During such time that investment balances in the account bear interest in accordance with this Agreement, they will be considered to be deposits of a United States bank and not securities. Therefore, these deposits, together with any other deposits at the Bank, will be covered by FDIC insurance up to the government-defined limits per legal entity. If your total funds on deposit at the Bank exceed the applicable FDIC insurance limit, the FDIC will not insure your funds that are in excess of the limit. It is Customer's sole responsibility to monitor the amount of its deposits in the Bank in order to determine the extent of the FDIC insurance coverage available to Customer.
  - ii. All deposit balances invested in the Relationship Sweep will at all times remain deposits of the Bank and shall have no additional backing by any securities or other guarantees.
3. **Target Balance.** As used herein "Target balance" means the collected balance amount designated by Customer from time to time as a threshold balance to remain in Customer's Account(s), and which shall not be invested in any of the Commercial Sweep Services investment options.
4. **Appointment as Agent.** Customer appoints Bank and its designees as Customer's agent for the purpose of opening, on Customer's behalf, the Commercial Sweep Service, placing orders, transferring funds, and taking such other steps as are reasonably necessary to carry out Customer's directions relating to the Commercial Sweep Service.
5. **Daily Processing.**
- a. At the end of each day, if the collected balance in the Account(s) exceeds the Target balance, then the Bank will reduce the collected balance to the Target balance and apply the difference ("Difference") as follows:
    - I. If Customer has selected the line of credit sweep and an outstanding balance exists on the designated line of credit, the Difference will be applied as a payment on the line of credit in the manner prescribed by the line of credit agreement, up to the entire outstanding balance of the line of credit, and any remainder will be transferred to the selected investment option.
    - II. If Customer has not selected the line of credit sweep, or if an outstanding balance does not exist on the designated line of credit, then the Difference will be transferred to the selected investment option.
  - b. If the ending collected balance in the Account(s) is less than the Target balance and Customer has selected the line of credit sweep, then Bank will make a credit advance against the line of credit in the amount needed to restore the collected balance in the Account(s) to the Target balance, subject to the availability of approved credit remaining available in the line, and Bank will transfer that amount to the Customer's Account(s).
6. **Nominee Title.** All investments by Bank in the Eurodollar investment, Repurchase Agreement investment and the Deposit Account investment will be made in Bank's name (or in the name of a nominee of Bank) on behalf of Customer. Bank or Bank's nominee will maintain records showing the ownership by Customer and other customers of the sweep balances.
7. **Best Efforts to Invest.**
- a. Bank will have no liability to Customer for lost income or otherwise if Bank is unable, using its best efforts, to invest the funds in the sweep investments or place orders to redeem sweep because of the unavailability of any sweep investments or otherwise.
  - b. In order to fulfill transfers to Repurchase Agreement sweep investments, Bank may place block orders to purchase and redeem investment grade securities based on estimated needs across all accounts. These securities will then be allocated to specific accounts based upon actual account balances. In some cases the actual purchase and redemption needs of accounts in total may exceed the size of the block orders, in which case the Bank will seek to allocate securities across accounts in a fair and equitable manner.
  - c. The Relationship Sweep allows Customer to earn interest daily on invested balances in its Accounts. The interest rate payable on the Deposit Account investment option is tiered and Customer's return will be based on the daily collected balance in your Deposit Account sweep. The Deposit Account sweep is a variable rate account and the Bank sets the rates each day. The rate of interest may vary over time.
8. **No Requirement to Sweep to or from the Account(s).** Bank is not required to sweep amounts to or from Customer's Account(s):
- a. if the collected balance in Customer's Account(s) and investment sweep selection, or the available credit on the line of credit, or some combination thereof, is not sufficient to restore the Account(s) to the Target balance;
  - b. if the amount of the sweep is less than the minimum sweep amount we establish from time-to-time for Customer's sweep selection;
  - c. if the amount of the sweep would exceed our internal aggregate limit for Customer's sweep selection; or
  - d. if Customer is in breach of this Agreement.

**9. Changing Sweep Selection.** If Customer changes its sweep selection, Bank may initiate such transfers and/or redemptions as are necessary to effect the request. Bank may require Customer to make the request in writing but is not required to do so if it reasonably believes the request to be authentic. Bank will have a reasonable time after receipt of notice to effect the change.

**10. Changing Target Balance.** Customer may change the amount of the Target balance; Bank may require Customer to make the request in writing, but is not required to do so if it reasonably believes the request to be authentic. Bank will have a reasonable time after receipt of Customer's notice to effect the change.

**11. Right of Set-off and Security Interest.** Customer agrees that Bank's right of set-off with respect to the Account(s) shall apply to any balances in Customer's investment sweep selection as though the balances were still in the Account(s).

**12. Certification of Taxpayer Identification Number.** Customer certifies (a) the Federal Taxpayer Identification Number provided by Customer to Bank is the correct, valid Federal Taxpayer Identification Number of Customer; (b) interest paid to Customer as the result of any sweep transaction conducted hereunder, if any, shall be reportable under the Federal Taxpayer Identification Number provided by Customer to Bank; and (c) Customer is not subject to "backup withholding" as defined by applicable statutes of the United States. Customer and Bank acknowledge and accept that this certification is provided herein in lieu of form W-9 of the Internal Revenue Service.

**\*\*\* End of Terms and Conditions for Sweep Services \*\*\***

### **VIII. Zero Balance Accounting (ZBA) Service**

**The terms and conditions enumerated below apply solely to Bank's ZBA Service. The terms in this section apply to Customer if and only if Customer enrolls in this Service, as evidenced by the submission to of an Enrollment Request signed by Customer's duly authorized representative.**

**1. Statement of Service.** Bank shall provide to Customer the Zero Balance Account ("ZBA") service, in which Bank shall initiate automatic transfers of funds from certain accounts designated by Customer ("Subsidiary Accounts") into a single account designated by Customer to hold funds transferred from one or more Subsidiary Accounts (the "Master Account") in order to arrive at a specified ending balance ("target" balance) in each Subsidiary Account. Customer's instructions to Bank regarding which accounts to include and the level of balances to be maintained in each Subsidiary Account shall be as specified by Customer in writing, subject to modification from time to time if requested by Customer.

**2. Liability.** In addition to the limits on liability established in the General Terms and Conditions, the following limits shall apply to the ZBA Services:

- a. It shall be Customer's sole and exclusive responsibility to be knowledgeable of any and all rules governing the co-mingling of funds among Customer's various accounts, whether such rules are established by Customer's internal policies or by any external policies, regulations, or laws to which Customer is subject. Customer agrees to hold Bank harmless from any and all liability from any claims asserting that any transfer made by Bank in accordance with Customer's instructions violated any rules concerning co-mingling.
- b. If Bank does not execute a transfer specified herein because Bank reasonably believes that doing so would subject Bank to the risk of monetary loss, including but not limited to the risk of loss from an overdraft caused by the specified transfer, Bank shall not be liable to Customer or any other party for not executing the transfer.
- c. The designation of accounts eligible for ZBA transfers is in Customer's sole discretion. Therefore, Bank shall not be subject to liability for any loss arising from a claim that a valid ZBA transfer subjected funds to withdrawal by a party who would not otherwise have withdrawal rights or access to the funds.

**\*\*\* End of Terms and Conditions for ZBA Services \*\*\***

### **IX. Automated Clearing House ("ACH") Origination Service**

**The terms and conditions enumerated below apply solely to Bank's ACH Origination Service. These terms apply to Customer if and only if Customer enrolls in this Service, as evidenced by the submission to Bank of an Enrollment Request signed by Customer's duly authorized representative.**

**1. Statement of Service.** Subject to the terms and conditions of this Agreement, Bank shall provide an ACH Origination service which allows Customer to initiate debit and/or credit electronic fund transfer entries through Bank by means of the ACH. Bank shall process entries received from Customer, shall transmit such entries to an ACH processor selected by Bank in its sole discretion, and shall settle such entries.

**2. Definitions.** In addition to the definitions contained in the General Terms and Conditions, the following definitions shall apply with respect to the Service:

- a. "Rules" shall mean the Operating Rules of the National Automated Clearing House Association, as in effect from time to time.
- b. "NACHA" shall mean the National Automated Clearing House Association.

The following additional definitions as used in the Rules will apply to terms used herein with respect to the Service:

- c. "Originator" refers to the entity who initiates debit or credit transactions via the ACH; i.e., the Customer hereunder.
- d. "Receiver" refers to the entity whose account receives the transaction.
- e. "Originating Depository Financial Institution" or "ODFI" refers to the bank who processes, and settles transactions submitted by the Originator;
- f. "Receiving Depository Financial Institution" or "RDFI" is the bank which maintains the Receiver's account.
- g. Individual ACH transactions are sometimes referred to herein as an "Entry" or "Entries."

With respect to the Service, terms not otherwise defined in this Agreement shall have the meaning ascribed to those terms in the Rules.

### **3. Compliance.**

- a. Customer and Bank agree to comply with and be bound by the NACHA Rules, copies of which are available from NACHA and various regional ACH associations. Customer acknowledges that Customer has a current copy of the Rules and that Bank requires that Customer have and use the most current edition of the Rules, at all times.

- b. Customer and Bank agree to comply with all applicable federal and state laws and regulations governing transactions to be performed hereunder and Customer acknowledges and agrees that Bank may delay the processing, settlement and/or availability of any Entries in order to comply with such laws, regulations and the Security Procedures.
- c. Customer agrees that it shall be Customer's responsibility to originate only Entries that comply with the laws of the United States, including, without limitation, the anti-terrorism and anti-money laundering programs administered by the U.S. Treasury Department's Office of Foreign Asset Control (OFAC) and other law enforcement entities. Customer acknowledges that it is aware that it is very important that U.S. businesses, individuals, and others subject to OFAC jurisdiction comply with the full legal requirements of OFAC's programs which are set forth in the applicable statutes, Executive Orders, and implementing regulations found in Title 31 Chapter V of the Code of Federal Regulations and in Federal Register documents that update the regulations. It shall further be the responsibility of the Customer to obtain information regarding OFAC enforced sanctions. This information may be obtained directly from the OFAC. Bank will charge Customer with any fines or penalties imposed by OFAC, NACHA or any organization which are incurred as result of non-compliance by the Customer and the Customer agrees to fully reimburse and/or indemnify Bank for such charges or fines.
- d. Customer acknowledges that certain regulations compel the use of the International ACH Transaction ("IAT") standard entry class code transaction type even for transactions that, on their face, would not appear to be international in nature. Customer agrees to maintain awareness of and compliance with such regulations, and acknowledges that the additional compliance review necessary for any IAT could result in possible delays in processing and settling such transactions. Customer agrees that it shall advise Bank in advance if its business requires the use of the IAT standard entry class code. Customer shall comply with all Rules applicable to IAT Entries.
- e. Customer acknowledges and agrees that Bank reserves the right to examine and audit Customer's records, policies, procedures and controls at any time upon reasonable notice to Customer to ensure that the Customer is in Compliance with the Rules and Customer's representations and warranties hereunder.

**4. Customer Warranties.** Customer represents and warrants to Bank as follows:

- a. Each Entry submitted by Customer shall comply with the terms of this Agreement, the Rules, and all applicable federal and state laws and regulations as applicable to such Entry;
- b. Entries submitted by Customer to Bank by Customer shall be limited to those types or credit and debit Entries that Bank has approved in advance;
- c. With respect to each Entry submitted by Customer, all requirements and conditions for the execution of such Entry by Bank, as set forth in this Agreement and the Rules, shall be satisfied as of the Effective Entry Date, as that term is defined in the Rules;
- d. Customer, with respect to each Entry submitted by Customer, makes all warranties that are made by Bank pursuant to the Rules with respect to the Entry and further warrants that such Entries are transmitted on Customer's own behalf, unless Bank, has agreed in its discretion to permit Customer to transmit Entries as a Third Party Sender.
- e. Each party shown as the Receiver on any Entry received by Bank from Customer has authorized the initiation of such Entry and the crediting/debiting of such party's account in the amount and on the Effective Entry Date shown on such Entry, and such authorization is operative at the time of transmittal and/or crediting/debiting by Bank. Such authorization shall be in a form that complies with all requirements of the Rules, and all other applicable federal and state laws and regulations. Customer agrees to retain the original or a copy of equal legal standing to the original of each such written authorization for a period of six (6) years after termination or revocation of such authorization, or, in the case of an authorization for the initiation of a single Entry, for a period of six (6) years after initiating such Entry, and shall, upon request by Bank, furnish such original or such copy of the written authorization to Bank.
- f. To use the Service Customer shall specify one or more accounts of Customer at Bank, which are to be credited with all Debit Entries on the date finally settled and debited with all Credit Entries on the Entry Effective Date (the "Offset Account").

**5. Transaction Limits.** In utilizing the ACH network in performance of the Service, Bank must make certain warranties on behalf of Customer. Specifically, Bank is charged with assuring the financial soundness of the Customer to make the intended Entries. To comply with applicable regulations, Bank must set transaction limits commensurate with Customer's legitimate business needs and financial condition. The maximum value of originated transactions ("Processing Limits") will be initially set by mutual agreement between Customer and Bank, subject to change from time to time at the Bank's discretion based on Customer's changing business needs and financial condition. Processing Limits may be expressed as a daily maximum, an unsettled transaction maximum (defined as transactions submitted by Customer but which have not reached the settlement date) or both. In the event Customer submits transactions which exceed an established limit, Bank in its sole discretion may elect to not process Customer's originated ACH transactions. Customer should be aware of its current established limits at all times and is responsible for determining whether the limits are established at levels appropriate for Customer's operations and should promptly advise Bank if the established limits are inappropriate for any reason. Customer acknowledges that (i) Bank may, for its own benefit or purposes from time to time or on a more regular basis, check, verify or confirm that the Entries do not exceed established limits, but that Customer shall have no right to rely on Bank's enforcement of such limits. Customer agrees that Customer shall have no right, claims, or demand against Bank arising from Bank's effecting one or more Entries which, individually or when aggregated, exceed any established limits or exceed the Customer's funds, credit or collateral held by Bank. Entries received by the Bank that have exceeded Customer's Processing Limits are suspended and subject to officer approval for release. If Customer's Entries exceed the applicable daily limit, please contact Client Services at 1-866-594-2304 to resolve the issue.

**6. Telephone-Based and Internet-Based Entries.** NACHA in its role of ensuring the safety, security, and viability of the ACH network has determined that certain single-use or limited-use consumer authorizations such as for the payment of purchases made by telephone or over the internet have the potential to increase risk in the ACH system and compromise system effectiveness by the increasing the incidence of returned entries. Therefore, in order for Originator to qualify to submit such Entries for processing, the following conditions must be met:

- a. Entries representing the settlement of telephone-based sales must be identified via Originator's use of NACHA's "TEL" Standard Entry Class code as defined in the Rules; entries representing the settlement of internet-based sales must be identified via Originator's use of NACHA's "WEB" Standard Entry Class code as defined in the Rules.
- b. For transactions related to telephone-based or web-based purchases, Customer's use of any Standard Entry Class codes other than TEL or WEB in order to avoid the increased scrutiny required for such transactions shall constitute a violation of applicable law and will result in Originator's immediate loss of ACH Origination rights regardless of any termination notification period otherwise specified in this Agreement.
- c. Originator will utilize commercially reasonable methods to establish the identity of the Receiver, and hereby warrants to Bank that each such Receiver has authorized Originator to submit ACH Entries to their accounts in settlement of transactions to which Receiver has agreed.
- d. As required by the Rules, Originator must maintain records such as telephone voice recordings or logs from an internet ordering system as proof of each Receiver's authorization. Bank from time to time may (without any obligation or duty to do so) require Customer to make such records available for Bank's review.

**7. Settlement of Entries.** All Files (Batches) submitted for processing shall not include the offset entry as the Bank shall settle all entries to the Customer's Account according to the terms communicated between Customer and Bank. Bank shall not be obligated to process, transmit or settle Entries unless all of the following requirements and conditions have first been satisfied or waived by Bank, in its sole and absolute discretion:

- a. **Delivery Requirements.** Customer shall have delivered the Entries to Bank in compliance with the formatting and other requirements as established by the Rules and any Bank requirements for specific delivery methods that may be provided to Customer from time to time and acknowledges that Bank has the right to refuse to process any Entries that are not submitted properly.
- b. **Receiver Authorization.** Customer shall have obtained from each Receiver an authorization to initiate one or more Entries with respect to the Receiver's account. Such authorization must (i) be obtained before Customer initiates the first Entry to that Receiver's account; (ii) remain valid and not revoked at the time of each subsequent Entry; (iii) relate to a Receiver whose arrangement with Customer has not been terminated; (iv) be immediately available for inspection by Bank upon its request; and (v) otherwise comply with the Rules. Bank shall be under no obligation to request, inspect or determine the validity or existence of any Receiver authorization.
- c. **Deadlines.** Bank shall have received the Entries before applicable cut-off deadlines.
- d. **Transaction Limit.** Entries submitted by Customer comply with Customer's pre-established transaction limit as described in Section 5 above.
- e. **Sufficient Funds.** Customer shall have sufficient collected funds available in the designated Offset Account at Bank to pay all Credit Entries that will be settled on any particular Effective Entry Date, together with all adjustment Entries, fees and other amounts that Customer is obligated to pay Bank under this Agreement. In its sole discretion, Bank may, before transmitting one or more Credit Entries, require that Customer have collected funds in the Customer Account sufficient to pay those Credit Entries. Bank may, without prior notice or demand obtain payment of any amount due and payable to it under this Agreement by debiting any Offset Account, or debiting or otherwise offsetting any of Customer's or Customer's affiliates accounts at Bank or Bank's affiliates.
- f. **Adherence to Processing Calendars.** Bank must receive Entries on the dates indicated in the current ACH processing calendar or schedule, if any, filed by Customer with Bank for the specific type of Entries being processed. Files and Entries may be submitted during a normal banking day. Files (Batches) are picked up by Bank for processing (scooped) at the following times – 6 am, 9 am, 12 pm, 3 pm, and 5:45 pm Central Time (CT) - Any file submitted after 5:45 pm CT will not be picked up and processed until the next business day. Email notifications are sent after each File is picked up to the designated individual(s) to confirm Bank's receipt of the File. These emails should be validated by Customer and any discrepancies reported to Bank as soon as possible. If Customer does not receive a confirmation email with respect to any submitted File, Customer should report this immediately to Bank. Confirmation emails are not sent until after the scoops are processed at Bank.
- g. **Compliance with Security Procedures.** Customer shall have complied with applicable Security Procedures for the Service as may be required by Bank from time to time.
- h. **Same Day ACH.** Customer's may elect same day settlement for eligible ACH credit or debit entries subject to applicable cut-off deadlines and transactions fees, if any, as disclosed to Customer by Bank. All ACH transaction types are eligible (except pre-funded ACH and International ACH Transactions (IATs)) with a limit of \$25,000 per transaction. Sending/Originating or Receiving/Originating an accepted file with an entry date of current day that falls within the same day origination window will be handled, processed, billed and settled as a same-day item provided Customer is enrolled for ACH Origination Service. Bank shall not be responsible if another receiving financial institution is unable to receive or initiate same day ACH payments, fails to act, fails to make funds available or fails to settle a same-day transaction timely. Customer is responsible for following appropriate NACHA rules for ACH transactions including proper authorization and timing for debits. Additional fees may apply for returned ACH transactions.

Waiver of any of the foregoing conditions shall always remain completely discretionary with Bank. Waiver by Bank of a condition with respect to one or more Entries on one or more occasions shall not create a requirement or give rise to a presumption of future waivers with respect to other Entries. Bank shall never be obligated to waive any of the conditions based upon a pattern or practice of waivers, or based on any oral agreements, understandings or representations that such waivers shall be made.

**8. Prefunding.** To qualify Customer as an ACH Originator, Bank may require credit transactions to be prefunded. If prefunding is required, Customer will be required to have sufficient collected funds on deposit in the Offset Account on ACH submission dates as a condition for Bank's processing of any outgoing ACH Credit Entry. When prefunding is in place, the offset transaction to remove funds from Customer's account will occur on the date the transactions are submitted rather than on the Effective Entry Date. Bank's normal overdraft policies and fees will apply if sufficient funds are not available.

**9. Rejection of Entries.** Customer agrees that Bank has no obligation to accept Entries and therefore may reject any Entry submitted by Customer. Bank has no obligation to notify Customer of the rejection of an Entry but will make reasonable efforts to do so. Bank shall have no liability to Customer for rejection of an Entry or for failure to notify Customer of a rejection and shall not be liable to pay any interest to Customer even if the amount of Customer's payment order is fully covered by the balance in the Offset Account or Bank has otherwise received full payment from Customer. In the event that Entries are rejected by the ACH for any reason, it shall be the responsibility of Customer to remake such Entries. Customer agrees to check for returns and notifications of changes at least once a day.

**10. Cancellation, Amendment or Reversal of Entries.** Customer shall have no right to cancel or amend any Entry after its receipt by Bank, nor any right to the reversal of any Entry after it has been transmitted to the ACH or, in the case of an On-Us Entry, after the Receiver's account has been credited/debited. However, Bank shall use reasonable efforts to act on a request by Customer to cancel or amend an Entry prior to transmitting it to the ACH or, in the case of an On-Us Entry, prior to crediting/debiting the Receiver's account, or for the reversal of a transmitted Entry or, in the case of an On-Us Entry, an Entry that has been credited/debited to the Receiver's account, provided such request complies with any and all Security Procedures and the Rules. Under no circumstances shall Bank have any liability whatsoever for any failure to cancel, amend, or reverse any Entry. Customer shall be liable to Bank for any expenses, losses or damages Bank incurs in effecting or attempting to effect Customer's request for cancellation, amendment or reversal of any Entry and does hereby agree to indemnify, defend and hold Bank harmless with respect thereto. Procedures and forms can be found on the Treasury Solution Resource Center.

**11. Returned Entries.** Bank shall use its best efforts to notify Customer of the receipt of Entries returned from the ACH or of any notification of change ("NOC"). Such notification may be given by phone, electronic transmission, or any other commercially reasonable means within a reasonable time after the Business Day on which Bank receives such returned Entries or NOC. Bank shall have no obligation to retransmit or re-execute any returned Entry. Customer agrees to check for returns and notifications of changes at least once a day.

**12. Refund of Debit Entries.** Customer acknowledges that, under the Rules, a Receiver has the right under certain circumstances to obtain a refund of funds debited from the Receiver's account pursuant to a Debit Entry. The RDFI, in turn, has the right to obtain payment of the amount of the Debit Entry from Bank as ODFI, by transmitting an adjustment Entry in the amount of such refund (an "Adjustment Entry"). Customer

acknowledges that it has received, reviewed and agrees to be bound by the provisions of the Rules governing refunds of Debit Entries and application of Adjustment Entries. Customer further agrees to pay Bank the amount of any Adjustment Entry upon the receipt thereof by Bank. With respect to a refunded On-Us Debit Entry, Customer will immediately pay Bank the amount of such refund.

**13. Error Detection.** Bank has no obligation to discover and shall not be liable to Customer for errors made by Customer, including, but not limited to errors made in identifying the Receiver, or an Intermediary or RDFI, or for errors in the amount of an Entry or for errors in settlement dates. Bank shall likewise have no duty to discover and shall not be liable for duplicate Entries issued by Customer.

**14. Inconsistent Entry Information.** Customer acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by Bank to the RDFI might be made by the RDFI (or by Bank in the case of an On-Us Entry) on the basis of the account number, even if it identifies a person different from the named Receiver, and that Customer's obligation to pay the amount of the Entry to Bank is not excused in such circumstances. Customer further acknowledges and agrees that, if an Entry describes the RDFI inconsistently by name and transmit/routing number, the Entry might be received by an RDFI on the basis of the transmit/routing number, even if it identifies an RDFI different from Customer's intended RDFI. Such RDFI might process the Entry on the basis of the Receiver account number contained therein. Customer acknowledges and agrees that its obligation to pay the amount of the Entry is not excused in such circumstances.

**15. Authorized ACH Representative.** Customer's designated contact(s) shall be considered Customer's Authorized ACH Representative(s) for the management and administration of transactions to be performed under this Agreement and other matters related hereto. Customer shall be entitled to designate additional or replacement Authorized ACH Representatives and Bank shall be entitled to rely upon Customer's designations in its performance hereunder. Any person whom Customer permits to have access to Confidential Information shall be presumed to be an Authorized ACH Representative. Bank from time to time may (without any obligation or duty to do so) require Customer to update the contact information to reflect current Authorized ACH Representative(s). Customer's failure to promptly provide such information when requested by Bank may result in the immediate suspension of Customer's ability to perform transactions hereunder. In any event, whether or not Bank has requested updated information, Customer agrees to notify Bank immediately in the event that the authority or identity of any Authorized ACH Representative should change.

**16. Security Procedures.** Customer agrees as follows:

- a. All transactions initiated by Customer hereunder will comply with the Security Procedures established in accordance with the General Terms and Conditions of this Agreement and Customer hereby releases and agrees to hold Bank harmless from any loss or liability incurred by Customer as a result of Customer's failure to comply with the Security Procedures.
- b. Customer agrees to create and maintain a separation of duties such that no one person acting solely may both create ACH transactions and submit them to Bank for processing. Customer acknowledges that submission of ACH Entries, whether in a batch or individually, will require Dual Authorization for release of the Entries for submission to Bank. Under Dual Authorization, Customer will have one person prepare and submit the Entries and another person(s) authorize the release of ACH Entries to Bank.
- c. Customer agrees that the purpose of the Security Procedures is to verify the authenticity of the Entries submitted to Bank in the name of Customer and not to detect errors in the content or transmission of any Entry. Customer and Bank have agreed upon no procedures for the detection of such errors.
- d. Customer and Bank agree that the Security Procedures are commercially reasonable.

**17. Authorized and Unauthorized Entries.** Any Entry (including a request for cancellation, amendment, or reversal of an Entry) or other communication delivered to Bank that purports to have been submitted or authorized by Customer in accordance with the Rules shall be effective and binding upon Customer even if the Entry was not in fact authorized by Customer provided Bank has accepted the Entry in compliance with the Rules, reasonably believes it to have been submitted or authorized by Customer, and has acted in good faith. If any Entry received by Bank is, in fact, submitted or authorized by Customer (or any Authorized ACH Representative), it shall be effective as Customer's Entry whether or not (a) Bank complies with the Rules and/or this ACH Services Agreement with respect to the Entry, (b) the Entry is erroneous in any respect, (c) the error, if any, could be detected by Bank, or (d) Bank processes, transmits or settles the Entry even though one or more of the conditions therefore, as set forth herein, is not satisfied. If Customer discovers an erroneous or unauthorized Entry, Customer shall immediately notify Bank, as well as notify the affected Receiver(s), and shall confirm such notification in writing. Upon receiving such notice, Bank will use reasonable efforts on behalf of Customer to correct the erroneous Entry in a manner consistent with the Rules, but Bank shall in no event be liable to Customer in the event that Bank is unable to correct the erroneous Entry. If Customer fails to notify Bank or the affected Receiver(s) of any erroneous Entry, Customer will be liable for any losses Bank may incur. Customer agrees that Bank has no obligation or duty to detect errors with respect to Entries submitted by Customer. However, if Bank detects an error with respect to an Entry delivered to Bank, Bank will exercise reasonable efforts to give Customer notice of such error, and Customer agrees to furnish to Bank corrections in a format and on a medium prescribed by Bank. Bank reserves the right to suspend or cancel Customer's ability to perform transactions hereunder if Bank suspects any unauthorized or fraudulent transactions. Customer agrees to take any reasonable actions requested by Bank to prevent unauthorized transactions or to correct errors.

**18. Third-Party Senders.** When Customer is acting in the capacity of a Third-Party Sender, as defined by the Rules, the following additional terms and conditions shall apply with regard to the initiation of ACH transactions by Customer on behalf of one or more commercial companies other than Customer, with Bank acting as ODFI for the purpose of processing and settling such entries:

- a. It shall be the responsibility of Customer to ensure the origination of ACH transactions complies with U.S. law, and as such, Customer represents and warrants that it will not transmit to Bank any Entries that violate U.S. law and that its Originator(s) will not initiate Entries that violate U.S. law.
- b. Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules. The term "Entries" shall have the meaning provided in the Rules and shall also mean the data received from Customer hereunder from which the Bank prepares Entries.
- c. For Entries of which Customer is not the Originator, Customer represents and warrants that each Originator has agreed to assume the responsibilities of an Originator under the Rules and has entered into a valid written agreement with its Originator that satisfies the requirements of Subsection 2.2.1.1 of the Rules (the "Originating Agreement").
- d. It is the responsibility of Customer, when acting in the capacity of the Third-Party Sender, to set, monitor, and review exposure limits for Originators or other third-party senders with which it has relationships.
- e. In the event the Customer or any of its Originators violates any of the applicable Rules and NACHA imposes a fine on Bank because of the Third-Party Sender's violation, Bank may charge the fine to Customer.
- f. In addition to any other duties, responsibilities, warranties, representations and liabilities under this Agreement, for each Entry transmitted by Customer to Bank, except for any Entry initiated by Customer as an Originator, Customer represents and warrants to Bank and agrees that Customer shall perform all duties and assume all responsibilities of a Third-Party Sender in accordance with the Rules and accordingly, Customer shall (a) perform all of the duties, including, but not limited to, the duty to identify Originators; (b) assume all of the responsibilities, including, but not limited to, the responsibilities of ODFIs and Originators; (c) make all of the warranties, including, but not limited to, the warranties of ODFIs and the warranty that Originators have agreed to assume the responsibilities of Originators under the

- Rules*; (d) make all of the representations; and (e) assume all of the liabilities, including, but not limited to, liability for indemnification for failure of an Originator to perform its obligations as an Originator.
- g. Customer will provide Bank with any information the Bank reasonably deems necessary to identify each Originator for which the Customer transmits Entries. Such information will be provided to Bank upon request by Bank within two banking days of the receipt of the request. The Customer shall notify Bank of any new Originators and obtain approval from the Bank prior to initiating Entries.
  - h. Customer represents, warrants, and agrees with respect to each Entry transmitted by Customer that (a) each person shown as the Receiver on an Entry received by Bank from Customer has authorized the initiation of such Entry and the crediting of its account in the amount and on the Effective Entry Date shown on such Entry, (b) such authorization is operative at the time of transmittal or crediting by Bank as provided herein, (c) Entries transmitted to Bank by Customer are limited to those Standard Entry Classes (as defined in the Rules) authorized by Bank in any accompanying ACH Originator Agreement, (d) Customer shall perform its obligations under this Agreement in accordance with all applicable laws and regulations, and (e) Customer shall be bound by and comply with the Rules as in effect from time to time, including without limitation the provision thereof making payment of an Entry by the ODFI to the RDFI provisional until receipt by the RDFI of final settlement for such Entry; and specifically acknowledges that if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and the Customer shall not be deemed to have paid the Receiver. Customer agrees to provide notice of this Rule to the Originator. Customer shall indemnify Bank against any loss liability or expense (including attorneys' fees and expenses) resulting from any breach of any of the foregoing agreements.
  - i. Customer shall and shall ensure its Originators agree to retain data on file adequate to permit remarking of Entries for such period of time as may be required by Bank from time to time, following the date of their transmittal by Bank and shall provide such data to Bank upon request.
  - j. Customer agrees it is obligated to make payment to Bank for all credit Entries and all Debit Entries that are returned by the RDFI. In the event Bank does not receive payment from Customer, the Originator of the Entry shall be liable to Bank.
  - k. In the event of any damages for which Bank or Customer may be liable to each other or to a third party pursuant to the Services provided under this Agreement, Bank and Customer will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party. Customer represents and warrants that each Originator has agreed to undertake reasonable efforts to cooperate with Customer, as permitted by applicable law, in performing loss recovery efforts with regard to any actions that Bank may be obligated to defend or elects to pursue against a third party.
  - l. Customer must conduct or have conducted an annual audit of its compliance with the *Rules* in accordance with Appendix Eight by December 31 each year and agrees that Bank has the right to audit Customers' and its Originators' compliance with this Agreement, the *Rules*, and the Originating Agreement.

\* \* \* End of Terms and Conditions for ACH Origination \* \* \*

## X. ACH Fraud Prevention Services

**The terms and conditions enumerated below apply solely to Bank's ACH Fraud Prevention Services. The terms in this section apply to Customer if and only if Customer enrolls in any of these Services, as evidenced by the submission to Bank of an Enrollment Request signed by Customer's duly authorized representative.**

1. **Definition of Service.** The Bank's ACH Fraud Prevention Services offer Customer a selection of fraud prevention measures that may be selected by Customer to protect Customer's Accounts from unauthorized ACH debits and credit. Customer may customize a solution to control the posting of ACH transactions to Customer's demand deposit account(s) with Bank as an integral part of Customer's process for validating that ACH transactions are authorized and serve a valid business purpose of the Customer. As used herein, "ACH transaction(s)" shall refer to electronic funds transfers that settle within a bank or between banks according to specified rules and procedures governed by the Federal Reserve Bank and the NACHA. "Debit Entry" shall refer to any ACH Transaction which has the intended result of removing funds from the Customer's demand deposit account(s). "Credit Entry" shall refer to any ACH Transaction which has the intended effect of depositing funds to the Customer's demand deposit account(s). Customer may enroll in one or more of the following ACH Fraud Prevention Services described below (each a "Service").
2. **ACH Fraud Service Module Selection**
  - a. The ACH Block module allows Customer to block all incoming ACH Debits and/or Credit Entries from posting to its Account(s). If Customer enrolls in this Service all ACH Debits will be returned.
  - b. The ACH Positive Pay module allows Customer to review and decision all ACH Debits. All incoming ACH Debits are posted to Customer's Accounts on a daily basis. Each morning, all ACH Debits will be presented to Customer for review and disposition. Customer instructs the Bank which items to pay or return. Customer shall notify Bank prior to the deadline established by the Bank of Customer's decision on any reported item that should be returned. Customer may also create customized instructions based on criteria the Customer controls such as acceptable payees, amount and frequency to pre-authorize future transactions initiated by such "trusted trading partners" that meet the parameters established by Customer. ACH Debits that meet such criteria will not be included on future daily review lists and will automatically be processed and charged to Customer's designated Account. Unless otherwise agreed to by Bank in writing the default instructions that will be applied by Bank to all ACH Debits will be to "return" such items. Accordingly, if no decision is made by Customer to pay or return ACH Debits by the Bank's established deadline, such ACH Debits will not be processed and will be returned by Bank. Customer shall define notification criteria for ACH alerts during enrollment and may choose to receive ACH alerts by text or by e-mail and "per debit" or "per Account".
  - c. ACH UPIC Identification utilizes a unique Universal Payment Identification Code (UPIC) that takes the place of Customer's account number on an ACH payment transaction made payable to Customer. This UPIC can be published as part of Customer's ACH payment instructions thereby allowing Customer to safeguard its actual bank account information while facilitating its receipt of ACH payments.
  - d. The Incoming ACH Report option provides Customer with a report listing all incoming ACH debits and credits scheduled to post against an Account. The report is sent to Customer by e-mail each morning.
  - e. The ACH Filter Option may be utilized by a Customer to instruct Bank to post only pre-authorized ACH Debits. The Bank only posts ACH debits that originate from pre-authorized originators; all other ACH debits will be returned. .
3. **Conveyance of ACH Fraud Prevention Instructions.**

- a. Customer's authorized employee(s), representative(s) or agent(s) shall deliver ACH Fraud Prevention instructions to Bank from time to time in accordance with Customer's business needs using a Bank-provided instruction form or a reasonable approximation of it accepted by Bank.
- b. Bank may, but is not required to, provide a secure internet-based facility for Customer's entry of the instructions in lieu of a written form.
- c. Bank shall be allowed a reasonable period of time in which to process the instructions following their receipt from Customer.
- d. Bank shall not be obligated to process instructions from Customer unless all of Bank's specified requirements and conditions with respect to the particular ACH Fraud Prevention service Customer wishes to utilize have first been satisfied or waived by Bank, in its sole and absolute discretion.
- e. Customer may provide special instructions regarding specific allowed transactions, such as to limit them by factors such as monetary amounts or transaction dates. Bank may accept or reject such additional instructions in its sole discretion, and in the event a requested instruction is rejected Bank will notify Customer's designated contact.
- a. Unless otherwise agreed between Customer and Bank, all instructions shall apply to transactions of any amount and shall remain in effect until revoked or modified by Customer.

**4. Limit of Liability.** Limits on the liability of Bank and Customer remain in full force and effect as specified in the General Terms and Conditions and the following additional limits apply specifically to the ACH Fraud Prevention Services :

- a. Dispute over Return of ACH Debit Entry. Customer acknowledges that the return of an ACH Entry is subject to dispute on the part of the Originator. In the event of such a dispute Bank must act according to applicable laws, regulations, and the rules of the National Automated Clearing House Association governing ACH transactions, for which the Customer hereby holds the Bank harmless and free of liability under this Agreement.
- b. Identification of ACH Transactions to Block. Customer and Bank acknowledge that ACH transactions are originated according to certain processing rules which require the use of an Originator Name and Originator Identification Number imbedded in the transaction to identify its source, and this imbedded data is a critical component of Bank's ability to apply Customer's instructions regarding the blocking or allowance of specific transactions. Bank shall act in good faith to process Customer's ACH Fraud Prevention Services instructions. However, if the identifying information in the transaction is inconsistent or is described inconsistently by Customer in its ACH Fraud Prevention Services instructions, Bank shall be held harmless for posting an ACH transaction to Customer's account and any dispute related to such a transaction shall be between Customer and the originator of the transaction.
- c. Overdrafts. If a Customer is enrolled in ACH Positive Pay then any ACH Debit that would create an overdraft in such Customer's Account may be included in Bank's overdraft list that is presented to account officer's for review and pay/return decisioning. In such cases the account officer's decision whether to pay or return the ACH Debit will override any decision made by Customer through ACH Positive Pay. Bank shall have no liability to Customer for any loss to Customer arising from an account officer's decision to pay or not pay any such overdraft. It is Customer's sole responsibility to coordinate decisions on such overdraft items with Customer's account officer.

\* \* \* End of Terms and Conditions for ACH Fraud Prevention Services \* \* \*

**XI. Controlled Disbursement Service**

**The terms and conditions enumerated below apply solely to Bank's Controlled Disbursement Service. The terms in this section apply to Customer if and only if Customer enrolls in this Service, as evidenced by the submission to Bank of an Enrollment Request signed by Customer's duly authorized representative.**

- 1. Statement of Service. Subject to the terms and conditions of this Agreement, Bank shall provide the Controlled Disbursement service to Customer, by which Bank shall report to Customer each Business Day the monetary value of checks that will be presented for payment against Customer's designated "Controlled Disbursement Accounts" at Bank's next posting of accounts. The purpose of the Controlled Disbursement Service is to assist Customer in estimating Customer's daily requirement for account funding, thereby facilitating Customer's management of its daily cash positioning.
- 2. Establishing Accounts for Use with the Service.
  - a. Bank shall make available to Customer a unique demand deposit account (or multiple accounts as Customer might require) with checks to be drawn on the Controlled Disbursement site (i.e., routing and transit number) selected by Bank.
  - b. Bank shall provide Customer check specification guidelines for the magnetic ink character recognition ("MICR") encoding of bank-routing and account number(s) on all checks purchased by Customer to be drawn against the Controlled Disbursement account(s). Customer agrees to comply with Bank's standards for MICR encoding.
  - c. For testing purposes, Customer shall provide to Bank a minimum of ten (10) voided checks out of each printing of checks for the Controlled Disbursement account(s) prior to commencement of the Service as well as at each reorder. Customer acknowledges and agrees that proper testing of Controlled Disbursement checks is a critical quality control step to help ensure the proper operation of the Service, and Bank shall bear no liability to Customer for costs or claims arising from the use of improperly printed checks or checks that were not sampled for testing by Bank.
- 3. Funding of the Controlled Disbursement Account(s).
  - a. If Customer has specified automated funding of the Controlled Disbursement account(s), Bank shall obtain funding to cover the total amount of such checks by way of automatic transfers from the "Funding Account," as designated on Customer's Enrollment Request.
    - i. In this event, Customer agrees to always have collected funds available in the Funding Account for this purpose at the time of the Bank's daily posting of accounts.
    - ii. If sufficient funds are not available Bank may, in its sole discretion, reverse the funding credit to any Controlled Disbursement Account and apply its standard rules for the treatment of insufficient checks, as defined in the Deposit Account Agreement.
  - b. If Customer has specified no automated funding of the Controlled Disbursement account(s), the Service shall be delivered as a "reporting-only" service with respect to the presentation of checks.
    - i. In this event, Customer shall be solely responsible for ensuring the presence of sufficient funds in the Controlled Disbursement account(s).
    - ii. Bank shall apply its standard rules for the treatment of any insufficient checks as defined in the Deposit Account Agreement.

4. **Estimated Check Clearings.** Customer acknowledges and agrees that the daily reporting of check clearings (and any related funding transfers) is an estimate based on the best information available to Bank at the time reporting is conducted. Events beyond Bank's control, including but not limited to encoding errors, direct or late presentments of checks, stop payments, and adjustments may cause the actual check amount posted to differ from the check amount reported via the service. If Customer has specified automated funding as a feature of the Service, such differences may also result in the under-funding or over-funding of the Controlled Disbursement account(s), for which Bank may create correcting entries.

5. **Checking Account Fees.** In addition to the Controlled Disbursement fee, Customer agrees that Bank's standard Account Analysis service charge process for commercial checking accounts shall be applied to the transaction activity and balances of the Controlled Disbursement account(s).

\* \* \* End of Terms and Conditions for Controlled Disbursement \* \* \*

## XII. Bill Pay Direct Post Service

The terms and conditions enumerated below apply solely to Bank's Bill Pay Direct Post Service. These terms apply to Customer if and only if Customer enrolls in this Service, as evidenced by the submission to Bank of an Enrollment Request signed by Customer's duly authorized representative.

1. **Statement of Service.** Subject to the terms and conditions of this Agreement, Bank shall provide Customer a Service that collects, converts and consolidates online bill payments made to Customer by participating Payment Originators into an electronic file (the "E-File") formatted to meet Customer's accounts-receivable system requirements. The Bank will transmit the E-File to Customer each Business Day allowing Customer to electronically process its bill pay receivables and post them directly into Customer's accounting system in accordance with the specifications provided to Bank as selected by Customer on the Enrollment Request for Bill Pay Direct Post Services and deposit payments into Customer's designated Account(s).
2. **Definitions.** In addition to the definitions contained in the General Terms and Conditions, the following definitions shall apply with respect to the Bill Pay Direct Post Service:
  - a. "ACH" shall mean the National Automated Clearing House Association;
  - b. "Payment Originator" refers to the entity who initiates debit or credit transactions via the ACH on behalf of a Payor;
  - c. Individual ACH transactions are sometimes referred to herein as an "Entry" or "Entries";
  - d. "Payment Data" refers to electronically initiated consumer bill payment data received from a Payment Originator;
  - e. "Payment Funds" refers to bill payment funds that correspond to Payment Data (also referred to as a "Payment");
  - f. "Payor" refers to a client of Customer who has made an online bill payment to Customer through a Payment Originator;
  - g. "Return " refers to the rejection of Payment Data either (i) by Bank or Customer on the grounds that the Payment Data is incorrect, incomplete, not identifiable, or (ii) because Customer's Account was blocked or closed prior to the time that the Payment Data was received by Bank or Customer;
  - h. "Reversal" occurs when a Payment Originator requests Payment Data and Payment Funds be returned;
  - i. "Reversing Entry" refers to an ACH debit to either the Customer's Account or the Bank's Account for the purpose of processing a Return or Reversal.
3. **Establishing Accounts for Use with the Service; Customer's Responsibilities.** Bank is hereby authorized to (i) process Electronic Payments Data and Payment Funds received from Bank's third party vendor, (ii) deposit Payment Funds to an Account established by Customer at Bank, and (iii) to act on behalf of Customer according to the instructions provided by Customer to Bank to process Returns and make Reversing Entries to Customer's Account(s).
4. **Processing.** On each Business Day, Bank will electronically deliver or make available to Customer an E-File with Payment Data regarding Payment Funds that have been received by Bank's third party service provider. Electronic payments received which cannot be processed will be passed to the online decisioning system provided to Customer in connection with the Service. It will be the Customer's responsibility to access these payments and make a decision to reject the payment or provide correcting information to the item so it can be processed in the daily E-File. If payments requiring decisioning are not processed and completed by the second business day, the items without decisions will be automatically returned.
5. **On-Line Decisioning.** Payments that contain invalid account numbers and other errors ("exception items") are held in a queue and will not be processed until the errors have been corrected by Customer. Designated Users authorized by Customer will have access to an online decisioning module that will allow Customer to review, manage and correct Payment Data or reject a Payment. All Payments that have been fixed and assigned for processing will be queued for automatic processing at 2:00 P.M. Central Time each Business Day. Customer agrees that Bank may reject and Return any electronic payment which has not been timely corrected by Customer. If, after receipt of funds, Customer is unable to post a transaction due to invalid payment information, Customer shall notify Bank, and Bank shall be authorized to return the Payment Funds to the Payment Originator.
6. **Stop File Processing.** Customer may, at its option, send to Bank a list of accounts for which it does not wish to receive payments. Customer shall provide such list by sending Bank a file transmission to Bank in an agreed upon electronic format. Bank shall provide third party vendor with such list. Third party vendor will monitor, automatically reject (back to the Payment Originator) and assign a reject code to any such Payments. Customer further understands and agrees that Bank may not be able to comply with Customer's request. In such an event, Customer agrees immediately to notify Bank if a payment is not rejected as described therein.
7. **Posting and Settlement.** Customer authorizes Bank (and its third party service provider) to initiate appropriate ACH entries from its Account(s) for all Returns arising from either rejected Payments or Reversals. Customer agrees to maintain sufficient collected and available funds for these purposes in its Account(s). Customer further agrees that Payments may only be rejected by Bank or Customer on the grounds that the Payment Data is incorrect, incomplete, not identifiable, or (ii) because Customer's Account was blocked or closed prior to the time that the Payment Data was received by Bank or Customer and for no other reasons. Customer authorizes Bank and its third party service provider to post current and future Payment Funds from Payors to its Account(s) in a manner consistent with information Customer has previously provided to Bank to resolve incorrect or incomplete Payor or Payor Account information. Bank or its third party service provider will initiate a credit to Customer's Account(s) for next business day settlement, of the Payment Funds applicable to non-rejected (non-returned) electronic payments processed daily prior to established cut off time.
8. **Review.** Customer agrees to promptly review all Payments credited to Customer's Account within two (2) Business Days after receipt of the E-File containing Payment Data related to associated Payment Funds, and to notify Bank of any errors in the E-File (including without



limitation any Payments that should have been credit to Customer's Account(s) but that were not credited, and any Payments that should have been rejected and Returned but that were credited to your Account(s)). If Customer fails to notify us of errors as required herein, Customer will lose any right to make any claim against Bank based on such errors.

9. **Authorization and Cooperation.** Customer authorizes Bank to share with our third party service providers (including, without limitation, Vanco Services, LLC) information about its deposit Account(s), Payors and their accounts with Customer and any related information necessary or appropriate to facilitate the provision of the Bill Pay Direct Post Service to Customer. Customer further agrees to promptly cooperate with Bank and its third party service providers if additional information or research is necessary or appropriate in connection with the processing of a Payment and to research and provide to us any required additional information about a Payment no later than 2 p.m. Central Time of the second Business Day after the additional information or research was first requested from Customer.

**\*\*\* End of Terms and Conditions for Bill Pay Direct Post Services \*\*\***

### XIII. Remote Deposit Service

The terms and conditions enumerated below apply solely to Bank's Remote Deposit Service. These terms apply to Customer if and only if Customer enrolls in this Service, as evidenced by the submission to Bank of an Enrollment Request signed by Customer's duly authorized representative.

1. **Statement of Service.** Subject to the terms and conditions of this Agreement, Bank shall provide the Service to Customer, which allows Customer to make deposits to Customer's designated Account(s) from Customer's office by scanning Checks (as hereafter defined) on equipment consisting of a desktop image scanner (the "Scanner"). The Scanner will capture an image of the front and back of the check (each an "Image") and will read and capture the Magnetic Ink Character Recognition (MICR) line of the Check. After capture of the image and data, Customer will use the Service to transmit an electronic data file containing the Images of the Checks and the data, via the internet, to Bank for deposit to Customer's account(s). Customer agrees that the image of the check that is transmitted to Bank shall be deemed an "item" within the meaning of Article 4 of the Uniform Commercial Code.
2. **Actions of the Administrator.** Customer acknowledges that the Remote Deposit Service requires Customer's appointment of a Security Administrator as defined in the General Terms and Conditions and Customer agrees to comply with the requirements set forth herein regarding Security Administrators.
3. **Technical Requirements.** Customer acknowledges that Bank's published procedures (the "Procedures") and technical requirements (the "Requirements") for the Service as modified from time to time are designed to set forth a methodology for ensuring that the capture of check images and the submission of these images in the form of an electronic data file are conducted in such a way that Customer's depository needs and Bank's regulatory obligations are met. Customer agrees to fully comply with the Procedures and the Requirements at all times. Customer agrees to hold Bank harmless for any failure to perform hereunder if such failure arises from Customer's non-compliance with the Procedures or the Requirements. Bank may, and in some instances must by law, terminate Customer's use of the Service if Customer's apparent non-compliance with the Procedures or the Requirements results in deposits that do not meet the regulatory standards applicable to image-based check collection.
4. **Checks Deposited.** Customer agrees to scan and remotely deposit only those paper items or checks (each a "Check," collectively, the "Checks," as that term is defined in Federal Reserve Board Regulation CC), that Customer is entitled to deposit in accordance with the Deposit Account Agreement and all laws and regulations pertaining to the definition and negotiability of checks. Customer agrees to never scan and remotely deposit any item Customer could not have legally deposited by other means, such as through Bank's teller window. Customer further agrees as follows with regard to processing of Checks using the Bank's Remote Deposit Capture service:
  - a. Customer shall scan original paper checks only.
  - b. Checks must have legal amount and courtesy amount and be payable in United States currency and drawn on a financial institution located in the United States.
  - c. The Remote Deposit Service may only be used to deposit Checks that are payable to Customer only; Checks with third party endorsements are not eligible for deposit through the Service.
  - d. The Service is for business use only, it may NOT be used for consumer purposes.
  - e. Checks must be properly endorsed prior to scan, unless using virtual endorsement. Bank recommends the franking option be turned on with scanner, this will save time and mean the Customer will not have to stamp checks "processed" after they are scanned.
  - f. Customer may not image, transmit or otherwise try to use the Service to deposit Checks that (i) are substitute checks or remotely created checks as defined by Regulation CC; (2) have already been deposited by or returned to Customer, or (3) contain alterations that Customer suspects or should suspect are fraudulent, not authorized, suspicious or unlikely to be honored.
5. **Duplication of Presentment.** Customer shall establish and adhere to internal controls that ensure no Check will be deposited more than once. Customer represents and warrants to Bank that it will not: (i) create duplicate Images of any Check, (ii) transmit a duplicate Image of file to Bank, (iii) deposit or otherwise negotiate the original of any Check of which an Image was created; or (iv) . Customer further warrants that no subsequent transferee, including, but not limited to Bank, a collecting or returning bank, drawer, drawee, payee or endorser, will be asked to pay the original Check from which an Image was create or duplication thereof.
6. **Access to the Service.** Customer acknowledges that the Service may be accessed only through Treasury Solution, Bank's commercial online banking service and agrees to comply with all terms and conditions related to the use of Treasury Solution. Users shall access the Service through a separate, secure login Portal using a unique User ID and password. After login, the User will be directed to a special landing page for the Service Bank may suspend the Remote Deposit Capture service at any time.
7. **Maintenance and Destruction of Original Check.** Customer shall securely store each original Check for a period of at least fourteen days (14) days after Customer has received notice from Bank that the deposit has been accepted. At all times while Customer retains possession of the original Check, Customer shall take appropriate security measures to ensure that only authorized personnel shall have access to the original Check, that the information contained on the Check shall not be disclosed to anyone, and that the original Check will not be duplicated, will not be scanned more than one (1) time unless instructed by Bank to do so, and will not be deposited or negotiated in any form. Customer shall destroy the original Check after the expiration of such fourteen (14) day period, but in any event within thirty (30) days from Customer's receipt of Bank's notice that the deposit has been accepted, using a method that reasonably assures the complete destruction of the Check.

8. **Bank Processes and Check Collection.** All processes, policies and procedures of Bank associated with the acceptance of a deposit and the collection of checks shall be conducted in accordance with and subject to the terms and condition of the Deposit Account Agreement and in a manner that is exactly or substantially the same as processes used for deposits presented through a Bank teller window or other physical means. Such processes include but are not limited to the crediting of the depository account, the routing of checks for collection, the assignment of availability, the handling of checks returned by the drawee bank and the confirmation of the deposit by way of a periodic account statement.
9. **Cut off Times.** Deposits made through this Service have a cut off time for same day credit of 7 pm Central Time. After submitting a deposit, that deposit cannot be modified or unsubmitted. There are multiple deposit capture times throughout the day. When a deposit has been captured, the status of that deposit will change from a "submitted" to a "delivered" status. Any deposits made after the daily cut off will be processed the next banking business day.
10. **Contingency.** Nothing in this Agreement to establish the Remote Deposit Service prohibits Customer from also making deposits at a teller window of Bank. In the event the Service becomes temporarily unavailable for any reason, Bank recommends that Customer deposit the original checks through a teller as a contingency action to assure timely processing of deposits.
11. **Return Checks.** If at any time Bank is unable to process an item that was accepted through the Remote Deposit Service for reasons such as poor image quality, we will request the original check from Customer (if it is available) and Customer's Account will be debited until the item is successfully deposited by Bank. If Images of Checks previously deposited by Customer are dishonored and returned unpaid by the drawee bank or are returned by a clearing agent for any reason, including but not limited to issues relating to the quality of the Image, Customer understands and agrees that, since Customer either maintains the original Check or has destroyed the original Check in accordance with this Agreement, the original Check cannot be returned and Bank may charge back an Image of the Check to Customer's checking account. Customer understands and agrees that the Image may be in the form of an electronic or paper reproduction of the original Check or a substitute check. Unless otherwise instructed by Bank, Customer agrees not to deposit the original Check if an Image or other debit as previously described is charged back to Customer. Return items are processed the same way as they would be for a check that was imaged. Customer will receive IRD of return, which becomes the legal document. (The original check is not the legal document once it has been deposited.)

**12. Scanner Acquisition, Maintenance and Support.**

Customer is responsible for computer equipment, internet service, communication line and scanner including maintenance.

- a. Customer shall be responsible to acquire and install at its own expense the scanner equipment required to use the Service.
- b. To ensure that check images and related data are captured in accordance with regulatory standards, Customer agrees to maintain the scanner(s) in good working order by performing any maintenance tasks, including cleaning, specified in the user guide for the scanner(s).
- c. Bank's obligation to Customer with regard to scanners shall be strictly limited to facilitating the acquisition of a replacement for a non-functioning scanner, the expense for which would be covered by any unexpired warranty, or otherwise by Customer. Warranty coverage will not apply to any scanner that shows obvious signs of misuse or neglect.

**13. Financial Information and Right to Audit.**

Bank can suspend service at any time, without notice.

- a. Customer acknowledges that applicable law requires a credit evaluation as a condition of using the Service, and Customer agrees to comply with requests for information or other requests related to Bank's execution of its credit evaluation process, both at the time of implementation of the Service and during periodic renewals.
- b. Customer acknowledges that applicable law requires a periodic review of Customer's procedures related to the Service to ensure compliance with regulatory standards, and agrees to provide Bank with access to its facilities from time to time upon reasonable advance notice for the purpose of conducting such procedural reviews.
- c. Customer acknowledges that the credit reviews and audits described herein may reveal conditions that require Bank to take corrective action, up to and including the termination of the Service. In such event, Customer agrees to hold bank harmless from any costs or liabilities arising from such action.

\* \* \* End of Terms and Conditions for Remote Deposit Service \* \* \*

**XIV. Image Cash Letter Service**

The terms and conditions enumerated below apply solely to Bank's Image Cash Letter Service. These terms apply to Customer if and only if Customer enrolls in this Service, as evidenced by the submission to Bank of an Enrollment Request signed by Customer's duly authorized representative.

1. **Statement of Service.** Subject to the terms and conditions of this Agreement, Bank shall provide to Customer a Service which allows Customer to leverage Customer's existing imaging infrastructure to capture images of consumer and business checks received at Customer's offices in an Image Cash Letter file ("File") and transmit the File to Bank for processing in accordance with the terms of this Agreement. The File consists of imaged checks and check data, including an image of the front and back of the check (each an "Image") and will capture the Magnetic Ink Character Recognition (MICR) line of the Check, including the routing transit number, account number, and when encoded, the check amount, serial number and process control field. If the File meets the requirements of this Agreement, Bank will provisionally credit Customer's Account for the amount of the deposit and will enter the images of the checks into the collection process in accordance with the Deposit Account Agreement and this Agreement.

2. **File Format and Procedures.** The File must be in the format and meet the specifications required by the Universal Companion Document X9.37 or any other agreed upon format as may be set forth in Bank's then current procedures pertaining to Image Cash Letter Service (the "Procedures"). The Procedures may include established cut-off times as well as the use of particular Security Procedures and Credentials, and may be amended from time to time by Bank with or without notice to Customer.

- 3. Checks Deposited.** Customer represents and warrants to Bank with respect to each Check:
- a. Customer will only scan and deposit check(s) as that term is defined in Federal Reserve Board Regulation CC ("Reg CC"), payable to Customer. Customer agrees that the image of the check that is transmitted to Bank (each such check and other item a "Check" and, if more than one, "Checks") shall be deemed an "item" within the meaning of Article 4 of the Uniform Commercial Code (1990 Official Text);
  - b. Any image Customer transmits will meet the standards for image quality established by the American national standards Institute (ANSI) or other applicable standards established by Bank, the Board of Governors of the Federal Reserve System, and any other applicable regulatory agency, clearing house or association;
  - c. Any information Customer transmits to Bank accurately represents all of the information on the front and back of any check as of the time such check was truncated, including without limitation: payment instructions placed on the check by, or as authorized by, the drawer, such as the amount of the Check, the payee, the drawer's signature; the information identifying the drawer and the paying bank that is preprinted on the Check, including the MICR line; and any other information placed on the Check prior to the time an image of the Check is captured, such as any required identification written on the front of the Check and any endorsements applied to the back of the Check; and
  - d. Customer shall not attempt nor permit duplicate presentment of a Check in any form, including as an Imaged Item, a paper negotiable instrument or otherwise and Customer will not deposit or otherwise negotiate the original Item(s) from which the Image(s) was created
  - e. That no subsequent transferee, including but not limited to Bank, a collecting or returning bank, drawer, drawee, payee or endorser, (i) will be asked to pay the original Item from which the Image(s) was created or a duplication (whether paper or electronic, including ACH entries) of the Item(s), or (ii) shall sustain a loss as the result of the fact that the Image was presented for payment or returned instead of the original Check/Item.
  - f. Customer will only transmit checks payable to Customer. If Customer is engaged or intends to engage in any business that would result in Customer being a "money service business" as defined in the Federal Bank Secrecy Act and its implementing regulations, Customer agrees to immediately notify Bank of same, and agrees that Bank at its sole discretion may refuse to provide or terminate (as applicable) this Service.
  - g. Customer will not remotely deposit Items that: (i) are payable to any person or entity other than Customer, (ii) are drawn, or otherwise issued, by Customer or any affiliate of Customer on any account of Customer or of such affiliate, (iii) are prohibited by Bank's Procedures or are in violation of any law, rule or regulation, (iv) Customer knows or suspects, or should know or suspect, to be fraudulent or otherwise not authorized by the legal owner of the account on which the Item is drawn, (v) have been previously endorsed by a bank and are either "substitute checks" (as defined in Reg CC or other applicable federal law or regulation) or "image replacement documents" that purport to be substitute checks, without Bank's prior written consent, (vi) are drawn on financial institutions that are located outside of the United States or Territories of the United States, (vii) is a Remotely Created Check, or (h) which are not acceptable to Bank for deposit into a deposit account as provided in the Deposit Account Agreement (Checks described in clauses (i) through (vii) each a "Prohibited Check" and, collectively, "Prohibited Checks").
  - h. Any Third Party Agent utilized by Customer is familiar with, and shall at all times be in compliance with the terms hereof, including without limitation, image quality, prohibition of duplicate items, and proper storage and destruction of original checks.

**4. Processing.** Customer shall balance the deposit dollar amount to the sum of the Items ("Balanced File") in each File prior to transmitting the File in accordance with the Procedures. Customer may send multiple Files to Bank throughout the day subject to any limit set by Bank. A File is received by Bank only when a complete ICL File has been written on a Bank electronic storage device in conformity with Bank's technical and operational requirements for sending an ICL File to Bank. To meet Bank's cut-off times (as specified in applicable Procedures), the entire ICL File must be received prior to the cut-off time and the File must successfully pass the edits for conformity with the technical requirements. For purposes of determining when an item has been delivered and received, Bank's records shall be determinative. An ICL File which is not balanced in accordance with the Procedures or which is received after the cut-off time shall be deemed to have been received on the business day following the business day on which the ICL File is actually received by Bank. Bank reserves the right to change the File Limit, the Deposit Limit, and the Cut-Off Time. These modifications are effective immediately and may be implemented prior to Customer's receipt of the newly established File Limit, Deposit Limit or Cut-Off Time. Customer may contact Bank at any time to verify the current File Limit, Deposit Limit or Cut-Off Time.

**5. Receipt of File.** Customer agrees that Customer shall remain liable for and that Bank shall not be accountable to Customer for a File and/or Item(s) that are not received by Bank and for a File and/or Item(s) that are intercepted or altered by an unauthorized third party. Customer agrees that Bank has no obligation to accept a File and therefore may reject any File or Images of Items submitted by Customer. Bank has no obligation to notify Customer of the rejection of a File or Images. Bank shall have no liability to Customer for rejection of a File or Image(s) or for failure to notify Customer of a rejection. Upon receipt of the File submitted by Customer, Bank may examine the File and the Images to ensure that Customer has followed the Procedures. If Customer has not followed the Procedures or if errors exist in the data or the Images contained in the File, Bank, in its sole discretion, may reject and not accept the entire File or Bank may elect to correct the error, accept and process the File ("Corrected File"). As a form of correction, Bank may credit Customer's Account for the full amount of the deposit and make any necessary adjustments to correct the error. Bank, at its option may, but is not required to perform a risk management analysis of the File submitted by Customer to detect potentially fraudulent Items, and, in its sole discretion, reject the File or Image(s). (The risk management analysis is solely for Bank's benefit. The deposit of a fraudulent item is at Customer's sole risk.) If, after examination of the File and Images, Bank determines that Customer has processed and transmitted the File in accordance with the Procedures and this Agreement, the File is balanced, and the Images meet the requirements of this Agreement, then Bank may accept the File ("Acceptance") for deposit to Customer's Account. Notwithstanding the fact that Bank has accepted a File for deposit, any credit made to Customer's account shall be provisional and Customer shall remain liable to Bank for any errors, inaccuracies, breach of warranties and any other loss sustained by or claim made against Bank on the part of any party. Bank reserves the right to refuse to process or reject any Imaged Items for any reason at its sole discretion.

**6. Provisional Credit and Availability of Funds.** Upon Acceptance of the File, Bank shall grant Customer's Account Provisional Credit, defined below, for the total amount of the File. "Provisional Credit" means that the credit is made to Customer's account subject to final payment of the Items and subject to the terms of the Deposit Account Agreement. For the purpose of determining availability of funds, the Bank may hold funds for the period of time permitted by Bank's funds availability disclosure. Files will only be processed on Business Days.

**7. Maintenance and Destruction of Original Item.** Customer shall stamp the original Check "Processed" before or during the process of scanning the Check. Customer acknowledges that Checks and Imaged Items may contain confidential and nonpublic personal information about Customer's customers. Customer shall securely store all original Checks for a period of thirty (30) days after Customer has received notice from Bank that the File containing the images of such Checks has been accepted (the "Retention Period"). During the Retention Period, Customer shall take appropriate security measures to ensure that: (a) only authorized personnel shall have access to original Checks, (b) the information contained on such Checks shall not be disclosed, (c) such Checks will not be duplicated or scanned more than one time and (d) such Checks will not be deposited or negotiated in any form. Customer shall also implement proper security procedures and internal controls to ensure the confidentiality of any information that is considered to be confidential personal information that is retained by Customer. Customer shall destroy original Checks upon the expiration of the Retention Period applicable to such Checks. Customer will use commercially reasonable methods of

destruction approved by Bank to destroy original Checks after expiration of the Retention Period. Customer will promptly (but in all events within 5 business days) provide any retained Check (or, if the Check is no longer in existence, a sufficient copy of the front and back of the Check) to Bank as requested to aid in the clearing and collection process or to resolve claims by third parties with respect to any Check.

**8. Requested Information** Customer agrees to provide such information as requested by Bank in order to qualify Customer for the Service, including without limitation, business activities, risk management processes, geographic location, customer base, and employee policies. If qualified, Customer agrees to provide information and Imaged Items as requested by Bank to facilitate investigations related to unusual transactions or poor quality transmissions or to resolve disputes. Such documents may include copies of Imaged Items or original items, if available.

**9. Returned Items** Bank will process any returned Imaged Items in accordance with applicable law and the Deposit Account Agreement governing the Account for which the Imaged Item is presented. If Images of Checks previously deposited by Customer are dishonored and returned unpaid by the drawee bank or are returned by a clearing agent for any reason, including but not limited to issues relating to the quality of the Image, Customer understands and agrees that, since Customer either maintains the original Check or has destroyed the original Check in accordance with this Agreement, that the original Check cannot be returned and Bank may charge back an Image of the Check to Customer's checking account. Customer understands and agrees that the Image may be in the form of an electronic or paper reproduction of the original Check or a substitute check. Unless otherwise instructed by Bank, Customer agrees not to deposit the original Check if an Image or other debit as previously described is charged back to Customer. Return items are processed the same way as they would be for a check that was imaged. Customer will receive IRD of return, which becomes the legal document. (The original check is not the legal document once it has been deposited.)

**10. Audit** Bank may at its reasonable discretion conduct an on-site inspection of Customer's place of business and/or request any internal audits or assessments to ensure compliance with the provisions hereof.

**11. Contingency Plan.** Customer agrees that in the event that Customer is not able to capture, balance, process, or otherwise transmit a File to Bank, or otherwise comply with the terms hereof or of the Procedures, for any reason, including but not limited to communications, equipment or software outages, interruptions or failures, Customer will transport the physical Checks and deposits to the closest office of Bank and deposit the original Checks with Bank until such time that the outage or other interruption can be identified and resolved. Customer hereby acknowledges and agrees that Bank shall not be liable to Customer for any loss or damage of any nature sustained by Customer as the result of the inability of Customer to use the Service. The deposit of original Checks at an office of Bank shall be governed by the terms and conditions contained in the Deposit Account Agreement and not by the terms of this Agreement.

**12. Indemnification and Liability:** Third Party Claims. In addition to any other indemnification herein, Customer hereby indemnifies and agrees to reimburse, protect, defend and hold Bank and each of its parents, subsidiaries and affiliates and their respective officers, directors, employees, and agents harmless from and against, all actions, causes of action, claims, damages, loss, liabilities, including without limitation all incidental and consequential damages, and all reasonable out-of-pocket expenses (including reasonable attorneys' fees) of any nature or kind (including those by third parties) arising directly or indirectly from: (a) any breach of warranty or other breach, or failure to by Customer under the terms of this Agreement; (b) any warranty or indemnity claim brought against Bank by a third party under 12 CFR 229.52, 12 CFR 229.53 or other regulations in connection with a File transmitted to Bank by Customer; (c) any loss by any recipient of an Image Item processed by Bank if that loss occurred due to the receipt of an Imaged Item instead of the Check; any wrongful acts or omissions of Customer or any person acting on Customer's behalf in connection with Customer's use of the Service provided, however, Customer is not obligated to indemnify Bank for any damages solely and proximately caused by Bank's gross negligence or willful misconduct. The terms of this paragraph shall survive the termination of this Agreement.

**\*\*\* End of Terms and Conditions for Image Cash Letter Services \*\*\***

## **XV. Lockbox Services**

**The terms and conditions enumerated below apply solely to Bank's Lockbox Services, which include Wholesale Lockbox (corporate payments), Retail Lockbox (consumer payments) and Medical Lockbox (healthcare payments and remittances). The terms in this section apply to Customer if and only if Customer enrolls in this Service, as evidenced by the submission to Bank of an Enrollment Request signed by Customer's duly authorized representative.**

- 1. Statement of Service.** Subject to the terms and conditions of this Agreement, Bank shall provide the Service to Customer. Pursuant to the Service, the Customer shall direct its trade debtors and/ or customers making payments and other remittances to Customer to mail any and all payments evidences by checks, drafts, money orders, or other instruments of payment (collectively, the "Items") and certain documentation to a Post Office Box from which Customer has authorized Bank or Bank's designated processor ("Processor") to remove contents. Bank shall perform certain specified functions as selected by Customer on the Enrollment Request for Lockbox Services and deposit Items into Customer's account.
- 2. Establishing Lockbox and Accounts for Use with the Service: Customer's Responsibilities.**
  - a. Customer hereby authorizes Bank to establish a Post Office Box in Customer's name (the "Lockbox") and authorizes Bank to have exclusive and unrestricted access to the Lockbox. Customer shall execute any and all forms required by the Postmaster to establish the Lockbox and to grant Bank exclusive access thereto. Customer shall not have access to the Lockbox and shall not authorize any other person or entity to have access to or remove the contents of the Lockbox.
  - b. Customer shall open a commercial analyzed checking account (or multiple accounts as Customer might require) and shall submit all forms and documents, including, but not limited to signature cards, corporate documents and resolutions or authorizations, as required by Bank in conjunction with this Service.
  - c. It is Customer's responsibility to notify all remitters that remittances shall be mailed to the Lockbox assigned by Bank.
  - d. In addition to any normal demand deposit account service charges imposed by Bank, Customer agrees to pay for the Service at the rates set forth in the Treasury Services Fee Schedule, as amended by Bank from time to time. The annual Lockbox rental costs shall be payable in advance.
- 3. Processing of Lockbox Items.**
  - a. Customer hereby authorizes Bank to arrange for the physical transportation of Items and documents from the Lockbox to a processing center of the Bank and also authorizes Bank to transport Items from such processing center to the appropriate check clearing location.

Customer further authorizes Bank to open the envelopes addressed to Customer, process the contents, endorse items on behalf of Customer, prepare deposit tickets, handle documents and perform any other functions specified in the Enrollment Request. Notwithstanding the foregoing, and as provided elsewhere in this Agreement, Bank may deposit items to Customer's Account without endorsing items in Customer's name.

- b. Bank shall remove and inspect the contents of the Lockbox each Business Day at intervals determined by Bank in its sole discretion, Customer acknowledges and agrees that removal of the Items from the Lockbox shall constitute delivery of the Items by Customer to Bank for collection. Bank shall open the envelopes, process the contents and deposit the Items into Customer's Account in accordance with the Enrollment Request. Bank shall use its best efforts to process all Items removed from the Lockbox on the banking day the Items are removed therefrom, however, Customer agrees that Bank shall have no liability to Customer for failure to process all Items on any given day if the volume received by Bank for all of Bank's lockbox customers exceeds Bank's ability to process all of the items on the day of receipt.
- c. The Uniform Commercial Code provides that a bank becomes a holder of unendorsed items when the customer who is a holder of the item delivers the item to a depository bank for collection. In accordance with therewith, while Customer authorizes Bank to endorse Items in its name and on its behalf, Bank may, in its sole discretion, elect not to place Customer's endorsement on items deposited by Bank to Customer's Account. Additionally, in the event any check is returned to Bank by drawee bank with a request for the endorsement of the Customer, Bank is hereby authorized to endorse such check as follows:

CREDIT TO THE ACCOUNT OF THE WITHIN NAMED PAYEE  
PAYMENT ACCEPTED WITHOUT PREJUDICE  
ABSENCE OF ENDORSEMENT GUARANTEED

or such other industry accepted endorsement or, the local clearing bank is authorized to endorse such check in accordance with their then current procedures. If a necessary endorsement of a Payee (other than Customer's endorsement) is missing, the Item will not be included in the output file; rather these items will be returned to Customer.

- d. Items made payable to the Customer using the payees, corporate names, divisions, trade names or trademarks (or any nominal variation of such names) set forth on the Enrollment Request will be accepted for deposit and will be processed.
- e. Items returned unpaid by the drawee bank shall be charged back to the Account in accordance with the Deposit Account Agreement.
- f. Bank shall not examine items. Notwithstanding the foregoing and without creating any liability on the part of the Bank, if Bank detects an alteration, an incomplete check, postdated check, stale dated check, or other irregularity, Bank may send such item to Customer.
- g. Customer hereby agrees that Bank uses the services of Processor to perform processing functions for Bank. The terms Bank and Processor may be used interchangeably in this Agreement when used in relation to any services performed by a Processor on behalf of Bank, including, but not limited to, the receipt and processing of Items and other documents, endorsing checks, creating images of checks and depositing images to Customer's account.
- h. Processing, crediting and collection of the Items deposited to Customer's Account are subject to the Deposit Account Agreement.
- i. Remittance material, correspondence and exception items (including international payments), as applicable, will be returned to Customer. Delivery of remittance material will be made by the method designated by Customer on the Enrollment Request for Lock Box Services. Customer may elect paperless remittance of scanned items through the Bank's image system or elect to receive remittance materials via physical mail delivery.
- j. The Bank offers an information reporting service for lockbox ("Lockbox Web Portal") which provides you with transaction information for your lockbox and its Items. There are a variety of tools available that allow you to create custom reports and searches to find only the data you need to review or export. Customer is responsible for reviewing, approving and confirming transactions created or entered on or submitted to lockbox. The Lockbox Web Portal has reporting available for you to confirm that we have received and processed your transactions. These reports should be routinely used to ensure that all requests have been confirmed. We will have no obligation to contact you if any attempted transaction cannot be processed or is otherwise rejected.
- k. While using this Service and upon reasonable notice, you agree that we can inspect your premises as we deem necessary within our sole discretion in order to determine your compliance with the provisions of this Agreement.

#### **4. Remote Acceptance of Payments and Remittance Documents**

- a. This remote acceptance service allows Customer to scan checks, plus any associated remittance documents and transmit the images to the Bank as if such checks and documents had been sent directly to your lockbox. The Bank will enter those electronic images into the collection system or use them to print Substitute Checks. We will provisionally credit your account for the deposit ("Remittance Deposit"). The images of the checks and associated remittance documents will be available to you through Lockbox Web Portal. If the Substitute Check or an image of the Substitute Check is returned for any reason, we will return the check to you as an Image Replacement Document ("IRD") as defined in the American National Standards Institute's applicable standards. Subject to our right to refuse any item for deposit as stated in the Account Agreement, you may re-deposit any check that was deposited using this Service by sending us another file containing an image of the check or the IRD. After you have sent us an image of an original check for deposit, you may not deposit the original check with us or with any other financial institution, even if the Substitute Check we created from your Remittance Deposit or an image of such a Substitute Check is returned. You must employ appropriate measures to ensure that original checks are not deposited.
- b. **Software and Materials.** In order for you to use this remote acceptance service, you will be provided with installation software. We will provide a user manual and other appropriate materials that will give you details on how to use this Service and install the software. The user manual and any other materials are considered part of the documentation for the service.
- c. **Remote Transmissions.** In order to transmit your Remittance Deposit file, containing your checks images and associated remittance documents, you will have to comply with any applicable security procedures. You will transmit the Remittance Deposit file to a secure site as directed in the user manual. You will scan each check, plus any associated remittance documents. We will not process duplicate, partial or incomplete Remittance Deposit files.
- d. **Purchase of Equipment.** Customer must purchase the scanners needed to use this service. Customer must use an approved scanner to transmit remittance deposit file. The Bank has an approved scanner list which shows certified scanners that will work with our remote acceptance service. All scanners are to be purchased by the Customer. The Bank may recommend a vendor from whom you can purchase scanners, but, in any case, Customer must purchase scanners that are compatible with this service. Customer agrees that we have no liability to you or your agents for the use, purchase, maintenance, quality, or any other aspect of the scanners.
- e. **Retention of Checks.** While using this service and upon reasonable notice, Customer agrees to retain each original check, and an image of each original check in a format specified by us, without affixing any void language to the original check, for a minimum of fourteen (14) calendar days from the date of the deposit ("Retention Period"). You agree, upon our request and during the Retention Period, to provide either the original check or an imaged copy of any check that was transmitted to us using this service. You agree to store each original check and an image of each original check in a secure location. Upon reasonable notice, Customer agrees that we can inspect the location where you keep the original checks and imaged checks, but we have no obligation to conduct an inspection.

- f. **Deposit of Check Images.** (i) You are responsible for determining whether an original check is eligible for deposit as a check image in accordance with this Agreement and the Documentation. Without limiting the foregoing, you shall not deposit (x) a check image created from any check or item that is not eligible for conversion to a Substitute Check, including but not limited to non-US dollar denominated checks, checks drawn on foreign banks, forward or return items in carrier documents, or photocopies in lieu or mutilated items, or (y) an electronically created image that did not actually originate from a paper item.
- (ii) You shall review each check image prior to transmission of the check image to us in order to confirm the legibility and accuracy of the check image, and that the check image satisfies the quality standards as specified in our Documentation. You assume sole responsibility for ensuring that all information from the original check is accurately captured in the resulting check image.
- (iii) You acknowledge and agree that (x) we do not separately verify that the check image is eligible for conversion to a Substitute Check or verify the accuracy, legibility or quality of the check image or MICR line information received from you and (yi) you are responsible for any copies of check images or original checks that you maintain and for any loss that may arise as a result of unauthorized access to or use of such original checks or check images. Except to the extent that you may re-deposit any check that was deposited using this Service as indicated above, we are not obligated to accept a check image for deposit from you, and we may in our sole discretion reject a Remittance Deposit at any time and request that you deposit the original check.
- (iv) When we transfer or present a check image, or a Substitute Check created from that check image, we make certain representations and warranties under contract or under applicable law, including, without limitation, Check 21, clearinghouse rules and Federal Reserve Operating Circulars. With respect to each check image that you send to us, and each Substitute Check that we make from such a check image, you are deemed to make to us any representation or warranty that we make to any person (including without limitation a collecting bank, a Federal Reserve Bank, a paying bank, a returning bank, the drawee, the drawer, any endorser, or any other transferee). You agree that a check image that is received by us using this Service or a Substitute Check created by us in accordance with this Agreement, shall be considered a check and/or an item for all purposes.

#### **5. Image Delivery and Information Reporting.**

- a. Bank shall make images of the documents listed above available to Customers through Lockbox Web Portal or by a CD-ROM or by a DVD. Images may be viewed through Lockbox Web Portal. If the Customer elects to receive images on a physical medium (CD-ROM or DVD), Bank will deliver a CD-ROM or DVD to the Customer daily, weekly or monthly as they request. Unless in our sole discretion we agree otherwise, the CD-ROMs or DVDs that are sent containing images will be encrypted to help protect the images from unauthorized access. We will provide the Customer with a copy of the software necessary for the Customer to decrypt the images. The Customer will be responsible for managing access to and use of the decryption software and any related tools used within its organization for access to the images.
- b. Bank will handle original Items according to our procedures in effect from time to time. Certain original documents that are too large or otherwise cannot be scanned will be returned to the Customer. Bank retains image files for a limited period of time, which may change from time to time and which we will tell you upon request. Beyond that time, the best way to ensure availability of images or copies of your Items and other documents is to download them from the Lockbox Web Portal and/or take delivery of the images on CD-ROM or DVD. If the image of a particular document (other than an Item) is not legible, Bank will be unable to produce another image or copy if you tell us after we have destroyed the original. Bank will not be liable to you if an image is not legible.
- c. **Information Reporting and Data Exchange.** This Service provides you with balance and transaction information for your Accounts on a current day and/or historical basis. There are a variety of reports and tools available to allow you to create custom reports and searches to find only the data you need to review or export. You may choose to view/receive your current day and/or previous day information directly, or you may have Bank deliver your account information to another financial institution or entity. This service also includes online DDA Statement delivery. You are responsible for timely reconciliation of your statement.

Current day reports allow you to see updated balance and transaction information during the current business day. Transactions that display on current day reports are received by the bank, but not yet posted to your account. They are subject to verification and adjustment. For final review of the account balance and transactions for the day, you should use previous day reports, which shows all final and posted activity.

You may choose to have information for your accounts at other financial institutions or entities sent to bank for inclusion on the your current day and/or previous day reports. Bank will receive this data from the other financial institution's data exchange provider and will make it available through our Lock Box Web Portal as it is available. You agree to authorize the other financial institution to send this information to Bank. The specific level of detail included in the data file and frequency of reporting is selected by you when establishing the data exchange service with the sending financial institution. Bank is not responsible for the accuracy or timeliness of any data sent to us from a third party.

If you have chosen to have your Information Reporting or other reports delivered via fax, we will send the fax to the fax number that you have provided to us in writing. You may change this fax number at any time, and all such changes must also be provided in writing. Faxes are sent over standard telephone lines. If you desire a heightened level of security, you should consider using one of our online products. You are responsible for the security of the data once it reaches your fax machine. We will have no obligation to contact you should the information be undeliverable because your fax machine or telephone line is inoperable or unavailable.

#### **6. Return of Paper Documents.**

If the Customer elects not to receive image delivery of all or some of their documents listed above via Lockbox Web Portal, CD-ROM or DVD, and instead has chosen to receive paper documents, Customer acknowledges and accepts the additional risk of inadvertent mailing errors and other errors related to the request for return of the original paper documents in the lockbox. Customer agrees to release the Bank from any claims, losses, damages or liabilities you may incur as a result of the inability to reconstruct lockbox documents that we mail to you or that are lost or misdirected, or as a result of any disclosure of the paper documents and their contents, in the absence of Bank's gross negligence or willful misconduct.

#### **7. Medical Lockbox Services**

- a. The Bank offers a specific service known as "Medical Lockbox" pursuant to which the Bank provides a healthcare remittance service processing payments and documents related to healthcare services. When you utilize the Bank's Health Care Remittance Service you

represent and warrant that by entering into and engaging in the activities contemplated by this Agreement, including the Documentation, you are not in violation of and will not be violating any agreements with third parties, including but not limited to, contracts with payers and/or consents and directives of patients, or any federal or state laws. You agree to comply with all applicable federal and state law regarding the privacy of health information, including but not limited to, the provisions of the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder, as amended from time to time ("HIPAA"). You understand and agree that, as necessary for the delivery of the Services, we and our contractors and agents may have access to and use of Protected Health Information, as that term is defined in HIPAA, which is transmitted or otherwise made available to us. You represent and warrant that you have, and will continue to have, the authority to allow us and our contractors and agents to have access to and use of such Protected Health Information.

- b. In order to use the HealthCare Remittance Service a medical provider will send their customer a paper bill (invoice and statement with information in a scannable line) for an outstanding balance. Upon receipt of the paper bill at the Bank's lockbox facility, the envelope is opened, the payment processed and the statement and any other documents are scanned to create an electronic file in the X12 format established by The Accredited Standards Committee ("ASC"), chartered by the American National Standards Institute. Known as the ASC X12 835 (Healthcare Claim Payment / Remittance Advice) or "835" file.
- c. 835 File. The 835 File contains information from the statement scanned from an optical character recognition (OCR) reader and any other required data from documents that accompanied the payment. This part of the Medical Lockbox service enables the Customer to receive electronic healthcare remittance information from insurance payers in the 835 format and to have electronic remittance files matched with their associated payments.
- d. The Bank will test and approve all scanable statements prior to implementation of the service.
- e. The Bank will notify you if we detect that a file is not in the required format or does not contain the minimum required data elements. The Bank will not alter the content of files, or otherwise change the information sent by the payer. The Bank will transmit files to you using a mutually agreeable secure transmission method such as an 835 remittance format, Bank Administration Institute (BAI) flat file or a customized format specified by our Customer. The payers are responsible for the accuracy of the information we transmit to you.
- f. Remittance Re-association. If Customer has instructed the Bank to match electronic remittances with their associated payments automatically, the Bank will perform the following additional processes (a) When electronic remittances and payments are received, if the payer has provided sufficient information to enable an automated match, then we will match the associated remittances and payments; (b) If no match can be made when a file is received, we will warehouse unmatched remittance files, pending receipt of the associated payment, according to your instructions; and (c) Only matched remittance files will be transmitted to Customer for posting to your patient billing system. Customer can review reports with data on your matched and unmatched files via Lockbox Web Portal.
- g. Termination of Medical Lock Box Services; Liquidated Damages. If you choose to terminate Medical Lock Box Services before you have used such services for twelve (12) consecutive months for any reason other than Bank's failure to reasonably perform our obligations hereunder, Customer shall pay to Bank, as liquidated damages and not as a penalty, an amount equal to sixty percent (60%) of such Customer's average monthly billings for health care services relating multiplied by the number of months remaining until the end of the 12-month period.

\* \* \* End of Terms and Conditions for Lockbox Services \* \* \*

## XVI. Commercial Card Manager

The terms and conditions enumerated below apply solely to Bank's Commercial Card Manager Service. These terms apply to Customer if and only if Customer enrolls in this Service, as evidenced by the submission to Bank of an enrollment request signed by Customer's duly authorized representative.

1. Statement of Service. Bank shall provide to Customer services and reports selected by Customer related to Customer's use of Bank-issued Credit Cards for Customer's business purposes. The Service:
  - a. enables authorized Security Administrator(s) of Customer to, for business reasons important to Customer, cause Cards to be issued to individuals employed by Customer, subject to the aggregate spending limit of all of Customer's individual Card limits being less than or equal to Customer's Company Credit Limit, as established by Bank from time to time;
  - b. provides certain self-service tools by which Customer's Security Administrator may monitor, control the use of, and cause payments to be made on Customer's Cards issued by Bank, whether such Cards were issued by Bank as a result of a separate application or request from Customer, or as a result of Customer's actions within the Service.
  - c. All reports to which Customer subscribes with respect to Customer's Credit Cards shall be delivered through the Service. Except for the credit card statement, Bank shall not provide printed reports and if applicable, shall discontinue the provision of printed reports to Customer.
  - d. As a supplement to Bank's Commercial Card Manager Services, Bank shall provide to Customer data exchange services that will allow balance and transaction information ("Data") related to use of Bank-issued Credit Cards by Customer, its officers, employees and agents, to be electronically transmitted to Customer or Customer's designated invoice and expense management vendor. Each Business day, the Bank will transmit the Data to Bank's credit card affiliate (currently Visa®), which will in turn forward the Data to the Customer or Customer's selected vendor as designated by Customer on the Enrollment Documents for this Service (the "Recipient").
2. Definitions. In addition to the definitions contained in the General Terms and Conditions, the following definitions will apply to terms used in this section:
  - a. "Credit Card" or "Card" refers to a nationally branded credit card used by Customer to conduct purchase transactions at or with merchants authorized to accept such payments. Bank is currently affiliated with the national Visa® brand but reserves the right to affiliate with any national credit card brand meeting Bank's legitimate business requirements as determined solely by Bank from time to time.
  - b. "Company Credit Limit" means the overall credit card limit assigned by Bank to Customer based on a separate credit application submitted by Customer to Bank for initial approval and periodic renewal.

- 3. Total of Individual Card Limits Not To Exceed Company Credit Limit.** If Customer has enrolled in the Card Administration Package and has requested access to establish and maintain individual Card limits, Customer shall not establish Card limits such that the sum total limits for all Cards controlled by Customer exceed Customer's Company Credit Limit, even if the Commercial Card Manager Service enables Customer to do so.
- 4. Online Security.** Bank and Customer acknowledge that the use of any banking services via an online channel introduces risks that may not be present in other service channels, requiring additional diligence by each party. Customer warrants that its use of the Service shall be undertaken with a full understanding of and in compliance with the provisions of the General Terms and Conditions dealing with "Security" and "Computer Based Services," and agrees that those terms and conditions describe a commercially reasonable approach to securing the Service from unauthorized use.
- 5. Actions of the Administrator.** Customer acknowledges that the Commercial Card Manager Service requires Customer's appointment of a Security Administrator and agrees to comply with the requirements set forth herein regarding Security Administrators.
- 6. User Entitlements to Conduct Transactions.** If Customer uses the administrative functions of the Service to grant transaction initiation capabilities to any User, Customer acknowledges that such activity is solely within the control of Customer's authorized Security Administrator(s), and agrees that Bank shall be entitled to treat activities conducted by such Users as authorized activities, even if such Users are not specifically named as authorized users in any documentation in Bank's possession.
- 7. No Obligation to Extend Credit.** Customer's ability within the Service to issue or terminate the issuance of any Card and to control spending limits or payments on any Cards does not represent the extension of credit by Bank to Customer nor does it obligate Bank in any way to extend credit to Customer. Customer acknowledges that the Service is simply a self-service tool extended by Bank for Customer's convenience, and the establishment and maintenance of Customer's Company Credit Limit is governed solely by a separately executed credit application.
- 8. Limitations.** Bank reserves the right to establish, and Customer agrees to abide by, limits with respect to transaction amounts, frequency of transactions, and other matters based on the balance of Customer's Account(s), the terms and provisions of other Bank customer agreements in effect with respect to specific transactions to be performed hereunder, applicable law, systems limitations, and other factors. Customer acknowledges that Account information obtained through the Service may include transactions still subject to verification and/or processing by Bank and may differ from Customer's records. Customer agrees to take such possible differences into consideration before performing Service transactions on the basis of Account information obtained through the Service and acknowledges that transaction processing requirements may delay the immediate processing of a Service transaction.
- 9. Limitations.** Customer acknowledges and agrees that (a) that Data transmitted by Bank may be subject to verification and later adjustment or correction and (b) that Data will be transmitted using such communication protocol and data encryption methodology as may be required by VISA and Recipient. Customer assumes all responsibility for any risks associated with use of this Service and acknowledges that Bank shall not be liable for any direct, indirect, punitive, incidental, special or consequential damages, whether based on contract, tort, strict liability or otherwise, that may result from the use of this Service.

\* \* \* End of Terms and Conditions for Commercial Card Manager and Credit Card Data Exchange Services \* \* \*

## **XVII. Cash Services.**

**The terms and conditions enumerated below apply solely to Bank's Cash Services. These terms apply to Customer if and only if Customer enrolls in this Service, as evidenced by the submission to Bank of an Enrollment Request (or Implementation Form) signed by Customer's duly authorized representative.**

- 1. Statement of Service.** Subject to the terms and conditions of this Agreement, Bank shall provide Customer services that allow Customer (i) to place orders for coin and currency in such amounts and denominations as requested by Customer ("Change Orders"); (ii) to have coin, currency and check deposits ("Deposits") delivered to a Bank vault location for processing and credited to an Account designated by Customer; (iii) to utilize Bank's Virtual Vault services by using "smart safe" equipment and related software and accessories obtained by Customer from a provider approved by Bank to virtually deposit currency to Customer's designated Account through an electronic file transmission from the smart safe to the Bank reporting the purported value of all acceptable currency deposited into the smart safe since the transmission of the last report.
- 2. Definitions:** In addition to the definitions contained in the General Terms and Conditions, the following definitions shall apply with respect to Cash Services:
- a. "Courier" means the armored courier service acceptable to the Bank with whom Customer contracts directly for armored courier services. Customer must separately contract with a Courier to deliver deposits to a Bank vault location or to pick up Change Orders from a Bank vault location.
  - b. "Daily Virtual Vault Credit" means the provisional credit given by Bank to Customer's designated Account for funds deposited in a Smart Safe before such funds are delivered to the Bank's vault location.
  - c. "Delivery Location" means the location or facility designated by Bank or by Customer to which the Courier shall deliver the Depository Bag(s) or Change Orders.
  - d. "Depository Bag" means a tamper evident bag approved by Bank for the transfer of Items to Bank for deposit. No property other than currency, coin, and negotiable instruments shall be contained in any Depository Bag delivered by or on behalf of Customer to Bank or any Bank vault location.
  - e. "Items" mean coins, currency and negotiable instruments.
  - f. "Loss" means any loss of, damage, theft or destruction to Property.
  - g. "Property" means cash, currency, checks and other financial instruments for deposit by Bank to Customer's account or cash or currency delivered to Customer pursuant to a Change Order.
  - h. "Smart Safe" means equipment with related software and accessories installed by Bank's approved provider pursuant to an agreement with Customer, which equipment is installed in Customer's locations and which equipment counts, records and reports the currency deposited into and accepted by it.
  - i. "Virtual Vault Report" means an electronic file transmission from the Smart Safe to the Bank reporting the purported value of all currency deposited in the Smart Safe since the last report was transmitted to Bank.



**3. Cash Services.** Cash Services allow Customer to have Customer's Courier deliver Items to a Bank vault location for deposit processing ("Deposit"). Bank vault locations and cash processing services are made available to Customer through an agreement between Bank and a nationally-recognized vault provider and provide Customer with all the coin and currency depository features available at a branch location through the convenience of our vault locations. Customer must comply with the standards and procedures established by Bank, as set forth in the Cash Vault Deposit Standard's delivered to Customer in connection with implementation of Cash Services, as the same may be updated from time to time. Failure to follow Bank's Cash Vault Deposit standards may result in a crediting delay or extra charges. If Bank's Cash Vault Standards are not met by Customer, Bank expressly reserves the right to refuse to accept deposits delivered to a Bank vault location or Change Orders attempted to be picked up from a Bank vault location. Damaged currency, including currency that is soiled, mutilated or contaminated is subject to special procedures and there may be delays in crediting damaged currency to Customer's Account.

**4. Change Orders.** Cash Services allow Customer to place orders for coin and currency by phone, email or online and to schedule regular Change Orders for pick up in the amount and denominations requested by Customer. Customer agrees to pay in collected funds for Orders at the time they are processed by Bank. Customer shall execute a supplemental authorization for a direct debit to an Account maintained at Bank in order to make such payments, as well as any charges and fees due in connection with Cash Services. Change Orders will not be processed if Customer's Account does not contain sufficient collected balances. Change Orders shall be delivered by Bank or the Bank's designated vault provider to the Courier contracted by Customer or any person the Courier or Customer has certified to Bank is authorized to act for it ("Representative). Bank shall not be liable for any Loss resulting from any fraud or misrepresentation with respect to any person's purported authority to act on behalf of Customer. Courier or Customer's Representative shall provide Bank with a receipt reciting the actual amount of the Change Order, or the receipt of a sealed Depository Bag(s) said to contain a specified sum(s), which receipt shall, in each instance, be conclusive evidence of the amount received by the Courier or its Representative and a complete discharge of amount delivered or said to be delivered by Bank to the Courier or its Representative, regardless of whether the Courier or a Representative makes actual physical delivery of the Change Order to Customer. In the event that Bank should duplicate a Change Order it is Customer's responsibility to refuse delivery. If a duplicate Change Order should be accepted, Customer assumes all liability for the protection of the funds until such time as the funds are returned to Bank for credit. Bank assumes no liability whatsoever in connection with the loss of any duplicated Change Order. Customer shall comply with all Security Procedures Bank may require in connection with the placement of Change Orders and all such Change Orders may only be placed by authorized personnel, who have been specifically identified to Bank on the Implementation form for the Service, or such replacements as may be specifically identified to Bank from time to time. Customer shall from time to time, as requested by Bank, provide Bank, with such evidence, as the Bank may reasonably require to evidence the authority of any Representatives or other authorized personnel to act on behalf of Customer with respect to Cash Services and Bank shall be fully protected in relying on the authority of such parties. Bank may reject a Change Order if the Bank has any concerns about the authenticity, authority or accuracy of the Change Order.

**5. Virtual Vault Services.** Bank's Virtual Vault Service allows Customer to deposit United States currency into a Smart Safe which tallies the amount of currency deposited. Customer may not remove currency from the Smart Safe once it has been inserted. Customer's Smart Safe is electronically polled at agreed upon intervals to capture deposits. Following each the occurrence of each polling event the Smart Safe will transmit a Virtual Vault Report to Bank. Once currency deposit totals are received by Bank, Customer's designated Account is given provisional credit for the currency deposits reflected on each Virtual Vault Report. In order to utilize the Virtual Vault Service Customer is required to contract with a third party service provider approved by Bank (the "Virtual Vault Vendor") for the purchase/ lease and installation of the Smart Safe. Customer hereby agrees to comply with its obligations under the Virtual Vault Vendor Agreement. The Virtual Vault Vendor provides its services on behalf of Customer and is not an agent of the Bank. Customer acknowledges that provisional credit may only be available for those currency deposits communicated to Bank by the Smart Safe Vendor even if such deposits are inserted by Customer prior to the applicable deadline. Bank reserves the right to refuse to provide provisional credit for any Deposits at its reasonable discretion. Any Items other than currency deposited into a Smart Safe shall not be eligible for provisional credit and Customer shall not receive credit for any such Items until such Items have been duly delivered to Bank or a Bank vault location and processed in accordance with Section 3 above.

**6. Virtual Vault Verification.** Customer's Smart Safe must be "serviced" (deposits are removed for verification purposes) at least once each calendar week unless otherwise required by Bank and transported to a Bank approved vault location. Currency will only be removed from the Smart Safe under dual control by Customer and Customer's Courier using the PIN and Keys provided by the Virtual Vault Vendor and shall be delivered by the Customer's Courier in either sealed cassettes removed from the Smart Safe ("Smart Safe Cassettes") or in tamper-resistant Depository Bags to the Bank's designated vault location for verification purposes. Verification shall be performed at intervals agreed upon between Virtual Vault Vendor, Customer and Bank. Bank retains the right to refuse any Deposit for any reason.

**7. Timing and Receipt of Deposits.** Bank shall have the right to inspect all Depository Bags and Smart Safe Cassettes for tampering, and may refuse to accept the same for any reason. All Items properly received by Bank in a Depository Bag or Smart Safe Cassettes accepted by Bank will be processed for deposit to the designated Account through normal banking procedures and will generally be credited to the Account on the next business day if delivered before the Bank's deadline on any Banking Day. In the event of a discrepancy between the amount of the Deposit(s) initially reported to Bank and the verified amount, Customer agrees that the findings and records of Bank shall be conclusive and binding upon Customer. If Customer is using the Bank's Virtual Vault Service, then any required adjustments to the amounts provisionally credited to Customer's account based on Virtual Vault Reports will be made following Bank's receipt of the applicable Depository Bag or Smart Safe Cassette in accordance with the procedures set forth above.

**8. Liability for Loss of Property.** Until Bank, or the Bank's vault location, has finally received and physically verified any Deposit, Bank accepts no liability for loss of any Depository Bag or Smart Safe Cassette or Deposit or any losses or damages incurred by Customer with respect to the Deposit. Bank shall not be deemed to have finally received and accepted any Deposit until such Deposit has been physically verified by Bank or on Bank's behalf at a Bank vault location at the direction of Bank. Bank shall not be liable as an insurer of the Property, including Depository Bags and Smart Safe Cassettes. The Bank also ceases to be liable for the delivery of coin or currency shipped to Customer pursuant to a Change Order at such time as the Customer's Courier or other Representative signs for other otherwise acknowledges receipt of a shipment of a Change Order.

**\*\*\* End of Terms and Conditions for Cash Services \*\*\***

## **XVIII. Biller Express Service**

The terms and conditions enumerated below apply solely to Bank's Biller Express Service. These terms apply to Customer if and only if Customer enrolls in this Service, as evidenced by the submission to Bank of an enrollment request signed by Customer's duly authorized representative.

- 1. General Description of Service.** Subject to the terms and conditions of this Agreement, Customer may use the Biller Express Service, a secure online payments solution that accepts payments from Customer's Payers. The Biller Express Service permits Customer to deliver bills and invoices to its Payers in electronic form rather than paper, and to accept either one-time or recurring Payments from Payers, either online through the use of a Device or by telephone (via interactive voice response or Customer's customer service representatives). Payers will be able to make such Payments by (i) creating a pre-authorized debit file originating an ACH transaction that debits the Payer's designated checking or savings account for the amount of the Payment, (ii) a debit card transaction that debits the Payer's designated checking or savings account for the amount of the Payment, or (iii) a credit card transaction. Upon receipt of a Payment, Customer's Settlement Account is electronically credited for the Payment made through the Biller Express Service. Enrollment in the Biller Express Service requires each Payer to agree to be bound by Customer's Electronic Bill Presentment and Payment Terms and Conditions, a copy of which will be provided to Customer by Bank upon request.
- 2. Terms and Definitions.** In addition to the definitions contained in the General Terms and Conditions, the following terms and definitions apply with respect to the Biller Express Service:

  - a. "Biller Express Service" means the electronic bill presentment and payment service offered by Bank to Customer, which may be provided either directly by Bank or indirectly through the Bank's service provider, which Service allows Customer to deliver E-Bills to and receive one-time or recurring Payments from Payers, either online through the use of a Device or by telephone (via interactive voice response or Customer's customer service representatives).
  - b. "Device" means a compatible and supported personal computer or other electronic computing or access device (including a mobile phone and/or other compatible and supported wireless devices) that meets the requirements for use of the Biller Express Service, as in effect from time to time. Certain Devices may not be compatible for use in connection with the Biller Express Service.
  - c. "EBPP Portal" means the online bill presentment and payment service established on behalf of Customer by Bank through the Biller Express Service.
  - d. "E-Bill" means a bill, statement, or invoice for amounts due from Payer that is electronically submitted by Customer to Payer through the Biller Express Service.
  - e. "Operational Instructions" means the provisions of any guides and instructional materials Bank provides to Customer in connection with the establishment, configuration and use of Customer's EBPP Portal and the Biller Express Service.
  - f. "Payer" means any person or entity to which Customer provides E-Bills through Customer's EBPP Portal using the Biller Express Service or any person or entity that makes a one-time or recurring Payment to Customer.
  - g. "Payment" means the remittance of funds by a Payer to Customer through the Biller Express Service.
  - h. "Payment Account" means the checking or savings account from which a Payer authorizes and directs Customer to debit funds to make a Payment.
  - i. "Payment Card" means the credit card or debit card that a Payer instructs and authorizes Customer to charge for a Payment.
  - j. "Settlement Account" means the Customer's checking account(s) with Bank to which the Payer's Payment will be credited.
- 3. Receiving Payments from Payers.** Customer authorizes Bank to credit Customer's applicable Settlement Account for payments remitted to Customer by a Payer without further approval from Customer. Customer agrees that Bank will not be liable in any way for any payments that Customer may receive, regardless of whether Customer authorized the Payer to send them to Customer. If Customer is the receiver of a Payment, Customer understands and agrees that there may be a delay between the time Customer is notified of the pending Payment and Customer's Settlement Account being credited for the amount of the Payment, and Customer may be required to take additional steps to facilitate the deposit of the payment funds into Customer's Settlement Account. Customer acknowledges and agrees that in the event that funds are transferred into Customer's Settlement Account as a result of a Payment and it is determined that such transfer was improper because it was not authorized by the Payer, because there were not sufficient funds available in the Payer's Payment Account or sufficient available credit through the Payer's Payment Card, or for any other reason, then Customer hereby authorizes Bank to withdraw from Customer's Settlement Account an amount equal to the amount of funds improperly transferred to Customer.
- 4. Settlement Accounts.** Customer shall be required to maintain a Settlement Account at Bank, to which the Payments shall be credited, and shall submit all forms and documents, including but not limited to, signature cards, partnership agreements, and resolutions, as required by Bank in conjunction with this Biller Express Service. Each Settlement Account shall be subject to the Bank's rules, regulations and fees. Bank is not obligated to process any Payments until the appropriate Settlement Account has been established.
- 5. Biller Express Service Terms and Conditions.**

  - a. **Processing Items.** As an agent for Customer, Bank shall process the Payments and deposit the same into Customer's Settlement Account. Bank shall use reasonable efforts to process all Payments on the banking day the Payments are received; however, Customer agrees that Bank shall not be responsible for any liability, loss, or damage resulting from Bank's failure to process items or to perform any other obligations under this Service which is caused by an act of God, fire, floods, adverse weather or atmospheric conditions or other catastrophes; war, sabotage, riots, acts of public enemy, or acts of governmental authority; labor difficulties; equipment or Device failure or destruction or the unavailability, interruption, or malfunction of communications facilities or utilities; delays or failure to act by you or third parties and their personnel; criminal acts; or generally any cause reasonably beyond the Bank's control.
  - b. **Bank Not Responsible for Discrepancies.** Customer acknowledges and agrees that Bank shall not be required to discover discrepancies between the amount of the Payments and the amount of any E-Bill or other billing statement provided by Customer to its Payer. Customer shall determine in its discretion during the configuration of Customer's EBPP Portal whether it will require Payment in full of an E-Bill or other Customer invoice or if partial payments will be accepted.
  - c. **Bank Account or Debit or Credit Card.** In order for Customer to offer its Payers the ability to receive and pay their bills electronically, each Payer must have a valid email address and must designate an eligible checking or savings account for an electronic funds transfer ("ACH"), or a debit or credit card at a bank or other eligible financial institution from which payments will be made using Customer's EBPP Portal.

- d. **Permissible Payers.** Payers may include persons and entities, consumers and non-consumers, whom Customer wishes to bill and receive Payments from through the Biller Express Service. Bank reserves the right to decline to accept Payments from certain persons and entities. Customer agrees that it will not attempt to use the Service to receive any Prohibited Payments.
- e. **Insufficient Funds.** If Customer is notified that Customer has received or will receive a Payment from a Payer and such Payment is not completed through Biller Express Service due to insufficient funds available in Payer's Payment Account or insufficient available credit through Payer's Payment Card, or other action on the part of such Payer (including, without limitation, payment cancellation or failure to provide accurate or complete information, such as correct name, telephone number, or complete Payment Account or Payment Card information), Customer acknowledges and agrees that Bank will in no way be liable to Customer with respect to the failure of such Payment, and Customer agrees to look solely to Payer for the resolution of such payment failure.
- f. **Rules, Regulations and Other Agreements.** Customer agrees to be bound by and subject to the terms of any agreements entered into by and between Bank and any third party service providers or agents involved in the provision of the Biller Express Service. Customer further agrees to follow and to be bound by and subject to all Operational Instructions.
- g. **Limitations on Payment Amounts.** Bank reserves the right to limit the frequency and dollar amount of Payments credited to Customer's Settlement Account through the Biller Express Service.
- h. **Bank's Right to Refuse Certain Payment Requests.** Bank may refuse to credit Customer's Settlement Account for any Payments that reasonably appear to Bank to be fraudulent, unauthorized, erroneous, illegal or prohibited under this Agreement, or as otherwise permitted by law, and the Bank shall have no liability for its refusal to credit Customer's Settlement Account for such Payments.

## 6. WEB Portal Terms and Conditions.

- a. **Hosting.** Bank, through its third party service provider ("Web Host"), will host, for the benefit of Customer, a unique uniform resource locator (URL) on the internet (the "Web Portal") for Customer's EBPP Portal. This EBPP Portal may be made available by Customer to its Payers either through a secure portion of Customer's website or accessed through a direct URL. Customer's WEB Portal will be hosted on one or more of Web Host's servers or on a server outsourced by Web Host, which servers are shared between many customers. The WEB Portal will allow storage of information received by or provided to Customer on the Web Host's server(s). Customer shall be solely responsible, at its own expense, for acquiring, installing and maintaining all connectivity equipment, hardware, software and other equipment as may be necessary for it to connect to, access and use the WEB Portal.
- b. **Configuration.** Customer's EBPP Portal is configurable and shall be customized by Bank to Customer's preferences in accordance with the Operational Instructions. Customer shall have the option of directing the Bank to configure the Customer's EBPP Portal, including the ability to request that Bank brand the site with Customer's logos, colors, trademarks, service marks, names, designs and menu options ("Customer Trademarks"). All rights of ownership to Customer Trademarks shall remain with Customer. Customer grants to Bank and Web Host a non-exclusive, world-wide license to the Customer Trademarks only to the extent necessary for the configuration of the Customer's EBPP Portal and the provision of the Biller Express Service to Customer. The Customer Trademarks shall not be used by Bank or Web Host for any purpose other than in connection with configuring the Customer's EBPP Portal and performing the Biller Express Service under this Agreement.
- c. **Web Site Content.** Customer shall approve all information, data, text, software, music, sound, photographs, graphics, video, messages, goods, products, services or other materials ("Content"), whether publicly posted or privately transmitted using Customer's EBPP Portal. Neither Bank nor Web Host will pre-screen Content, but Bank and its designees (including Web Host) shall have the right (but not the obligation) in their sole discretion to refuse or remove any Content that is made available to others using the Biller Express Service or on Customer's EBPP Portal. Neither Bank nor Web Host assume responsibility for the Content on Customer's EBPP Portal and Customer agrees that it must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content.
- d. **Invoices.** Billing files may be uploaded by Customer through the Customer's EBPP Portal or submitted by Customer to Bank via Secure File Transfer Protocol (SFTP). Customer acknowledges and agrees that Customer shall be solely responsible for uploading any billing information to Customer's EBPP Portal and that neither Bank nor Web Host shall have any liability for billing information that is entered into Customer's EBPP Portal.
- e. **Software.** Customer acknowledges and agrees that the EBPP Portal and any necessary software used in connection with the Biller Express Service (the "Software") contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Customer further acknowledges and agrees that information presented to Customer through the Biller Express Service is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Customer is hereby granted a non-exclusive, nontransferable, revocable license to access and use the Software and to permit its Payers to access and use the Biller Express Service. Except as expressly authorized by Web Host, Customer agrees not to duplicate, modify, reproduce, rent, lease, loan, sell, give, sublicense, assign, distribute, otherwise transfer, create derivative works based on, reverse engineer, reverse assemble, decompile or otherwise attempt to discover any source code for the EBPP Portal or the Software, in whole or in part, or to allow or assist any others to do so.
- f. **Monitoring.** Customer acknowledges and agrees that Bank and Web Host reserve the right to monitor the Customer's EBPP Portal electronically and to access and disclose any information as permitted or required by any law, regulation or other governmental request for the purpose of operating each EBPP Portal properly, protecting itself or for any other reason Bank or Web Host in good faith deem necessary.
- g. **Availability.** The Customer's EBPP Portal and the Biller Express Service shall be available to Customer and Payers subject to Web Host's service level agreements with Bank. Customer acknowledges and agrees that, from time to time, Customer's EBPP Portal may be inaccessible or inoperable for various reasons including, but not limited to, (i) equipment malfunctions, (ii) periodic maintenance procedures or repairs which Web Host may undertake from time to time, or (iii) causes beyond the control of Web Host or which are not reasonably foreseeable by Web Host, such as interruption or failure of telecommunications or digital transmission links, hostile network attacks or network congestion or other failures. Under no circumstances shall Bank or Web Host be held liable for any direct or indirect or consequential damages, costs or expenses incurred by Customer (whether foreseeable or unforeseeable) in connection with the availability of Customer's EBPP Portal and the Biller Express Service. Bank shall use reasonable efforts to assist Customer with resolving any service level issues related to the Biller Express Service.
- h. **Acceptable Use.** Customer is responsible for all use of Customer EBPP Portal, with or without Customer's knowledge or consent. Violations of Web Host's or Bank's acceptable use policies may result in criminal and civil liability. Web Host or Bank may investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected.

**7. Service Providers; Reliance on Third Parties.** Customer acknowledges and agrees that from time to time, and at any time, with or without notice to Customer, Bank may make the Biller Express Service available through or using one or more unaffiliated third party service providers. Customer agrees that Bank has the right to delegate such service providers all of the rights and performance obligations that Bank has under this Agreement, and that such service providers will be third party beneficiaries of this Agreement and will be entitled to all the rights and protections that this Agreement provides to Bank. In the event any such third party service provider is unavailable or Bank determines, in its discretion, that Bank cannot continue providing the Biller Express Service through or using any such third party service provider, Bank may discontinue the Biller Express Service or may provide the Service through a different party. In such situations, Bank will have no liability for the delay or unavailability of access to the Biller Express Service.

**8. Acceptable Use; Prohibited Payments.** Customer agrees not to use or attempt to use the Biller Express Service to engage in any transaction that is not specifically authorized and permitted or in any way that is in breach of the terms and conditions of this Agreement. Customer agrees that it is independently responsible for complying with all applicable laws in all of Customer's activities related to Customer's use of the Biller Express Service, regardless of the purpose of the use, and for all communications Customer sends in connection with the Biller Express Service. The following types of payments are prohibited through the Biller Express Service, and Bank, in its discretion, has the right, but not the obligation, to monitor for, block, cancel, and/or reverse such payments submitted to Customer by Payer:

- i. payments from persons located in prohibited territories;
- ii. payments that violate any law, statute, ordinance or regulation;
- iii. payments that violate any term or condition of this Agreement, or any agreement governing your applicable Settlement Account;
- iv. payments related to (a) tobacco products, (b) prescription drugs and devices, (c) narcotics, steroids, controlled substances or other products that present a risk to consumer safety, (d) drug paraphernalia, (e) ammunition, firearms, or firearm parts or related accessories, (f) weapons or knives regulated under applicable law, (g) goods or services that encourage, promote, facilitate or instruct others to engage in illegal activity, (h) goods or services that are sexually oriented, (i) goods or services that promote hate, violence, racial intolerance, or the financial exploitation of a crime, (j) goods or services that defame, abuse, harass or threaten others, (k) goods or services that include any language or images that are bigoted, hateful, racially offensive, vulgar, obscene, indecent or discourteous, or (l) goods or services that infringe or violate any copyright, trademark, right of publicity or privacy or any other proprietary right under the laws of any jurisdiction;
- v. payments relating to transactions that (a) support pyramid or ponzi schemes, matrix programs, other "get rich quick" schemes or multi-level marketing programs, (b) are associated with purchases of real property, annuities or lottery contracts, lay-away systems, off-shore banking or transactions to finance or refinance debts funded by a credit card, (c) constitute money-laundering or terrorist financing, (d) are associated with the following "money service business" activities: the sale of traveler's checks or money orders, currency dealers or exchanges or check cashing, or stored value, or (e) provide credit repair or debt settlement services;
- vi. payments related to gambling, gaming and/or any other activity with an entry fee and a prize, including, but not limited to casino games, sports betting, lottery tickets, other ventures that facilitate gambling, games of chance or skill (whether or not it is legally defined as a lottery) and sweepstakes;
- vii. payments that involve (a) acting as a money transmitter or selling stored value cards, or (b) selling stocks, bonds, securities, options, futures (forex) or an investment interest in any entity or property; and/or
- viii. payments relating to transactions that constitute money-laundering or terrorist financing.

In no event shall Bank be liable for any claims or damages resulting from Customer's receipt of Prohibited Payments. Bank has no obligation to research or resolve any claim resulting from a Prohibited Payment, except as required by applicable law. All research and resolution for any misapplied, mis-posted or misdirected Prohibited Payments will solely be the responsibility of Customer and Bank will have no responsibility therefor whatsoever.

**9. Additional Customer Warranties.** In addition to any other representations and warranties under this Agreement, with respect to the Biller Express Service, Customer represents and warrants to Bank as follows: (a) for each Payment that is credited to Customer's Settlement Account, Customer has obtained all authorizations from the Payer which are required by applicable law and such authorizations are still valid and have not been revoked by operation of law or otherwise; and (b) none of Customer's Payers are a national of a designated blocked country or a "Specially Designated National," "Blocked Entity," "Specially Designated Terrorist," "Specially Designated Narcotics Trafficker," or "Foreign Terrorist Organization," as defined by the United States Treasury Department's Office of Foreign Assets Control (OFAC), and Customer agrees to always practice reasonable diligence and control to ensure ongoing compliance with this warranty.

Except as specifically enumerated herein, as between Bank and Customer, liabilities, fees, termination rights, and all other terms and conditions for the Service shall be governed by the Agreement.

**\*\*\* End of Terms and Conditions for Biller Express Service \*\*\***

## **XIX. Image Archive Services**

**The terms and conditions enumerated below apply solely to Bank's Image Archive Services. These terms apply to Customer if and only if Customer enrolls in this Service which can be either Image Direct or CD-ROM, as evidenced by the submission to Bank of an Enrollment Request signed by Customer's duly authorized representative.**

**1. Statement of Service.** Image Archive Services offer you the option to add archive data for your business, commercial or public fund checking statements in an electronic format that you can view, save to your computer or print at your convenience. These services – Image Direct or CD-ROM – will both provide the archival data on your accounts.

**2. Features of Bank's Image Archive Services.** Bank's Image Archive Services provide you with the ability to view the fronts and backs of your checks, deposit tickets and items deposited plus, other paper items, print such images, save them to your computer or storage media. Images are available during Bank's image archival period, as determined by Bank from time to time. Image Direct will build the archive data base from the statement period after you enroll in the service; the CD-ROM archival period is monthly as the images are stored on the CD. We may add to, modify, or delete any feature of Bank's Image Archive Services, at any time, in our sole discretion. We may also at any time, in our discretion, deem a particular type of account eligible or disqualify from eligibility for Bank's Image Archive Services any type of account. Please note that once you activate any of the Bank's Image Archive Services for a particular account, the service continues until you inform us in writing to turn off the Image Direct or CD-ROM by contacting your banking officer or calling Bank's published Customer Service telephone number.

**3. Activation of Bank's Image Archive Services. The Image Archive Services may be activated in two ways:**

- a) Image Direct: Once you have enrolled in Treasury Access select the Image Direct icon and confirm your ability to retrieve and view documents by following the online User Guide instructions that we provide. You must be enrolled in Treasury Access to use Bank's Image Direct Service.
- b) CD-ROM: Customer may enroll for CD-ROM Image Archive Services through your Treasury Services Sales Representative. Once you set up is completed, you will receive your CDs by mail to the address specified in the Enrollment Document. The Bank does not furnish a CD drive or other capability for reading a CD; if you do not have that capability, please use our Image Direct service.

**4. Accessing Your Image Archive Services.** Your periodic statements for each account for which you have selected the Image Direct or CD-ROM delivery option together with any enclosures ("Enclosures") or legal notices and disclosures that are required to accompany such periodic statements (referred to as "Disclosures") will be provided with your selected Image Archive Service. If you are using the Image Direct service, you acknowledge and agree that it is your responsibility to download and save in electronic form, or to print and retain, your images for your records. The Image Archive Services are set up for a standard distribution by statement period (i.e. monthly). With the Image Direct service you may request a more frequent distribution of data (bi-weekly, weekly or daily); however, there is an additional charge for this option. We may, if requested, send an e-mail notification to the e-mail address you provided to us in connection with the Image Direct Service advising you that your image data is ready and available for review.

**5. Image Archive Timeframe.** As long as you continue to receive Image Direct service on an account(s) you will be able to view the current month's statement and other archived statements furnished to you (for all open and active accounts) for such archival period as may be made available by Bank from time to time in its discretion. Once you cease to subscribe to an Image Archive Service for a particular account, your image archive for such account will no longer be accessible online.

**\*\*\* End of Terms and Conditions for Image Archive Services \*\*\***