



## **Cash Management Services**

### **Terms and Conditions**

Treasury Online Banking • Business Online Banking

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## GENERAL ONLINE SERVICES TERMS AND CONDITIONS

1. Definitions. For purposes of these Terms and Conditions, the following terms shall have the definitions assigned to them. To the extent there is conflict with a term below and a term pertaining to a specific Service, the definition in the specific Service shall control.
  - a. "Account" shall mean any account (including checking, money market, savings, or loan) maintained by Company with Bank.
  - b. "Account Owner" shall mean a natural person who, during their lifetime, (i)(a) maintains a fifty-one percent (51%) or greater equity interest in Company or (b) is provided by Company resolution the authority to act on behalf of Company as it relates to Services offered by Bank and (ii) maintains access to a Personal Account and the ownership of funds in the Personal Account.
  - c. "Agreement" shall mean the Cash Management Services Agreement and any addendum thereto, and in addition any Schedules thereto, Operating Procedures and other related documents provided to Company by Bank.
  - d. "App" or "Apps" shall mean Application.
  - e. "Available Balance" shall mean the amount of funds that are available to Company to withdraw or transfer to other Accounts.
  - f. "Bank" shall mean Bell Bank.
  - g. "Banking Day" shall mean any day on which Bank is open to the public during any part of such day for carrying on substantially all of its banking functions, and with reference to an ACH Operator, any day on which the appropriated facility of such ACH Operator is being operated. Banking Days vary from Business Days for purposes of ACH processing.
  - h. "Bell Bank Mobile App", "Bell Treasury App," or "Mobile App" shall mean the downloadable App for a Mobile Device.
  - i. "Billing Account" shall mean the checking account from which all Service fees will be automatically debited.
  - j. "Business Day(s)" shall mean Monday through Friday, excluding Federal holidays. To determine Federal Reserve holidays go to <http://www.federalreserve.gov/aboutthefed/k8.htm>.
  - k. "Business Online Banking" shall mean Bank's Online Banking System that offers no Services but does permit Company to view Account information and perform certain other functions.
  - l. "Collected Balance" shall mean the current balance in the Account less the amount of check deposits that Bank is in the process of collecting.
  - m. "Company" shall mean Company executing the Agreement ("Lead Company") and any Entities identified in the Agreement.
  - n. "Designated Service Provider" shall mean a third party where Bank has an agreement in place to offer a specific Service or standard function via a Third Party Site.
  - o. "Entities" shall mean companies related to the Lead Company by common ownership or control.
  - p. "Individual" shall mean any System Manager or System User that has been provided access to any Services or standard functions.
  - q. "Login Credentials" shall mean any combination of information used to gain access to the System. This includes but is not limited to: usernames, access IDs, passwords, biometrics, Security Access Codes, and token personal identification number generators provided by Bank or established by the System Manager through the System.
  - r. "Mobile Banking Service" or "Mobile Services" shall mean Text Banking, Bell Bank Mobile App, Bell Treasury App, Mobile App, or Mobile Browser Banking, if available.
  - s. "Mobile Browser Banking" shall mean the access to Online Banking using a mobile browser.
  - t. "Online Banking" shall mean both Business Online Banking and Treasury Online Banking.
  - u. "Operating Procedures" shall mean the procedures that Bank establishes and disseminates from time to time governing the Services Bank provides.
  - v. "Paperless Statements" shall mean the Periodic Statements which are available only electronically.
  - w. "Periodic Statements" shall mean any statement produced at a designated interval. Periodic statements may be daily, weekly, monthly, quarterly, or semi-annual.
  - x. "Personal Account" shall mean an Account owned by an Account Owner that (i) is not used primarily for business or agricultural purposes and (ii) is linked to the Online Banking Services at the request of Company and Account Owner.
  - y. "Rules" shall mean the rules of the National Automated Clearing House Association and Appendices to the rules of the National Automated Clearing House, as amended from time to time. Company can access the current Rules, as well as revisions to the Rules, through the website [www.achrulesonline.com](http://www.achrulesonline.com). Company can create a new account as a basic user for free access through this website. When asked for Company's "Affiliation," Company should choose "Upper Midwest ACH Association (UMACHA)" as the Payment Association.
  - z. "Schedule" shall mean a written schedule to the Agreement which, together with the Agreement and other Service Documentation, governs the parties' rights and obligations with respect to the Services. Each Schedule is made a part of the Agreement.
  - aa. "Security Access Code" shall mean a code that is auto-generated at Individual's request and delivered to a registered email address or phone number. Once the code is retrieved from the registered contact point, the Individual must enter the code in order to be granted access to Accounts online.
  - bb. "Service(s)" shall mean the cash management services offered by Bank and selected by Company in the Agreement, excluding Mobile Services and any other standard functions provided by Business Online Banking.
  - cc. "Service Documentation" shall mean all documentation governing the Services and System, including, without limitation, the Agreement, the Cash Management Setup Sheet, the Request and Acceptance of Cash Management Services, the fee schedule or any other fee proposal provided in writing, any previously executed Schedules, other Schedules, account agreements, loan agreements, procedures and specification sheets for the Services, payee match implementation requirements if Company implements payee match Positive Pay
  - dd. "System" shall mean Bank's electronic or other physical requirements allowing Company to utilize each individual Service.
  - ee. "System Configuration" shall mean each instance of System(s) used by Company.
  - ff. "System Maintenance" shall mean periods of time where one or more of Bank's Systems has routine or scheduled updates performed.
  - gg. "System Manager" shall mean a person or persons designated by Company as a System Manager in the Agreement. Person(s) assigned as System Manager(s) shall be assigned Login Credentials and have full administrative rights and capabilities for establishing System Users, granting access, establishing limits and controls, and performing transactions on behalf of Company, depending on the chosen Services.
  - hh. "System User" shall mean a person granted access to the Service and Accounts by a System Manager or Bank at the request of a System Manager. Person(s) assigned as System User(s) shall be assigned Login Credentials.
  - ii. "Text Banking" shall mean Short Message Service (or "SMS").
  - jj. "Third Party Site" shall mean any site Bank owns and controls, or site where Bank has an agreement with a Designated Service Provider in order to offer a specific Service.
  - kk. "Third Party Aggregation Service" shall mean any software solution offered outside of Bank's Services or Designated Service Providers that consolidates all Account information for viewing in one location.
  - ll. "Treasury Online Banking" shall mean Bank's Online Banking System that offers the Services as described in the Agreement.

2. **Services.** Bank may provide Services that are not specifically included in the Services section of the Agreement. By accepting and using any such Service, Company agrees that the Service will be governed by the Agreement and any other conditions communicated to Company by Bank. If not then currently available, these Terms and Conditions will apply to the specific Services once the Services are available and used by Company.

3. **Operating Procedures.** The Agreement and any Schedules thereto shall be subject to such Operating Procedures as Bank may establish and disseminate from time to time governing the Services it provides.

4. **Company's Acknowledgment and Responsibilities.** By executing the Agreement, Company acknowledges (i) the inherent risks and responsibilities associated with conducting business via the internet and that there can be no assurance that inquiries or transaction activity will be completely secure, despite any security procedures established by Bank such as firewalls, Login Credentials, and data encryption. Company also understands that access to the System will not be free from delays, malfunctions, or other inconveniences generally associated with this electronic medium and Company agrees Bank is not responsible for any such delays, malfunctions, or inconveniences; (ii) Company is responsible for maintaining all equipment required for its access to and use of the System and Services; (iii) that Company is authorizing Bank and Bank's affiliates and agents to allow Company access to Accounts via the internet; and (iv) Company is authorizing Bank, and any Designated Service Provider on Bank's behalf, to serve as agent in processing transaction instructions received from Company via the internet and to post such transactions to Company's designated Accounts. Company will comply with such Operating Procedures as Bank may prescribe from time to time and will be solely responsible for the timeliness, accuracy and adequacy of the data entered as well as the completeness of any instructions entered.

Company is solely responsible for any unauthorized use of the System, and Bank is fully protected in performing any transactions entered whether or not the person actually entering such transactions is authorized by Company to perform the transactions. Further, Bank may rely fully upon any actions or instructions provided when Company accesses the System using Login Credentials, and Company acknowledges that it is fully responsible for the security of its Login Credentials. Bank is not responsible or liable for any actions of a third party as a result of unauthorized access to the System. Company agrees to notify Bank immediately in the event Company believes security has been compromised, at which time Bank will employ commercially reasonable efforts to remove Company from the System to prevent any continued unauthorized transactions.

5. **Periodic Statements.** A Periodic Statement will be issued by Bank to Company or Account Owner which reflects credits and debits to the Account.

6. **Personal Accounts.** Company may request Bank to link access to Personal Accounts through Company's Online Banking Services in order to permit Company to view both Personal Accounts and Company Accounts in one location. Company acknowledges that the Personal Accounts will continue to be governed by applicable account agreements and related documentation. Additionally, Personal Accounts may receive additional protections under applicable laws that are not available to Company Accounts. Nothing in the Agreement shall be construed to expand the legal protections governing Personal Accounts to Company Accounts.

7. **Liability for Transactions Covered by Regulation E (Applicable to Personal Accounts only).** Company or Account Owner will tell Bank immediately if Company or Account Owner believes Login Credentials have been lost or stolen, or if Company or Account Owner believes an electronic fund transfer has been made without Company or Account Owner's permission on a Personal Account.

Contacting Bank by telephone is the best way of minimizing Company or Account Owner's potential losses. Company or Account Owner on Personal Account could lose all the money in Personal Account(s), plus maximum overdraft line of credit, if any.

Company and Account Owner of Personal Account also acknowledge:

- a. If Company or Account Owner tells Bank within two (2) Business Days after Company or Account Owner learns of the loss or the theft of its Login Credentials, Account Owner of Personal Account can lose no more than \$50.00, if someone uses Login Credentials without Company or Account Owner's permission.
- b. If Company or Account Owner does not tell Bank within two (2) Business Days after Company or Account Owner learns of the loss or theft of Login Credentials and Bank can prove Bank could have prevented the unauthorized use of Login Credentials, if Company or Account Owner had

told Bank earlier, Account Owner of Personal Account could lose as much as \$500.00.

c. Should Periodic Statement(s) for Personal Accounts show transfers that Company or Account Owner did not make, including those made through Online Banking or Mobile Services, or other means, Company or Account Owner will inform Bank immediately. If Company or Account Owner does not tell Bank within sixty (60) calendar days after the Periodic Statement for Personal Account was mailed, Account Owner may not get back any of the money lost after the sixty (60) calendar days if Bank can prove that Bank could have stopped someone from taking the money if Company or Account Owner of Personal Account had told Bank earlier. If a valid reason (such as a long trip or a hospital stay) kept Company or Account Owner of Personal Account from telling Bank, Bank may, at Bank's option, extend the time periods.

d. Company and Account Owner agree to assist Bank in Bank's efforts to recover any funds that were transferred or paid without Company or Account Owner's permission or consent.

8. **Contact in Event of Unauthorized Transfer.** If Company or Account Owner believes Login Credentials have been lost or stolen, someone has attempted to use Mobile Services without Company or Account Owner's consent, Company's Account(s) or other Personal Account(s) have been accessed or someone has transferred money without Company or Account Owner's permission, Company or Account Owner must notify Bank immediately at:

a. Business Online Banking: 855.755.7079 or 701.298.7079

b. Treasury Online Banking: 855.797.4603 or 701.298.7100

Company or Account Owner agrees to notify Bank within a reasonable time not to exceed thirty (30) calendar days after Company or Account Owner receives a Periodic Statement of any discrepancy between Company or Account Owner's records and the information in the Periodic Statement. If Company or Account Owner fails to notify Bank of any such discrepancy within thirty (30) calendar days after receipt of such Periodic Statement, Company and Account Owner shall be precluded from asserting any claim against Bank arising from such discrepancy.

9. **Unauthorized Transactions and Notice of Errors (Applicable to Personal Accounts Only).**

a. In case of errors or questions about transfers or transactions appearing on Company or Account Owner's Periodic Statement, Company or Account Owner should contact Bank. Bank's current contact information is listed on Bank's website, [www.bellbanks.com](http://www.bellbanks.com).

b. Bank must be notified by Company or Account Owner of Personal Account no later than sixty (60) calendar days after Bank sent the first (1st) statement on which the problem or error appeared.

- c. Company or Account Owner will need to provide Bank with the following:
- i. Company's name, Account Owner on Personal Account's name and Account number;
  - ii. Describe the error or transfer in question and explain, as clearly as Company or Account Owner can, why Company or Account Owner on Personal Account believes it is an error or why Company or Account Owner on Personal Account needs more information; and,
  - iii. The dollar amount of the suspected error and approximately when the error took place.

10. **Use of Services.** Company will use the Services only for its own internal business use in accordance with the terms of the Agreement. Without limiting the generality of the foregoing, Company agrees not to make the Services available or allow the use of the Services in a computer service bureau business, timesharing, or otherwise disclose or allow use of the Services by or for the benefit of any third party.

11. **Availability.** Bank agrees to make any of the Services which are accessed through the internet, available, other than when System Maintenance is being performed. However, transactions are processed and information is updated only on Business Days.

12. **Authorization.** Bank shall be entitled to rely on any verbal or written notice or instruction believed by it in good faith to be given by an officer, member, and partner or authorized representative of Company ("Authorized Representatives"). In some cases, Bank can rely on the signature on the Agreement to be a valid signature for, and binding upon, all Entities identified in the Agreement and any

Schedules thereto. For Personal Accounts, Bank shall be entitled to rely on any verbal or written notice or instructions believed by it in good faith is being given by any Account Owner on Personal Account.

13. **Security Procedures.** Company shall establish, maintain and enforce physical and logical commercially reasonable security practices, techniques and procedures with respect to access, storage and maintenance to safeguard against unauthorized transmissions and unauthorized access to security-related items. This includes maintaining up-to-date virus and malware protection software. By agreeing to use the Services, Company acknowledges the importance of maintaining the confidentiality of its Login Credentials. Company agrees that such Login Credentials and other security procedures for the Services are commercially reasonable. Company agrees to be bound by any payment order, transaction or Service change order that is acted upon by Bank in accordance with the Login Credentials and such other security procedures. Company shall exercise due care in seeking both to preserve the confidentiality of the Login Credentials to prevent the use of the Services by unauthorized persons. It is understood and agreed that implementation by Bank of its normal procedures for maintaining the confidentiality of information relating to Company's Login Credentials where applicable shall constitute fulfillment of its obligation to exercise due care. Bank shall not otherwise be under any liability or have any responsibility of any kind for any loss incurred or damage suffered by Company or Account Owner on a Personal Account by reason or in consequence of any unauthorized person gaining access to, or otherwise making use of, the Services.

Company must restrict access to the Services to Company's System Managers and System Users granted access by the System Managers. Company acknowledges Bank shall not be under any liability or have any responsibility of any kind for any loss incurred or damage suffered by Company or Account Owner on Personal Account, by reason or in consequence of any action of a System Manager or System User. Company and Account Owner on Personal Account assumes full responsibility for the consequences of any misuse or unauthorized use of or access to the Services or disclosure of any confidential information or instructions of Company by Company's employees, agents, or other third parties. Company acknowledges that Bank is entitled to rely upon actions initiated and instructions submitted through the System using Login Credentials with respect to both Company and Personal Accounts.

14. **Security Tokens.** With Treasury Online Banking, Bank offers an additional layer of protection through the use of security tokens with one-time passwords, challenge/response, and electronic digital signatures.

Features of security tokens include:

- a. Strong Two-Factor Authentication. Security tokens are based on strong two-factor authentication, and in order to gain access to Systems and Services, Individual must:
  - i. Register and remember a Personal Identification Number (PIN); and,
  - ii. Possess a hand-held security token, issued by Bank.
- b. Website Authentication. Upon logging in to Treasury Online Banking, a number is displayed in the Individual's browser. This number can then be displayed on the security token. By verifying that this number matches, Individual can be assured that they are accessing the legitimate website.
- c. Electronic Digital Signatures. For specific Services where the transfer of funds occurs, security tokens protect the integrity of transmitted data by requiring information that is specific to the transaction to be entered before the transfer can be submitted.

Depending on the Services used by Company, security tokens with the electronic signature functionality enabled are required. For Services that require security tokens with digital signature functionality, fees are disclosed within the fee schedule or any other fee proposal provided in writing for that Service.

15. **Third Party Aggregation Services.** Some third parties offer aggregation services that allow Company to consolidate Account information from different sources so that all Accounts can be viewed at one online or mobile location. These third parties may require Company to provide personal identification information including specific Account information or Login Credentials of the System Manager or System User. By providing this information to an aggregation service or any other third party, Company or Account Owner on Personal Account authorizes the Third Party Aggregation Service and such other third parties to access Accounts, and to initiate money movement to or from Accounts.

Any use of a Third Party Aggregation Service is at Company's own risk. Company is responsible for the use of Accounts or the disclosure of any personal

identification information to or by the third party. To revoke access provided to a Third Party Aggregation Service, Company agrees to contact Bank and request new Login Credentials for the System Manager or System User involved.

All matters concerning Third Party Aggregation Service's websites are solely between Company and the Third Party Aggregation Service. Bank makes no warranties or representations with regard to any Third Party Aggregation Service's website.

16. **Paperless Statements.** Copies of Company's Periodic Statements are available through Online Banking. Bank may automatically enroll Company in Paperless Statements for all business Accounts associated with the Entities documented in the Agreement or any future Addendums.

Personal Accounts will not be automatically enrolled. A System Manager or a System User must opt-in to Paperless Statements through Business Online Banking, or an Account Owner on Personal Account through a separate System specifically used to provide Services for Personal Online Banking.

If Company chooses to receive Periodic Statements through the U.S. Mail, a System Manager or System User can revoke Paperless Statements at any time. Bank's standard statement delivery fee pursuant to the applicable fee schedule or any other fee proposal provided in writing will apply for the delivery of Periodic Statements through the U.S. Mail. Company should allow ten (10) Business Days to process the revocation of Paperless Statements.

In addition:

- a. Company must have access to a computer which is able to comply with and adhere to the software and hardware requirements which are required to enable the electronic delivery of bank statements as well as access to the statements, which includes having appropriate browser software, such as Microsoft Internet Explorer, Mozilla Firefox, or Google Chrome, and communications access to the internet.
  - b. Documents may be in Portable Document Format (PDF). In order to view, download, and print a PDF document, Company must have Adobe Acrobat Reader software or another PDF viewer. Company can download Adobe Acrobat Reader at no charge from Adobe's website.
  - c. Bank may change the hardware and software required to obtain Paperless Statements at any time with ten (10) calendar days advance notice to Company. If Company chooses not to obtain the new hardware or software, Company may withdraw consent for Paperless Statements and Periodic Statements will then be delivered by U.S. Mail. Bank's standard statement delivery fee pursuant to applicable fee schedule or any other fee proposal provided in writing will apply. Company will remain liable for any other fees disclosed.
17. **Disputes.** In the event of a dispute regarding the Services, Company and Bank agree to resolve the dispute by looking to the Agreement. In case of errors or questions about Company's transactions, Company should notify Bank as soon as possible by contacting Bank. Bank's current contact information is listed on Bank's website, [www.bellbanks.com](http://www.bellbanks.com).
18. **Company's Warranties and Indemnity.** Company warrants and agrees that (i) its Entries (as defined below) are accurate, are timely and have been authorized by the party whose Account will be accessed; and (ii) it will otherwise perform its obligations under the Agreement consistent with all applicable laws and regulations. Company shall indemnify and hold harmless Bank from and against any and all losses, liabilities, penalties, damages, expenses or other harm or injury including reasonable attorneys' fees (including those fees of both in-house and outside counsel) and court costs which Bank may incur or suffer or which may be asserted by any person or Entity, arising out of (i) any failure by Company to observe and perform properly each and every covenant of the Agreement, any breach of Company's warranties of the Agreement, or any other wrong doing of Company, (ii) any wrongful act of any affiliate or subsidiary of Company in connection with any Services provided by Bank pursuant to any agreement, regardless of whether any such affiliate or subsidiary of Company has executed such agreement, or (iii) any action taken or omitted to be taken by Bank in reasonable reliance upon information provided to Bank by Company or any affiliate or subsidiary of Company, including those granted access to the Accounts of Company, if they are not signers to those Accounts; (iv) if the money in the Account from which a payment or transaction is to be made is subject to legal process or other claims restricting the transaction, or if the circumstances or persons beyond Bank's control prevent, delay, intercept or alter the transaction, despite reasonable precautions that Bank has taken; (v) a third party claim, action or allegation of infringement, misuse or misappropriation based on information, data, files or other materials submitted by Company to Bank; (vi) any fraud or

manipulation by Company or third parties; (vii) any third party claim, action or allegation brought against Bank arising out of or relating to a dispute with Company over the terms and conditions of the Agreement or related to the purchase or sale of any goods or Bank's Services; (viii) Company's violation of any law or rights of a third party; (ix) Company's use or the provision of Bank's products or Services or use of Company's Account by any third party; (x) damages that result from misuse or loss of Company's equipment or misuse of Bank's Services; (xi) Company's failure to exercise ordinary care in connection with its duties hereunder; (xii) any action by the RDFI upon an unauthorized or erroneous Entry (each as defined below) initiated by Company; (xiii) any actions by a Designated Service Provider or agent of Company that results in a breach of the Agreement by Company; or (xiv) to the extent that it involves Bank, any litigation by an ACH Operator, an RDFI or any Company Receivers (each as defined below) asserting noncompliance on Company's part with the Rules, laws, regulations or regulatory requirements. Bank reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Company, in which event Company will cooperate at Company's expense with Bank in asserting any available defenses. Company will not settle any action or claim on Bank's behalf without Bank's prior written consent. By execution of the Agreement, Company agrees to disclosure of Company information to those non-signing System Managers or System Users to which Company grants access, or to those persons who gain access; provided, however, that Company shall not be required to indemnify and hold harmless Bank from any losses which are caused by Bank's gross negligence or willful misconduct. The provisions of this Section shall survive the termination of the Agreement.

19. **Disclaimer.** Company acknowledges that the Services are provided on an "as-is" and "as-available" basis. Bank is not responsible for any errors or omissions in or to any information resulting from Company's use of the Services. Bank makes no warranty with respect to the Services to be rendered under the Agreement, including without limitation, accuracy, merchantability, or fitness for a particular purpose. In no event will Bank be liable for direct, indirect, special, incidental, or consequential damages arising out of the use or inability to use the Services or faulty Service even if Bank has been advised of the possibility of such damages. The warranty and remedies set forth above are exclusive and in lieu of all others, oral or written, expressed or implied. Bank is not responsible for any costs including, but not limited to, those incurred as a result of lost profits or revenue, loss of time or use of the Services, loss of data, costs of consultants, costs of substitute products, claims by third parties, or other similar costs.

20. **Restrictions on Use.** Company agrees not to use Mobile Services or Online Banking in, or for, any illegal, fraudulent, unauthorized or improper manner or purpose and will only be used in compliance with all applicable laws, rules and regulations, including all applicable state, federal, and international internet, data, telecommunications, telemarketing, "spam," and import/export laws and regulations, including the U.S. Export Administration Regulations. Without limiting the foregoing, Company agrees that Company will not use the Services and System to transmit or disseminate:

- a. junk mail, spam, or unsolicited material to persons or entities that have not agreed to receive such material or to whom Company do not otherwise have a legal right to send such material;
- b. material that infringes or violates any third party's intellectual property rights, rights of publicity, privacy, or confidentiality, or the rights or legal obligations of any wireless service provider or any of its clients or subscribers;
- c. material or data, that is illegal, or material or data, as determined by Bank (in Bank's sole discretion), that is harassing, coercive, defamatory, libelous, abusive, threatening, obscene, or otherwise objectionable, materials that are harmful to minors or excessive in quantity, or materials the transmission of which could diminish or harm Bank's reputation or any third-party service provider involved in the provision of the Services;
- d. material or data that is alcoholic beverage-related (e.g., beer, wine, or liquor), tobacco-related (e.g., cigarettes, cigars, pipes, chewing tobacco), guns or weapons-related (e.g., firearms, bullets), illegal drugs-related (e.g., marijuana, cocaine), pornographic-related (e.g., adult themes, sexual content), crime-related (e.g., organized crime, notorious characters), violence-related (e.g., violent games), death-related (e.g., funeral homes, mortuaries), hate-related (e.g. racist organizations), gambling-related (e.g., casinos, lotteries), specifically mentions any wireless carrier or copies or parodies the products or Services of any wireless carrier;
- e. viruses, Trojan horses, worms, time bombs, cancelbots, or other computer programming routines that are intended to damage, detrimentally interfere

with, surreptitiously intercept or expropriate any system, data, or personal information;

- f. any material or information that is false, misleading, or inaccurate; (vii) any material that would expose Bank, or any Designated Service Provider, or any other third party to liability; or,
- g. any signal or impulse that could cause electrical, magnetic, optical, or other technical harm to the equipment or facilities of any third party.

21. Company agrees that Company will not attempt to:

- a. access any System or Service for which Company's use has not been authorized;
- b. use or attempt to use a third party's account;
- c. interfere in any manner the provision of the Service or System, the security of the Services or System, or other customers of the Services or System; or,
- d. otherwise abuse the Services or System.

22. **Disclosure of Account Information to Third Parties.** It is Bank's general policy to treat Account information as confidential. However, Bank will disclose information to third parties during its course of business, and Company gives Bank the authority to disclose such information about Account or the transactions Company makes, including in the following situations:

- a. Where it is necessary for completing transactions;
- b. Where it is necessary for activating additional Services;
- c. In order to verify the existence and condition of Account to a Designated Service Provider;
- d. In order to comply with a governmental agency, court orders or other legal processes; or,
- e. If Company gives Bank written permission.

23. **Privacy and User Information.** Company acknowledges that in connection with Company's use of the Services, Bank, Bank's affiliates, and Designated Service Providers and its affiliates, may receive and may share with one another Company information. Bank and Bank's affiliates and service providers will maintain reasonable safeguards to protect the information from unauthorized disclosure or use, but reserve the right to use and disclose this information as reasonably necessary to deliver the Services and as otherwise permitted by law, including compliance with court orders or lawful instructions from a government agency, to protect the personal safety of subscribers or the public, to defend claims, and as otherwise authorized by Company. Bank and Bank's affiliates and service providers also reserve the right to monitor use of the Services and software for purposes of verifying compliance with the law, these terms and conditions and any applicable license, but disclaim any obligation to monitor, filter, or edit any content.

24. **Gathering, Using, and Sharing Data.** Bank or Designated Service Provider may offer sites or applications that permit browsing and do not require registration in addition to offering the ability to enroll, register, or access Accounts online. Information that Bank or Designated Service Provider may collect about Company or its System Managers and System Users includes names, addresses, and other contact information; data resulting from Individual's activity, such as transaction information; and location information. Bank may also gather additional information, such as the type of device and browser being used by Individual, the IP address, operating system or other information about the device. Bank or Designated Service Provider may collect information through cookies, tags, and other technologies including biometric information.

Cookies may be used to maintain continuity during Individual's online session, gather data about the user of Bank's or Designated Service Provider's site, anti-fraud, and information for security purposes. Cookies also describe locally stored objects in an Adobe folder that remain when an Individual uses the "clear cookies," function within their browser. This type of cookie is used in connection with information security and fraud prevention.

Individuals may be able to set their browser to reject cookies. However, if Individual chooses to reject cookies, Company acknowledges that Individual cannot access Accounts with Bank, or that specific Services offered by Designated Service Providers and access through single-sign on will not be accessible. Company agrees that the removal of locally stored objects in an Adobe folder may result in Individual being required to receive a Security Access Code each

time they login to Business Online Banking, or to answer specific questions each time they log in to Treasury Online Banking. The ability to use other features, such as the "Forgot Password," feature, will also be limited.

25. **Force Majeure.** Without limiting the foregoing, neither Bank nor Company shall not be liable for and shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communications facilities, equipment failure, war, acts of terror, emergency conditions or other conditions beyond Bank's or Company's control, conditions including but not limited to a blizzard, flood, tornado or any other adverse weather conditions.

26. **Bank's Liability.** In the performance of the Services required by the Agreement, Bank shall be entitled to rely solely on the information; representations and warranties provided by Company pursuant to the Agreement and shall not be responsible for the accuracy or completeness of such information. Except as otherwise specifically provided by law, Bank shall be responsible only for performing the Services expressly provided for in the Agreement and shall be liable only in the event of loss due to its gross negligence or willful misconduct in performing those Services. In no event shall Bank have any liability for any consequential, special, incidental, punitive or indirect damages Company may incur or suffer in connection with the Agreement whether or not the likelihood of such damages was known or contemplated by Bank and regardless of the legal or equitable theory of liability Company may assert.

If, for any reason, Bank is adjudged liable to Company, it shall only be to the extent that the amount of the damages resulting from such liability arise out of Bank's gross negligence or willful misconduct and, in such cases, damages will be limited to the amount of the aggregate monthly fees and charges paid by Company for the Services for the immediate three (3) month period prior to the event giving rise to Company's claim. In no event shall Bank be liable for consequential damages, exemplary damages or lost profits, even if Company advises Bank of the possibility of such damages. The provisions of this Section shall survive the termination of the Agreement.

Without limiting the generality of the foregoing, Bank will not be liable to Company in the following situations:

- a. If through no fault of Bank, Company or Account Owner on a Personal Account does not have enough available money in Account from which a payment or transaction is to be made, or if Account has been closed or is not in good standing, or if Bank reversed a payment or transaction because of insufficient funds, or if any payment or transaction would go over the credit limit of any Account;
- b. If the equipment of Company or Bank is not working properly and the breakdown should have been apparent to Company when Company attempted to conduct the transaction;
- c. If Company has not given Bank complete, correct or current Account numbers or other identifying information so that Bank can properly credit Account or otherwise complete the transaction, or if Company does not properly follow Bank's instructions, or if Company provides Bank with wrong or inaccurate information, or fails to correct or tell Bank about any inaccuracy of which Company is aware;
- d. If Company does not instruct Bank soon enough for Company's payment or transaction to be received and credited by the time its due;
- e. If the money in the Account from which a payment or transaction is to be made is subject to legal process or other claims restrict the transaction, or if circumstances or persons beyond Bank's control prevent, delay, intercept or alter the transaction, despite reasonable precautions that Bank has taken;
- f. If Company has an overdraft line and the transfer would go over the credit limit;
- g. If Bank has a hold on Account;
- h. If Account is closed or has been frozen;
- i. If Company, anyone authorized by Company or anyone using Login Credentials commits any fraud or violates any law or regulation;
- j. If Company, anyone authorized by Company or anyone using Login Credentials requests to disable the use of token at login for two-factor authentication or website authentication;

- k. If Bank takes any action including suspension of Services, or refrains from taking action, if Bank has a reasonable basis for believing an unauthorized use of Company's Login Credentials has occurred or may be occurring;
- l. If Company is in default under the Agreement or if Bank or Company terminate the Agreement; or,
- m. If the failure was caused by a fire, or other catastrophe, or by an electrical or computer failure or by other causes beyond Bank's control, or if Bank has a reason to believe that the transaction requested is unauthorized; and,

The above listing is not meant to be exhaustive.

27. **Electronic Mail.** Email sent to Bank is not a secure method of communication and Bank recommends Company does not send information by email. Bank may disregard email Bank receives from Company. Company should not include confidential information, such as Account numbers and balances in any emails to Bank. Company cannot use email to initiate transactions. All such transactions must be initiated using the appropriate features. Bank will not be liable for any errors, omissions, claims, fraud or problems of any kind involving Company's email.

Email sent by Company that originates on Company's server will be considered secure when the Individual has already authenticated. Bank may act upon such email request.

28. **Technical Support and Training.** From time-to-time, and depending on Services that Company may use, System Managers or System Users may request Bank to provide technical support or additional training. This technical support or training may be provided via telephone or on-site. Assistance provided via telephone may include the use of tools that grant Bank employees access to Company's hardware and software.

Company agrees that any System Manager or System User that interacts with Bank has permission to receive technical support or training, which may include remote PC support, from a Bank employee or Designated Service Provider.

Company is responsible and liable for the following:

- a. Ensuring that any System Manager or System User accessing Company's computers have permission to do so;
- b. Making available the appropriate IT personnel to grant access and render updates that System Manager or System User cannot make; and,
- c. Confidentiality and the securing of Company's data, software, and hardware.

Company agrees that Bank is not responsible or liable for the following:

- d. Access by third parties, with or without Company's authorization, to Company's data, software, or hardware; and,
- e. Exploitations of security gaps, weakness, or flaws (whether known or unknown) that may exist in the equipment used to provide technical support or training.

Bank is not responsible for bad memory, failure of hard drives, power supplies, motherboards, or any other hardware failures that may occur under normal use while machines are being remotely controlled. Bank is also not responsible for any data loss, although Bank will attempt to minimize the chance data loss will occur.

Company agrees to require all System Managers and System Users to complete the free online banking security awareness training courses offered under Bank's learning center. These courses are designed to inform Company about financial criminals and several high-risk tactics used to commit fraud. Topics included during the 45-minute training include: The Risk Background and Threat Landscape, Risk Management, and Reduction and Managing a Negative Event.

29. **Fees.** If applicable, and in consideration for the Services provided, Company agrees to pay such fees as may be charged by Bank pursuant to the applicable fee schedule or any other fee proposal provided in writing as disclosed from time to time to Company. Customized written fee proposals shall prevail over general fee schedules. Bank may change the fees at any time in its sole discretion. Any applicable fees will be charged regardless of whether the Service was used during the billing cycle. There may be a charge for additional transactions and other optional Services. Company agrees to pay such charges and authorizes Bank to deduct the calculated amount from Company's designated Billing Account for these amounts and any additional charges that may be incurred by

Company. Any fees associated with Company's standard deposit Accounts will continue to apply.

30. **Assignment.** The Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns; provided, however, that Company may not sell, assign, or transfer the Agreement without Bank's prior written consent, whose consent shall not be unreasonably withheld based on Operating Procedures, bank regulations, National Automated Clearing House Rules and the financial viability of the assignee. Bank may assign the Agreement or any of its rights or obligations hereunder, in whole or in part, without such consent. Bank may, at any time, in whole or in part, delegate any of its functions hereunder to any affiliate, purchaser, successor, or subcontractor.
31. **No Waiver.** Bank shall not be deemed to have waived any of Bank's rights or remedies hereunder unless such waiver is in writing and signed by Bank. No delay or omission on Bank's part in exercising any rights or remedies shall operate as a waiver of such rights or remedies or any other rights or remedies. A waiver on any one (1) occasion shall not be construed as a bar or waiver of any rights or remedies on future occasions.
32. **Governing Law.** Any dispute concerning Bank and Company, arising out of, connected with, related to, or incidental to the relationship established between them in connection with the Agreement, and whether arising in contract, tort, equity or otherwise, shall be resolved in accordance with the internal laws and not the conflicts of law provisions of the State of North Dakota.
33. **Choice of Forum.** Bank and Company agree that all disputes between them arising out of, connected with, related to, or incidental to the relationship established between them in connection with the Agreement, and whether arising in contract, tort, equity or otherwise, shall be resolved only by the State or Federal courts located in Cass County, North Dakota, but Bank and Company acknowledge that any appeals from those courts may have to be heard by a court located outside of Cass County, North Dakota. Company waives in all disputes any objection that it may have to the location of the court considering the dispute.
34. **Captions.** The captions of sections hereof are for convenience only and shall not control or affect the meaning or construction of any of the provisions of the Agreement.
35. **Amendment; Counterparts; Miscellaneous.** From time to time Bank may amend any of the terms and conditions contained in the Agreement. Any amendment (i) Bank makes to comply with federal or state law or (ii) to the Operating Procedures does not require Company's consent. Company will be deemed to have consented to any other amendment unless, within thirty (30) days from the date of notice of the amendment, Company notifies Bank in writing that it does not consent and wishes to terminate the Agreement. Bank reserves the right, at its sole discretion, to notify Company of any amendments by posting notice of the amendment to the System or sending a notice of the amendment via email or U.S. mail. If a notice regarding an amendment to the Agreement is posted on the System or sent via email or U.S. mail, it will be considered effective when posted to the System or sent to you at the last electronic or other mailing address maintained for Company in Bank's records. The Agreement may be executed in two (2) or more counterparts and transmitted electronically, each of which shall be deemed as original but such counterparts together shall constitute one (1) instrument. If any provision of the Agreement is held to be unenforceable or invalid, the other provisions shall continue in full force and effect. The failure of either party to insist on strict performance of any of the provisions hereunder shall not be construed as the waiver of any subsequent default of a similar nature.
36. **Termination.**
  - a. **In General.** The Agreement shall continue in full force and effect until either party terminates the Agreement by giving the other party thirty (30) calendar days advance written or oral notice of its intention to terminate; provided, however, that any such termination by Company shall not be effective until Bank has had a reasonable opportunity to act upon Company's notice of termination. The termination of the Agreement shall not affect the rights and obligations of the parties which have accrued prior to such termination.
  - b. **Immediate Termination.** Notwithstanding the foregoing, Bank may terminate the Agreement and suspend any Service immediately without written notice to Company if, at any time, (i) Company fails to comply with any of its material obligations hereunder, (ii) Company is in default under any other material obligation with Bank, (iii) a receiver, custodian, trustee, or similar official has been appointed, or been applied for by Company for all or a substantial part of Company's property, (iv) any general assignment has been made for the benefit of creditors with respect to Company, (v) a voluntary or involuntary case, petition or proceeding has been commenced

under the United States Bankruptcy Code or any other statute or regulation relating to bankruptcy or relief of debtors seeking liquidation, reorganization or other relief with respect to Company, or its debts, (vi) Company or any other person on behalf of Company has taken any action under the laws of any jurisdiction applicable to Company which is similar to any of the foregoing, (vii) there has been a material adverse change in the financial circumstances of Company, or (viii) Bank deems immediate termination of the Agreement and/or any Service as necessary or appropriate in order to prevent a financial loss to Bank.

37. **Complete Agreement.** The parties hereto acknowledge that each has read the Agreement, understands it, and agrees to be bound by its terms. Company agrees that the Agreement is the complete and exclusive statement of Company and Bank pertaining to the Services, which supersedes any proposal or prior agreement, oral or written, and any other communications between Company and Bank relating to the subject matter of the Agreement. If there is a conflict between what Bank's employee says and the terms of the Agreement, the terms of the Agreement will prevail.
38. **Notices.** All notices, requests, demands, directions and other communications given to or made upon Company by Bank may be made orally, in writing (including facsimile communication), or electronically. Notwithstanding any other provisions of the Agreement, all communications provided under the Agreement by Company may be given to Bank by letter, facsimile or electronically, as deemed acceptable by Bank, subject to such additional terms and conditions as Bank may require. In its sole discretion, Bank may, but shall not be required to, accept communications given to Bank orally. Any communications given to Bank orally shall promptly thereafter be confirmed in writing, but Bank will incur no liability for Company's failure to send written confirmation or for the failure of any such written confirmation to conform to the communication received by Bank via telephone.
39. **Accuracy and Timelines of the Services.** Bank will use reasonable efforts to provide the Services in a prompt fashion, but shall not be liable for temporary failure to provide the Services in a timely manner. In such event, Company shall be responsible for carrying out banking business through alternative channels. Bank shall not be liable for any inaccurate or incomplete information with respect to transactions which have not been completely processed or posted to Bank's deposit or payments system prior to being made available pursuant to the Services. Information with respect to all transactions is provided solely for Company's convenience, and Company shall have no recourse to Bank as to use of such information.
40. **Acknowledgment that Transaction May Not Be Initiated in Violation of the Laws of the United States.** Company acknowledges that it will not generate any transactions using the Services that violate the laws of the United States, including the sanction laws administered by the Office of Foreign Asset Control (OFAC).

## **SPECIFIC SERVICES TERMS AND CONDITIONS ONLINE BANKING**

1. **Definitions.**
  - a. "CardSwap" shall mean a standard function made available by Designated Service Provider to Company that enables Individuals to automatically apply new approved debit or credit card information across Point-of-Sale Websites, if available.
  - b. "Point-of-Sale Website" shall mean the combination of hardware and software built to centralize business operations for a Third Party Vendor with whom Company or an Individual has chosen to transact a monetary exchange for goods or services.
  - c. "Third Party Vendor" shall mean anyone who provides goods or services to Company or Individual in exchange for payment transacted with electronic instructions.
2. **Access.** Company has no rights to the System, or any copies thereof, except for the right to use the System as specifically described by Bank. Title and ownership rights to the System (including patent, copyright, and trade secret property rights) remain with Bank, Its third party licensor, or Designated Service Provider. If a System Manager, System User or anyone using Login Credentials is not an authorized signer on the Account, Company specifically acknowledges its agreement to indemnify and hold harmless Bank from acts of all non-signatory persons. Regardless of Company's written instructions to Bank, Company authorizes Bank to allow access to Accounts and to execute the transactions



requested by a System Manager, System User or anyone using Login Credentials.

3. **Bank Obligations.**

- a. Bank agrees to transmit all the financial data under its control required to utilize the Services and to act on appropriate instructions received from Company or anyone using Login Credentials in connection with such Services. Company understands and agrees that the Services may be provided by Bank or its Designated Service Provider.
- b. Company understands that Services availability is at all times conditioned upon the corresponding operating and availability of those computer services and Systems used in communicating Company's instructions and requests to Bank and Bank's responses to such instructions and requests. Bank shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by Company in the event of any failure or interruption of such Services or any part thereof, resulting from the act or omission of any Designated Service Provider, or from any other cause not reasonably within the control of Bank.
- c. Bank agrees that it will allow Company to process and transmit information and conduct on-line transactions as long as Company complies with the terms of the Agreement.

4. **Current Day Balance Information and Current Day Transactions.** Company acknowledges that the information regarding the current day may change. For instance, over the counter items may not be reflected and interruptions in communications can occur and Bank shall not be responsible for current day balance or current day transaction information. Company acknowledges that Company's decisions based on Bank's information on current day balances and current day transactions therefore must take into consideration information not known to Bank or not reflected in the current day balance or transaction details Company obtains from Bank.

5. **Funds Transfers.**

- a. Company authorizes Bank to transfer funds of Company between any Accounts of Company at Bank when requested to do so in an electronic instruction through the System by Company to Bank. If Company authorizes Bank to transfer funds from a business Account to a Personal Account or to another business Account, which may or may not have the same tax identification number, Company represents and warrants to Bank that Company is the owner of the business(es), or the related company for the businesses.
- b. Transfers initiated prior to 11:00 p.m. CT on a Business Day will be posted to the receiving Account the same day. All transfers completed after 11:00 p.m. CT, or on a non-Business Day or holiday, will be posted the following Business Day.
- c. Company assumes responsibility for verifying availability of funds at the time of the fund transfer orders. Company must have enough money or credit in the Account from which Company instructs Bank to make a payment or transfer.
- d. Transfers from a savings Account by preauthorized, automatic, check, telephone or computer transfer, are limited to six (6) per month. If Company exceeds these limits, Bank may close the Account and/or change the Account to a non-interest bearing demand deposit Account.
- e. If more than one fund transfer is made at or about the same time and the available funds in the applicable Account do not cover all of such fund transfer orders, Bank at its option may execute as many of such fund transfer orders as possible within the dollar limits of such available funds, in any order convenient to Bank and in its sole discretion.

6. **Loan Advances and Payments.** In addition to other applicable terms regarding fund transfers, Bank shall not be required to process any loan advance request if any default exists under any credit agreement with Bank, or these terms and conditions, or Bank is otherwise excused or prohibited under any credit agreement or applicable law from making an advance to Company. All information provided regarding any loan Account is for Company's informational purposes only and are subject to verification and adjustment, including all information regarding availability and payoff amounts.

7. **Stop Payment Authorization.** Company will be able to place and/or delete stop payment orders on any check written on a demand Account of Company. Company is solely responsible for its actions when placing or deleting stop payment orders. Bank reserves the right to require confirmation in writing in a

form acceptable to Bank of all stop payment orders and deletions thereof. The stop payment entry page within the System must be completed in its entirety.

- a. Sufficient information to properly identify the check must be provided, including the Account number, check serial number, and exact dollar amount. Bank assumes no liability when information is incorrect or incomplete.
- b. Bank must be given sufficient time to provide a reasonable opportunity to act on the stop payment order. Stop payment orders are not effective if, before the stop payment order was placed; Bank has already negotiated the check or otherwise become legally obligated for its payment.
- c. Stop payment orders are effective for six (6) months. Company may renew stop payment orders for an additional six (6) month period by reentering the stop payment order upon the expiration of the original six (6) month period. Company is solely responsible for monitoring all expiration dates of stop payment orders.
- d. Bank's customary stop payment fees will apply.
- e. Company agrees to abide by the rules and regulations governing stop payment orders as outlined in the Uniform Commercial Code or other applicable laws.

8. **CardSwap.** If requested by Company and available from Bank, Company may use CardSwap to update or apply new debit or credit card information across designated Point-of-Sale Websites. Bank is willing to offer CardSwap according to the terms and conditions of the Agreement and any related Service Documentation.

- a. Company's ability to use CardSwap is only available if Company has enrolled in Business Online Banking.
- b. To use CardSwap, Company acknowledges the applicable credit or debit card must be issued by Bank or Bank approved third party issuer, and the credit or debit card will be verified during the setup process to confirm it meets this requirement.
- c. The debit or credit card information provided or required may vary by Vendor and will include instructions on how to access the Point-of-Sale Website.

## ACH ORIGINATION

1. **Definitions.** Unless defined in the Agreement, capitalized terms shall have the meanings provided in the Rules (as defined below).

- a. "ACH" shall mean Automated Clearing House.
- b. "ACH Account" shall mean the deposit Account Company designates to be debited or credited in order to offset the debit and credit Entries Company originates.
- c. "ACH Operator" shall mean the central clearing facility operated by a Federal Reserve Bank or a private organization on behalf of the Depository Financial Institutions (DFI), to or from which a participating DFI transmits or receives ACH Entries.
- d. "Effective Entry Date" shall mean the date included in any Entry as the date upon or after which such Entry is to be effective.
- e. "Entry" has the meaning given in the Rules, except that it shall also include an "On-Us Entry".
- f. "IAT" shall mean International ACH Transactions.
- g. "OFAC" shall mean Office of Foreign Asset Control.
- h. "On-Us Entry" shall mean a debit or credit Entry to Receiver's Account maintained at Bank.
- i. "Originator" shall mean an organization or person that initiates an ACH transaction to Receiver Account either as a debit or credit.
- j. "Receiver" shall mean a natural person or an organization that has authorized an Originator to initiate an ACH Entry to Receiver Account with the Receiving Depository Financial Institution ("RDFI"). A Receiver can be either a company or a consumer depending on the type of transaction.
- k. "Receiver Account" shall mean the Account at the RDFI where an Originator has designated a debit or credit Entry to be applied.

- I. "Report of Possible Rules Violation" shall mean as defined in the Rules.
2. **ACH Origination Access.** If requested by Company and available as a Service by Bank, Company may use the Service to originate debit and credit Entries to Receiver Account(s) by means of the ACH Network according to the terms of the Agreement.
  3. **Compliance with the Rules and Applicable Law.** Company's rights and obligations with respect to any Entry are governed by the Rules, and applicable law. Company acknowledges receiving online access to ACH Rules. Company agrees to be bound by the Rules, subject to any exceptions listed in the Rules such as those governing IAT. Company represents and warrants that it will comply with the Rules and applicable laws, regulations, regulatory requirements and Bank's current Service Documentation, and that it will not transmit any Entry or engage in any act or omission that violates or causes Bank to violate the Rules, applicable laws, regulations or regulatory requirements, including, without limitation, regulations of OFAC, sanctions or executive orders. Further, Company agrees that the origination of an IAT Entry must comply with the authorization requirements of the receiving country when such authorization is required by the laws or payment system rules of the receiving country.
  4. **Transmittal of Entries and Authenticity.**
    - a. Company shall transmit any and all debit or credit Entries to Bank in accordance with the Rules and the Agreement. Company shall comply with the security procedures described in the Agreement. Company acknowledges that the security procedures are for verification of authenticity and not to detect errors in the transmission or content of the Entry. Bank and Company have not agreed to any security practice or procedure for the detection of any such error. With prior approval by Bank, Company may also be permitted to originate IAT Entries subject to the Rules and in accordance with this Agreement.
    - b. The following security procedure are used to verify the authenticity of ACH Entries sent to Bank:
      - i. Security Tokens. Adding the ACH Service requires all System Managers and any System Users at Company who will submit or approve ACH Entries to use a security token with digital signature when submitting ACH Entries to Bank. This requirement cannot be waived.
      - c. The following authorization procedure is recommended to verify authenticity of ACH Entries sent to Bank:
        - i. Dual Authorization. Bank's Standard Authorization Procedure recommends Company to require a secondary authorization for all ACH Entries. In order to provide the most protection to Company, secondary authorization should be granted by a different System Manager or System User using a security token furnished by Bank.
      - d. Company shall prevent and safeguard against unauthorized transmissions, disclosures and access to the following (all of which are referred to herein as "Security-related Items"): information (including but not limited to Operating Procedures, processing instructions, and Login Credentials, security tokens, Systems and equipment that interfaces with, connect to, or allows access to Bank, its information, Systems and equipment. Company shall establish, maintain and enforce physical and logical commercially reasonable security practices, techniques and procedures with respect to access, storage and maintenance to safeguard against unauthorized transmissions and unauthorized access to Security-related Items. Such practices, techniques and procedures shall be no less than the security-related requirements set forth in the Agreement and in the Rules. To mitigate unauthorized returns, Company shall also establish a process to provide its ACH Originator name and Originator ID to corporate customers who use ACH fraud filters.
      - e. Without limiting the foregoing, Company warrants that no Individual will be allowed to initiate ACH Entries without proper supervision. If Company suspects, knows, believes or has reason to believe that an unauthorized Individual has transmitted or attempted to transmit one or more Entries or that the security procedures or other security-related items have otherwise been compromised, Company agrees to immediately notify Bank and agrees that any Entry received by Bank before, or within a reasonable time after such notice to Bank, shall be treated as authorized by Company.
      - f. In the event the System is unavailable, Company may submit ACH Entries via an alternative method process as described below or in Bank's Operating Procedures or other Service Documentation. Alternate Method used if System is Unavailable:
        - i. In the event that there is an outage with Treasury Online Banking, Bank offers an alternate method to enable Company to issue Online ACH instructions to Bank through Treasury Online Banking's secure messaging service. If Treasury Online Banking's secure messaging service is unavailable, Company will utilize Bank's secure email service. Company authorizes Individuals with access to the Online ACH service to receive all confidential funds transfer materials from Bank related to this Service. In addition, Company must authorize Individuals to submit ACH instructions to Bank through Treasury Online Banking's secure messaging service or Bank's secure email service.
        - ii. In the event that the Security Token malfunctions, is lost, or is otherwise inaccessible, Bank will register a replacement Security Token to Individual, and complete the out-of-band authentication on behalf of the Individual for the Online ACH before sending the Token to Individual.
      - g. Company hereby authorizes Bank to transmit any Entry received by Bank from Company in accordance with the Rules and the terms of the ACH Agreement and to credit or debit the amount of such Entries to the ACH Account(s) specified by Company.
    5. **Company's Representations, Warranties and Agreements.** Company represents and warrants that each Entry provided to Bank complies in all respects with the Rules and the Agreement. Company acknowledges and agrees that, pursuant to the Rules, Bank makes certain warranties to the ACH Operator and other financial institutions and that such warranties are made in reliance on: (i) the representations and warranties of Company, including but not limited to those contained in this Section of the Agreement and (ii) Company's agreement to be bound by the Rules and applicable law.

Without limiting the foregoing, Company warrants:

      - a. Each Entry is authorized pursuant to the Rules and the authorization has not been revoked;
      - b. Each credit Entry is timely and accurate;
      - c. Each debit Entry is for a sum which, on the Effective Entry Date, will be due and owing to Company from the Receiver whose Receiver Account will be debited, is for a sum specified by such party or is to correct a previously transmitted erroneous credit Entry;
      - d. No Entry has been reinitiated in violation of the Rules;
      - e. Company has used commercially reasonable procedures to verify that all information contained in an Entry, including but not limited to routing numbers, is accurate and valid;
      - f. Controls are in place for physical security of ACH data (e.g., ACH authorizations, printed reports, or other confidential documents should be stored in a locked storage cabinet or drawer);
      - g. Controls are in place for digital security and protection of ACH data (e.g., on devices accessing ACH data have unique User IDs for each employee, updated firewall, anti-virus, and malware software. Use secure email for transmission of ACH data); and,
      - h. Access to ACH data-related information and systems is restricted to only those who need it.
    6. **Company's Resubmission.** If Company wishes to resubmit a permissible returned debit Entry, it must contain RETRY PYMT in Company Description field according to the Rules.
    7. **WEB-Internet Initiated Entries/Mobile Entry.** When submitting WEB Entries through the System or Mobile System, Company must:
      - a. Employ a commercially reasonable method of authentication to verify the identity of the consumer;
      - b. Employ a commercially reasonable fraudulent transaction detection system to screen each Entry;
      - c. Use commercially reasonable procedures to verify that routing numbers are valid; and,

- d. Conduct an audit annually, and share this audit with Bank upon Bank's request, to ensure that Bank information Company obtains from Receivers is protected by security practices and procedures that include, at a minimum, adequate levels of (i) physical security to protect against theft, tampering, or damage; (ii) personnel and access controls to protect against unauthorized access and use; and (iii) network security to ensure capture, storage and distribution.
8. **Bank Obligations and Authorization.** Bank shall, in accordance with the Rules, process, transmit and settle any Entry. Bank shall have no obligation to transmit an Entry if Company fails to comply with the Rules or any terms of the Agreement.
9. **Company's Account.** Company will maintain an ACH Account with Bank at all times during the term of the Agreement. Company shall at all times maintain a balance of available funds in the ACH Account sufficient to cover Company's obligations under the Agreement. If Collected Balance in the ACH Account is insufficient to cover the aggregate amount of Entries, Bank shall have no obligation to transmit such Entries. Company authorizes Bank to debit its ACH Account for any amount it owes Bank as a result of the Agreement. Bank may require pre-funding of ACH files. When pre-funding is required, the dollar amount of the file will be transferred from Company's ACH Account to Bank when the file is received. Company will be notified of the pre-funding requirement prior to implementation. Regardless of the foreign exchange conversion method associated with IATs, no gains or losses incurred shall be borne by Bank.
10. **Due Diligence.** Company will supply Bank with due diligence information when requested. This information may include, but is not limited to, financial data, names and other information concerning the principles of Company, information about the business in which Company participates, information regarding the creditworthiness of Company, projected return rates, and payment history. Bank may, in its reasonable discretion, conduct a limited review of Company's operations to ensure compliance with the provisions of the Agreement. Where Bank reasonably believes that Company's financial condition is impaired or deteriorating, Bank may refuse to process any Entries or may require pre-funding of all Entries.
11. **Format and Content of Entries.** Entries will be formatted based on the Rules in the standard ACH format. Company shall refer to the Rules for the specific formats.
12. **Effective Entry Date.** Company must specify a Business Day as the Effective Entry Date on which it intends a batch of Entries to be posted.
13. **Authorizations.** Company shall obtain and retain copies of all authorizations and agreements according to the Rules, including, without limitation, authorizations and agreements as follows:
- Company obtains authorizations and agreements from all Receivers and makes authorization agreements available to Bank upon request within five (5) Banking Days. Company must retain authorizations and agreements for a period of two (2) years after termination or revocation.
  - Consumer Credit Entries.** In case of errors, Company shall include debit language on the Direct Deposit Authorization. This allows the Originator to run a debit File to reverse an error or to run a correcting Entry. Since the authorization includes debit language, it must be in writing and signed or similarly authenticated by the consumer. The similarly authenticated standard permits signed written authorization to be provided electronically.
  - Consumer Debit Entries.** The authorization must be in writing and signed or similarly authenticated by the consumer. Also if Company is originating variable debit amounts, must comply with the specific notification requirements.
  - Commercial Entries.** Company must execute a Corporate Trade Agreement binding Company and the Receiver to the Rules.
14. **Cancellation or Amendment of an Entry.** Company shall have no right to cancel or amend any Entry after its receipt by Bank. However, Bank shall use reasonable efforts to act on a request by Company to cancel an Entry before transmitting it to the ACH Operator or crediting or debiting an On-Us Entry. Any such request shall comply with the Agreement, including the security procedures described in the Agreement. Bank shall have no liability if it fails to effect the cancellation. Company shall reimburse Bank for any expenses, losses or damages Bank incurs in effecting or attempting to effect Company's request for the cancellation of an Entry.
15. **Rejection of Entries.** Bank may reject any Entry, including an On-Us Entry, that does not comply with applicable law, the requirements of the Rules, the Agreement, and Bank's current ACH Operating Procedures. Bank shall notify Company of such rejection no later than the Business Day such Entry would otherwise have been transmitted by Bank to the ACH Operator or, in the case of an On-Us Entry, the day before its Effective Entry Date. Notices of rejection shall be effective when given. Bank shall have no liability to Company by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.
16. **Provisional Credit Notice.** In the case of a credit Entry, credit given by the RDFI for the Entry is provisional until the RDFI has received final settlement through a Federal Reserve Bank or has otherwise received payment. If the RDFI does not receive payment for the Entry, the RDFI is entitled to a refund from the Receiver in the amount of the credit to the Receiver Account, and Company will not be considered to have paid the amount of the credit Entry to the Receiver. Bank shall have no liability for (i) delays or errors occurring to IAT transactions, which require greater scrutiny, nor for (ii) any gain, losses or other assumption of risks involving foreign exchange and IAT transactions, including, without limitation, erroneous or duplicate Entries.
17. **Reversals.** Company may reverse an Entry pursuant to the Rules. Company must complete a reversal Entry within five (5) Business Days of the original Effective Entry Date. Company must attempt to notify the Receiver of the reversal Entries. If Company reverses an Entry, Company shall indemnify Bank against any claim, alleged claim, demand, loss, liability or expense resulting directly or indirectly from such reversal.
18. **Notice of Returned Entries and Notifications of Change.** If an Entry is rejected, returned or if a Notification of Change ("NOC") is received, Bank shall timely notify Company through its Positive Pay System or any other agreed upon method. Company must make the necessary corrections as specified in the NOC or other corrections to originated Entries prior to reinitiating the Entry according to the Rules. Bank shall have no obligation to retransmit a returned Entry if Bank complied with the terms of the Agreement with respect to the Entry.
19. **Contacts.** Company will notify Bank of contact information for Company ACH processors, including after-hours phone numbers. Contact information can be updated by verbal request of Company.
20. **Entries Returned as Unauthorized.** In the event that an Entry is returned as unauthorized or authorization revoked, Company will contact the necessary parties and resolve any dispute. During this process Company may ask Bank to request from the RDFI a copy of the "Written Statement of Unauthorized Debit." Bank will make its best effort to obtain the form and will deliver it to Company when received. Company agrees not to re-originate any Entry returned as unauthorized or as authorization revoked unless Receiver reauthorized the Entry or Entry stream.
21. **Liability.** To the extent allowed by law, Bank shall not be liable for, and shall be excused from, failing to transmit or any delay in transmitting an Entry (i) if such transmittal would result in Bank's having exceeded any limitation upon its intraday net funds position established pursuant to present or future Federal Reserve guidelines; (ii) if, for any reason, the ACH Operator fails or declines to process an Entry; (iii) if, in Bank's sole discretion, processing an Entry would violate or contribute to the violation of any present or future risk control program of the Federal Reserve or any Rule, law, regulation or regulatory requirement; or (iv) if processing an Entry, in Bank's sole discretion, would cause it to engage in an unsafe and unsound practice.
22. **Rules Enforcement.** In the event that a Report of Possible Rules Violation is filed on Company, Company will take appropriate steps to correct the problem within the time frames suggested by Bank. In the event that a fine is levied against Bank for a violation of the Rules, Company agrees to indemnify Bank for the full value of the fine and any related cost or damages.
23. **Rates.** In the event the rate of any of the following occur based on the calculations noted in the Rules, Company will share the data requested by Bank and will immediately begin the process of bringing the rate below the specified percent:
- Unauthorized transactions exceed one half of a percent (1/2%);
  - Administrative return rate exceeds three percent (3%); or,
  - Overall return rate exceeds fifteen percent (15%).
24. **Inconsistency of Name and Account Number.** Company acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and Account number, payment of the Entry may be made on the basis of the Account number even if it identifies a person different from the named Receiver, and

Company's obligation to pay the amount of the Entry to Bank is not excused in such circumstances.

25. **ACH Rule Compliance Review.** Company agrees to review its compliance with the ACH Rules on a periodic basis. Bank has a right to request the details of the review.

## **AUTOMATED FILE MOVEMENT**

1. **Definitions.** For the purposes of the Agreement, the following terms have the definitions assigned to them:
- a. "Alternative Channel" shall mean by Secure File Transfer Protocol (SFTP) as a replacement for Bank's System with Login Credentials.
  - b. "Authorized Account(s)" shall mean the Account(s) of Company identified, to which Automated File Movement rendered by Bank will apply.
  - c. "Auto-Load Issued Check File" shall mean an Issued Check File that Company delivers to Bank through Alternative Channel. The file contains records describing checks drawn by Company on one or more Authorized Accounts with either Check Positive Pay or Payee Match Positive Pay.
  - d. "Automated ACH File Delivery" shall mean the use by Company of Alternative Channel to deliver to Bank electronic file(s) originated by Company that contain debit and credit Entries to be applied to Receiver Account(s) maintained at Bank, or other financial institutions by means of the ACH Network, according to the terms of the Agreement.
  - e. "Automated Delivery of NOCs/Returns" shall mean electronic file(s) that Bank delivers to Company through Alternative Channel that contain directives on return Entries and/or NOCs.
  - f. "Automated File Movement" shall mean the process of sending or receiving one or more pre-defined electronic file(s) listed below through Alternative Channel.
    - i. Auto-Load Issued Check File;
    - ii. Automated ACH File Delivery;
    - iii. Automated Delivery of NOCs/Returns; and/or,
    - iv. Batch Extract File.
  - g. "Batch Extract File" shall mean a file containing transactions for Authorized Account(s) covering a prior period that Bank delivers to Company through Alternative Channel.
  - h. "Check Positive Pay" shall mean an optional Service available with Treasury Online Banking whereas prior to issuing any checks on an Authorized Account, Company shall submit an Issued Check File to Bank by the established deadline. The Issued Check File shall accurately state the complete check number, exact amount, and the date of every check issued on each Authorized Account since the last Issued Check File was submitted.
  - i. "Issued Check File" shall mean record describing checks drawn by Company on an Authorized Account, provided by Company to Bank.
  - j. "Payee Match Positive Pay" shall mean an optional Service available with Treasury Online Banking that is an adaptation of Check Positive Pay whereas the payee name on the check image is validated against the payee name Company records in the Issued Check File.
2. **Automated File Movement.** If requested by Company and available by Bank, Company may use Automated File Movement to send or receive pre-defined electronic files by Alternative Channel. Bank is willing to offer Automated File Movement according to the terms and conditions of the Agreement and any related Service Documentation.
3. **Authorization.** Company may request one or more pre-defined electronic file(s) by indicating on the Agreement and/or Service Documentation.
- a. General Online Banking. Batch Extract File(s) are available to Company by indicating on the Agreement and Service Documentation. Login Credentials to Online Banking are not required.
  - b. ACH Origination. Automated ACH File Delivery and Automated Delivery of NOCs/Returns are available to Company by indicating on the Agreement

and Service Documentation. Login Credentials to Online Banking are not required.

- c. Positive Pay. Auto-Load Issued Check File(s) is available to Company by indicating on the Agreement and Service Documentation. Login Credentials to Online Banking are not required for Auto-Load Issued Check File(s); however, Company is required to have Login Credentials for Treasury Online Banking to use System for features of Check Positive Pay and/or Payee Match Positive Pay.

## **BILL PAY**

1. **Definitions.** For purposes of the Agreement, the following terms shall have the definitions assigned to them:
- a. "Bill Pay Provider" shall mean Bank's Designated Service Provider that provides Bill Payment Services.
  - b. "Biller" shall mean the person or Entity to which Company wishes a bill payment to be directed or is the person or Entity from which Company receives electronic bills, as the case may be.
  - c. "Biller Account" shall mean the Account Company's Payment Instructions indicate to credit.
  - d. "Due Date" shall mean the date reflected on Company's Biller statement for which the payment is due; it is not the late date or grace period.
  - e. "Payment Account" shall mean the checking Account from which bill payments will be debited.
  - f. "Payment Instructions" shall mean the information provided by Company to the Service for a bill payment to be made to the Biller (such as, but not limited to, Biller name, Biller Account number, and Scheduled Payment Date).
  - g. "Scheduled Payment" shall mean a payment that has been scheduled through the Service but has not begun processing.
  - h. "Scheduled Payment Date" shall mean the day Company wants the Biller to receive the bill payment, unless the Scheduled Payment Date falls on a non-Business Day in which case it will be considered to be the previous Business Day.
2. **Bill Pay Access.** If requested by Company and available as a Service by Bank, Company may use the Service to allow Company to make payments to a designated Biller utilizing the System. Bank is willing to offer the Services through a Bill Pay Provider according to the terms and conditions of the Agreement.
3. **Bill Pay Services.** Company will establish and authorize payments to the Biller by submitting Payment Instructions to Bank through the System. Company is solely responsible for choosing the Payment Account, establishing Billers, and providing accurate payment instructions. All Billers must have a valid US address, zip code, and telephone number. At the sole discretion of the Bill Pay Provider, payments may include, but may not be limited to, an electronic payment, an electronic check payment, or a laser draft payment. Subject to the terms and conditions of the Agreement, Bill Pay Provider will follow Company's Payment Instructions by debiting Company's Payment Account and remitting the funds on Company's behalf to the designated Biller. Company is solely responsible for choosing the Payment Account, establishing Billers, and providing accurate Payment Instructions. All Billers must have a valid U.S. address, zip code, and telephone number. At the sole discretion of the Bill Pay Provider, payments may include, but may not be limited to, an electronic payment, an electronic to check payment, or a laser draft payment (funds remitted to the Biller are deducted from Company's Payment Account when the laser draft is presented to Bank for payment).
4. **Payment Cancellation Requests and Stop Payments.** Company may cancel or edit any Payment Instruction only if the Bill Pay Provider has not begun to process the payment. Company understands and agrees that any stop payment request can be honored only if Payment Account has not already been debited for the payment and Bank or Bill Pay Provider has had a reasonable time to act on the stop payment request. In addition, stop payment requests are subject to the provisions set forth in the Agreement. Customary stop payment fees will apply.

Bank or Bill Pay Provider's ability to process a stop payment request will depend on the payment method and whether or not a payment has cleared. Bank or Bill Pay Provider may also not have a reasonable opportunity to act on any stop payment request after a payment has been processed. If Company desires to

stop any payment that has already been processed, Company must contact customer service at number listed on Bank's website. Although Bank or Bill Pay Provider will make every effort to accommodate Company's request, Bank or Bill Pay Provider will have no liability for failing to do so, and Company shall indemnify Bank and Bill Pay Provider for any damages incurred during such attempt.

5. **Timeliness of Payments.** Company is solely responsible for scheduling and authorizing bill payments in such a manner that the bills will be paid on time.
6. **Payment Scheduling.** When scheduling payments, Company must select a Scheduled Payment Date that is no later than the actual Due Date reflected on Company's Biller statement unless the Due Date falls on a non-Business Day. If the actual Due Date falls on a non-Business Day, Company must select a Scheduled Payment Date that is prior to the actual Due Date. Scheduled Payment Dates must be earlier than the late date or grace period.
7. **The Service Guarantee.** Due to circumstances beyond the Bill Pay Provider's control or particularly delays in handling and posting payments by Billers or financial institutions, some transactions may take longer to be credited to Payment Account. Bill Pay Provider will bear responsibility for any late payment related charges up to fifty dollars (\$50.00) should a payment post after its Due Date as long as the payment was scheduled in accordance with the guidelines described under "Payment Scheduling" in the Agreement. Company acknowledges this guaranty constitutes Company's sole remedy for late payments.
8. **Payment Authorization and Payment Remittance.** By providing the Bill Pay Provider with Payment Instructions through the Service, Company authorizes the Bill Pay Provider to make payments to a designated Biller Account by debiting the designated Payment Account. In order to process payments more efficiently and effectively, the Bill Pay Provider may edit or alter payment data or data formats in accordance with Biller directives.

When the Bill Pay Provider receives Payment Instructions from Company through the Service, Company authorizes the Bill Pay Provider to debit Company's Payment Account and remit funds on Company's behalf so that the funds arrive as close as reasonably possible to the Scheduled Payment Date designated by Company. Company also authorizes the Bill Pay Provider to credit Company's Payment Account for payments returned to Bank or Bill Pay Provider by the United States Postal Service or Biller.

Bill Pay Provider will use commercially reasonable efforts to make all Company's payments properly. However, Bill Pay Provider shall incur no liability and any service guarantee, as described above, shall be void if Bill Pay Provider is unable to complete any payments initiated by Company because of the existence of any one or more of the following circumstances:

- a. If, through no fault of Bank, Company's Payment Account does not contain sufficient funds to complete the transaction or the transaction would exceed the credit limit of Company's Payment Account;
- b. The payment processing center is not working properly and Company knows or has been advised by Bank or Bill Pay Provider about the malfunction before Company executes the transaction;
- c. Company has not provided the Bill Pay Provider with the correct Payment Account information, or the correct name, address, telephone number or Biller Account information for the Biller.

Provided none of the foregoing exceptions are applicable, if Bill Pay Provider causes an incorrect amount of funds to be removed from Company's Payment Account or causes funds from Company's Payment Account to be directed to a Biller which does not comply with Company's Payment Instructions, Bill Pay Provider shall be responsible for returning the improperly transferred funds to Company's Payment Account, and for directing to the proper Biller any previously misdirected transactions, and, if applicable, for any late payment related charges.

Bill Pay Provider is not required to honor any Payment Instructions if Collected Balance is not sufficient in the Payment Account in an amount equal to or greater than the amount of the item. In the case of insufficient funds, Bank or Bill Pay Provider has the option in its sole discretion to either honor or dishonor the item. If the item is honored, Company is liable for any overdraft and related charges. If the item is dishonored, Company is responsible for any related charges from Bank or third parties.

9. **Payment Cancellation Requests.** Company may cancel or edit any Scheduled Payments (including recurring payments) by following the directions within the Service. There is no charge for canceling or editing a Scheduled Payment. Once

the Bill Pay Provider has begun processing a payment it cannot be cancelled or edited.

10. **Prohibited Payments.** Payments to Billers outside of the United States or its territories are prohibited through the Service.
11. **Exception Payments.** Tax payments and court-ordered payments may be scheduled through the Service; however such payments are discouraged and must be scheduled at Company's own risk. In no event shall Bill Pay Provider be liable for any claims or damages resulting from Company scheduling of these types of payments. The service guarantee described above, as it applies to any late payment related charges, is void when these types of payments are scheduled and/or processed through the Service. Bank or Bill Pay Provider has no obligation to research or resolve any claim resulting from an exception payment. All research and resolution for any misapplied, un-posted or misdirected payments will be the sole responsibility of Company and not Bank or Bill Pay Provider.
12. **Bill Delivery and Presentment.** This feature is for the presentment of electronic bills only and it is Company's sole responsibility to contact Billers directly if Company does not receive its statements. In addition, if Company elects to activate one of the Service's electronic bill options, Company also agrees to the following:
  - a. **Information provided to the Biller.** Bill Pay Provider is unable to update or change Company's information including, but not limited to, name, address, phone numbers and email, with the electronic Biller. Any changes will need to be made by contacting the Biller directly. Additionally, it is Company's responsibility to maintain Login Credentials for all electronic Biller sites. Company also agrees not to use information received without authorization to gain unauthorized access to another person or company's bill. Bill Pay Provider may, at the request of the Biller, provide to the Biller, Company's email, service address, or other data specifically requested by the Biller at the time of activating the electronic bill for that Biller, for purposes of the Biller informing Company about Service and/or bill information.
  - b. **Activation.** Upon activation of the electronic bill feature, Bill Pay Provider may notify the Biller of Company's request to receive electronic billing information. The presentment of Company's first electronic bill may vary from Biller to Biller and may take up to sixty (60) calendar days, depending on the billing cycle of each Biller. Additionally, the ability to receive a paper copy of Company's statement(s) is at the sole discretion of the Biller. While Company's electronic bill feature is being activated, it is Company's responsibility to keep its Biller Accounts current. Each electronic Biller reserves the right to accept or deny Company's request to receive electronic bills.
  - c. **Authorization to Obtain Bill Data.** Company's activation of the electronic bill feature for a Biller shall be deemed by Bill Pay Provider to be Company's authorization for Bill Pay Provider to obtain bill data from the Biller on Company's behalf. For some Billers, Company will be asked to provide Bill Pay Provider with Company's Login Credentials for that Biller. By providing Bill Pay Provider with such information, Company authorizes Bill Pay Provider to use the information to obtain Company's bill data.
  - d. **Notification.** Bill Pay Provider will use commercially reasonable efforts to present all of Company's electronic bills promptly. In addition to notification within the Service, Bill Pay Provider may send an email notification to the email listed for Payment Account. It is Company's sole responsibility to ensure that this information is accurate. In the event Company does not receive notification, it is Company's responsibility to periodically logon to the Service and check on the delivery of new electronic bills. The time for notification may vary from Biller to Biller. Company is responsible for ensuring timely payment of all bills.
  - e. **Cancellation of Electronic Bill Notification.** The electronic Biller reserves the right to cancel the presentment of electronic bills at any time. Company may cancel electronic bill presentment at any time. The timeframe for cancellation of Company's electronic bill presentment may vary from Biller to Biller. It may take up to sixty (60) calendar days, depending on the billing cycle of each Biller. Bill Pay Provider will notify Company's electronic Biller(s) as to the change in status of Biller Account and it is Company's sole responsibility to make arrangements for an alternative form of bill delivery. Bill Pay Provider will not be responsible for presenting any electronic bills that are already in process at the time of cancellation.
  - f. **Non-Delivery of Electronic Bill(s).** Company agrees to hold Bank or Bill Pay Provider harmless should the Biller fail to deliver Company's statement(s).

Company is responsible for ensuring timely payment of all bills. Copies of previously delivered bills must be requested from the Biller directly.

- g. **Accuracy and Dispute of Electronic Bill.** Bill Pay Provider is not responsible for the accuracy of Company's electronic bill(s). Bill Pay Provider is only responsible for presenting the information it receives from the Biller. Any discrepancies or disputes regarding the accuracy of Company's electronic bill summary or detail must be addressed with the Biller directly.
  - h. The Agreement does not alter Company's liability or obligations that currently exist between Company and its Billers.
13. **Service Termination, Cancellation or Suspension.** Any payment(s) Bill Pay Provider has already processed before the requested cancellation date may be completed by Bill Pay Provider, in its sole discretion. All Scheduled Payments including recurring payments will not be processed once the Service is cancelled. Bank or Bill Pay Provider may terminate or suspend Service to Company at any time. Neither termination nor suspension shall affect Company's liability or obligations under the Agreement.
14. **Bill Limitation.** Bill Pay Provider reserves the right to refuse to pay any Biller to whom Company may direct a payment. Bill Pay Provider will notify Company promptly if Bill Pay Provider decides to refuse to pay a Biller designated by Company. This notification is not required if Company attempts to make a prohibited payment or an exception payment under the Agreement.
15. **Returned Payments.** In using the Service, Company understands that Billers and/or the United States Postal Service may return payments to Bank or Bill Pay Provider for various reasons such as, but not limited to (i) Biller's forwarding address expired; (ii) Biller Account number is not valid; (iii) Biller is unable to locate Biller Account; or, (iv) Biller Account is paid in full.

The Bill Pay Provider will use commercially reasonable efforts to research and correct the returned payment and return it to Company's Biller, or void the payment and credit Company's Payment Account. Company may receive notification from the Service.

## ELECTRONIC DATA INTERCHANGE

### 1. Definitions.

- a. "ACH" shall mean Automated Clearing House.
- b. "ACH Addenda" shall mean a record or records that contain supplemental data related to an ACH Entry.
- c. "Entry" shall mean one of the following:
  - i. An ACH order or request for the transfer of money to the deposit or loan Account of a Receiver (a "credit Entry");
  - ii. An ACH order or request for the withdrawal of money from the deposit Account of a Receiver (a "debit Entry"); or,
  - iii. A non-monetary Entry to the deposit or loan Account of a Receiver.
- d. "EDI" shall mean Electronic Data Interchange.
- e. "Standard Entry Class Code" shall mean a three-character code that identifies the type of an Entry.

2. **Electronic Data Interchange.** If requested by Company, and available as Service by Bank, Company may use the Service to access and download ACH Addenda reports relating to an Entry posted to one or more of Company's Accounts maintained with Bank. Company may elect to receive ACH Addenda reports on all or some of the Standard Entry Class Code ACH Entries, as requested in writing or through the System.

## LOCKBOX

1. **Definitions.** For purposes of lockbox service, the following terms shall have the definitions assigned to them:

- a. "Acceptable Payee" shall mean Company and each Other Payee.
- b. "BIN" shall mean a Lockbox number or bank identification number assigned to the Lockbox.
- c. "Checks" shall mean checks, drafts and money orders.

- d. "Charges" shall mean credit card payments.
- e. "Commercial Account Agreement" shall mean the provisions of any commercial deposit Account agreement, as amended from time to time, the agreement and any and all schedules and addendums to the agreement, which (i) have been issued by Bank and (ii) relates to the Account.
- f. "Confidential Service Information" shall mean information concerning access to any Service, including the security procedures.
- g. "Lockbox" shall mean the designated lockbox at a U.S. Postal facility.
- h. "Lockbox Account" shall mean the Account designated by Company to receive processed and prepared Checks.
- i. "Merchant Processor" shall mean a merchant processor with which Company has entered into a credit card authorization agreement and that is acceptable to Bank.
- j. "OCR" shall mean Optical Character Recognition.
- k. "Online Viewer" shall mean secure online access to an image and data archive with respect to Checks Bank processes.
- l. "Other Payees" shall mean other parties for whom Company is authorized to obtain payment.
- m. "Remittance Address" shall mean the mailing address for the Lockbox number or BIN.
- n. "Settlement Account" shall mean the Account to be credited for Charges or debited by Company's Merchant Processor under the terms of Company's merchant services agreement. In order for Bank to perform Merchant Processing on behalf of Company, Company must establish a Settlement Account with PayTrace/FIS.
- o. "User Information" shall mean names, domain names, addresses, Login Credentials, telephone and device numbers, the content of messages, data files, and other data and information provided by Company, other sources in connection with the Services, or software.

2. **Lockbox Access.** If requested by Company and available as a Service by Bank, Bank will provide the Lockbox services subject to and according to the terms and conditions of the Agreement and the related Service Documentation (the "Services"). Services provided to Company will vary from the Agreement only as requested by Company in writing and approved by Bank.

3. **Assignment of Lockbox Number.** Bank will make available to Company a designated Lockbox, assign a BIN for the receipt of Checks as well as Charges, and advise Company of the Remittance Address.

4. **Mail Pickup and Receipt.** Bank will pick up mail received at the Remittance Address in accordance with Bank's regular schedule. Bank may change the scheduled pick up of mail at any time at Bank's discretion.

5. **Deposits.** Only checks drawn on United States (US) banks and Charges (credit card payments) are acceptable deposit items under the timeframes listed. Bank will send foreign checks for collection and deposit the funds when received.

6. **Payee List.** Company will provide Bank with a list of payee names that Company has the legal authority to accept checks for deposit and otherwise negotiate. This includes variations of the legal name(s). Checks payable to unacceptable payees will be returned to Company.

7. **OCR Documents.** Company's OCR document and remittance envelope must be designed in accordance with Bank's technical specifications, as revised from time to time. These technical specifications include requirements for document size, paper weight, OCR line placement, OCR line content, and document colors. Company must provide Bank with sample OCR documents and remittance envelopes for testing and approval prior to the implementation of the Lockbox Services, and prior to implementing any changes to the OCR scan line, any wording change or any print changes (e.g., font changes and changes in the placement of data on the OCR document).

8. **Use of Lockbox.** Company will instruct its customers to limit use of the Lockbox to the receipt of Checks (checks, drafts and money orders) and, if applicable, Charges (credit card payments) only. Cash remittances or other items of value cannot be sent to Company's Lockbox. Company must instruct Company's remitters not to send such items to the Remittance Address. If Bank receives any cash or other such items, Bank will use reasonable efforts to (i) Deposit any cash remittances in Company's designated Account; and (ii) Forward to Company any other items of value received at the Remittance Address. Bank is not, however,

liable to any person for any cash remittances or other items of value sent to Company's Remittance Address which may be lost, stolen or misplaced. With respect to any sundry correspondence or other related documents other than Lockbox documents sent to Company's Lockbox, Bank will make a good faith effort to image or return such documents to Company per Company's instructions and Bank shall not be responsible for lost, stolen or misplaced documents. Bank will not read, inspect or otherwise process such correspondence or documents.

9. **Courtesy Amount.** Checks will be processed for the courtesy (numeric) amount. If the courtesy (numeric) is unreadable, Bank will process the check for the written amount.
10. **No Duty to Inspect.** Bank will not inspect any Check, OCR document, or Charge authorizations or other accompanying document for any writing from Company's remitters (such as "paid in full," "final payment" or words of similar meaning), and Bank will not be responsible for taking (or failing to take) any action based upon any such writing.
11. **Funds Availability.** All checks will be subject to Bank's established funds availability policy, including Bank's policy for placing case-by-case and exception holds.
12. **Rejects/Exceptions.** Rejects and exceptions will be returned to Company. Rejects and exceptions consist of checks issued to unacceptable payees, unreadable checks, cash, empty envelopes, etc.
13. **Returned Items.**
  - a. Checks returned unpaid for any reason will be charged to the account where deposited. Returned checks will be in the form of a Substitute Check. Substitute Check returns shall be mailed to Company; or,
  - b. To re-present a Substitute Check, Company can deliver to Bank as a normal deposit.
14. **Account Reconciliations.**
  - a. Company shall reconcile account statements to confirm deposits within thirty (30) calendar days of receipt.
  - b. Any settlements not credited, credited in error, or in a different amount should be immediately reported to Bank.
15. **Security.** Company will maintain the security and strict confidentiality of all account numbers and identification data (identification data, codes and passwords) as well as information concerning access to Lockbox Service including the confidential service information (information concerning access to any Lockbox Service, including the security procedures). If at any time any identification data or confidential security information has been lost, stolen or misused or Company believes that the security of communications between Bank and Company has been compromised or is in any way insecure, Company must notify Bank promptly (with confirmation in writing) and assist Bank in investigating and remedying the situation.
16. **Termination.** Bank makes available to Company a designated Lockbox. If Lockbox Services are terminated, Bank will follow Company's directions for the mail addressed to the Lockbox for a period of three (3) months after the date of termination of the Lockbox Services, unless otherwise agreed by Company and Bank. Bank's normal service fees apply for this period and Company authorizes Bank to prepay the anticipated amount via a charge to Company's designated Account at the time of termination.
17. **Lockbox Remittances.**
  - a. Bank will open mail picked up at the Remittance Address, extract Checks and remittance documents, and process and prepare Checks for deposit to Company's designated Lockbox Account. Bank will provide Company with electronic images of all Checks processed for that Business Day in accordance with Company's instructions, and will maintain digitized images of all Checks processed for Bank's customary retention period. Bank will accumulate remittance data during the processing of Company's Lockbox deposits and transmit that data to Company in accordance with Company's instructions. Remittance data may include the account number, the amount billed, the amount paid, or other data contained in the remittance documents.
    - i. Company represents and warrants that Company has the legal authority to accept for deposit and otherwise negotiate Checks payable to payees different from Company's legal name as such names are designated on the Service Documentation. Bank will deposit Checks in or otherwise credit Company's designated

Lockbox Account for Checks processed on each Business Day in accordance with Bank's customary practices, deposit cut-off hours and applicable law. Company may also designate a Lockbox Account as Company's Settlement Account to be credited for Charges or debited by Company's Merchant Processor under the terms of Company's merchant services agreement.

- ii. Bank will have the right to charge back to Company's designated Account for the amount of any Check deposited in or otherwise credited to Company's Lockbox Account through this Service which Bank determines was not payable to Company or is returned to Bank for any reason.

## MOBILE BANKING SERVICE

1. **Definitions.** For purposes of Mobile Banking Service, the following terms shall have the definitions assigned to them:
  - a. "Alert" or "Alerts" shall mean the notification of Account information or events delivered via email, Text Banking, or telephone.
  - b. "Mobile Device" shall mean a small, handheld computing device usually outfitted with a display screen and input method (either touchscreen or miniature keyboard). Many portable Mobile Devices have operating systems that can run applications (or "Apps").
2. **Participating Carriers.** Bank's participating carriers include (but are not limited to) AT & T, SprintPCS, T-Mobile®, U.S. Cellular®, and Verizon Wireless.
3. **Mobile Banking Service and Mobile Deposit.** If requested by Company and available by Bank, Company may use Mobile Services. Enrollment requires Company to have access to Online Banking and to execute the Agreement.
4. **Description of Mobile Services.** Mobile Services allows Company to perform several functions from a Mobile Device. The availability of Services and features differ between Business Online Banking and Treasury Online Banking. Where available, Company may use Mobile Services to:
  - a. transfer funds between Accounts;
  - b. obtain Account balances and transaction information for Accounts;
  - c. receive Alerts on Accounts; and,
  - d. utilize other features as Bank establishes from time to time.These Services and features are limited to the extent, and subject to the terms, noted below:
  - e. Features available with Business Online Banking may be different than features available with Treasury Online Banking;
  - f. Company's ability to transfer funds between certain Accounts is limited by federal law and the Deposit Agreement;
  - g. Information for Accounts will be available from Mobile Services for a maximum of three-hundred-sixty-five (365) calendar days from the date of inquiry and reflect activity through the close of business of the previous Business Day; and,
  - h. Company's ability to use Services to pay bills to Billers, submit ACH or Online Wire Transfers from a Mobile Device are only available if Company has enrolled in Treasury Online Banking.
5. **General Information.**
  - a. For questions regarding Mobile Services, contact Bank at the following phone numbers:
    - i. Business Online Banking: 855.755.7079 or 701.298.7079; or,
    - ii. Treasury Online Banking: 855.797.4603 or 701.298.7100.
  - b. Text Banking is only available on Business Online Banking.
  - c. To stop text messages from being delivered on a Mobile Device, Individual may send "STOP" to the number 226563. Individual may also contact Bank to cancel Text Banking.
6. **Accessibility.** In order to use Text Banking, Company needs a Mobile Device enabled with SMS.

- a. Text Banking requires a text-enabled Mobile Device. Company does not need internet access on Company's Mobile Device to use Text Banking. Internet access is required to utilize Mobile Browser Banking and Mobile App.
  - b. On occasion, Bank may develop additional features for Mobile Services. As additional features are developed, Company will have the opportunity to add them to Mobile Services, provided Company has compatible wireless hardware and software.
  - c. To use Mobile Services, Company must be enrolled in Online Banking. Within Mobile Services, Company will have access to all of the Accounts Company can view within Online Banking.
  - d. Company is responsible for the purchase, maintenance and Mobile Device relationship, including fees associated with the operation of Mobile Device. Bank is not responsible for any errors or failures from any malfunction of Company's Mobile Device.
  - e. Company can use Mobile Services seven (7) days a week, twenty-four (24) hours a day. However, at certain times, some or all of the Mobile Services may not be available due to System Maintenance or reasons beyond Bank's control, including, but not limited to, the availability of Mobile Device services. Bank does not warrant that Mobile Services will be available at all times and shall not be responsible when Mobile Services are unavailable. The display of account information may be limited or otherwise vary based on Company's Mobile Device and Company's Mobile Device Service.
7. **Charges.** Bank will not charge Company for viewing Accounts, transferring funds, or viewing transaction history. Bank reserves the right to charge fees in the future and such fees will be subject to change. Account(s) are still subject to the fees, charges, balance requirements, etc. articulated in the "Service Charges", "Understanding Company's Deposit Account" brochures and other Service Documentation. In addition, message, data, and other rates may apply. Refer to Mobile Device carrier for details.
8. **Company Responsibilities.**
- a. Company agrees not to use Mobile Services to conduct any business or activity or solicit the performance of any activity that is prohibited by law or any contractual provision by which Company is bound with any person. Company agrees to comply with all applicable laws, rules, and regulations in connection with Mobile Services.
  - b. Company agrees to promptly notify Bank in the event Company loses, changes, or destroys the Mobile Device whose number is registered with Mobile Services.
  - c. Company shall not use any company-identifiable information when providing shortcuts or creating nicknames to Accounts.
9. **Limited Liability for Use of Bank's Mobile Services.** Bank and Company's mobile service provider cannot make any representation or warranty that Company will have continuous or uninterrupted access to Bank's Mobile Service or any of its content or function or that any of the functions of Bank's Mobile Service will be error-free. The Mobile Banking Service is provided to Company "as is" and "as available." Bank and Company's mobile service provider cannot make any representation or warranty relating to Bank's Mobile Services (including, without limitation, its performance, availability, contents, or functions) or any advertisements or websites in connection with that Service. Company's sole and exclusive remedy for any failure or non-performance of Bank's Mobile Banking Service shall be for Bank to use commercially reasonable efforts to perform an adjustment or repair of Mobile Services. Company understands that there are risks associated with using a Mobile Device and that in the event of theft or loss; Company's confidential information could be compromised. In no event will Bank or any of its officers, directors, shareholders, subsidiaries, affiliates, agents, licensors or third party service providers be liable for any consequential (including, without limitation, loss of data, files, profit, or goodwill or the costs of procurement of substitute of goods or Mobile Services, indirect, incidental, special or punitive damages arising out of, or in connection with, Company's use of Mobile Services. Bank makes no representations or warranties regarding the accuracy, functionality or performance of Mobile Services or any software that may be used in connection with Mobile Services. Bank disclaims any express or implied warranties, including any warranties of merchantability, fitness for a particular purpose or error-free operation.
10. **Error Resolution.** If Company or Account Owner verbally informs Bank of an error involving a Personal Account, Bank may require confirmation of Company or Account Owner's complaint in writing within ten (10) Business Days.

Bank will determine whether an error involving a Personal Account occurred within ten (10) Business Days after notification by Company or Account Owner and will promptly correct any error. If Bank needs more time, however, Bank may take up to forty-five (45) calendar days (ninety (90) calendar days for errors or questions involving a transaction initiated outside of the United States or at a point-of-sale terminal or for a new Personal Account) to investigate Company or Account Owner's complaint or question. If Bank decides to investigate Company or Account Owner's complaint or question involving a Personal Account, Bank will credit such Personal Account within ten (10) Business Days (twenty (20) calendar days for a new Personal Accounts) for the amount Company or Account Owner believes is in error, so that Company or Account Owner will have the use of the money during the time it takes Bank to complete investigation. If Bank requests Company or Account Owner to put the complaint or question in writing and Bank does not receive it within ten (10) Business Days, Bank may not credit such Personal Account.

Bank will communicate to Company or Account Owner the results within three (3) Business Days after completing investigation regarding a Personal Account. If Bank decides there was no error, Bank will send Company or Account Owner, as applicable, a written explanation. Company or Account Owner may ask for copies of the documents that Bank used in investigation.

## MOBILE REMOTE DEPOSIT CAPTURE

Company agrees that the Remote Deposit Capture Services using Mobile Remote Deposit Capture shall be governed by these terms and conditions and other relevant terms of the agreement(s) governing the Account into which checks are deposited (including, but not limited to, Bank's "Understanding Company's Deposit Account," "Service Charges" and "Electronic Funds Transfer" brochures), and that Bank may change or discontinue the terms and conditions for Mobile Remote Deposit Capture at any time.

1. **Definitions.** For purposes of Mobile Remote Deposit Capture, the following terms shall have the definitions assigned to them:
  - a. "Check Image" is an electronic image of an original paper check or an electronic image of a Substitute Check that is created by Company, Bank or another bank or depository institution in the check collection system.
  - b. "Check Image Metadata" is information about the Check Image, as well as pointers to the actual image data (also known as image tags).
  - c. "Customer System" is the computer hardware, software and web-based applications located at Company's site that is used by Company to prepare Electronic Deposits and to access the Mobile Remote Deposit Capture Services.
  - d. "Electronic Deposit" is electronic information (including Check Images, Check Image Metadata, MICR Data, or dollar amount information), obtained from capturing information from an original paper check, that is transmitted to Bank for deposit, processing and collection.
  - e. "MICR Data" is information from the Magnetic Ink Character Recognition stylized printing on the bottom of checks comprising of routing, transit, account and check serial numbers.
  - f. "Mobile Remote Deposit Capture" or "Mobile Check Deposit" is the remote deposit capture service governed by the Agreement that allows Company to receive a check and deposit it electronically at Bank.
  - g. "Post-dated Check" shall mean a paper check that is made payable at some point in the future.
  - h. "Remote Deposit Capture System" is Bank's computer systems and databases that Company may access in order to use Mobile Remote Deposit Capture.
  - i. "Substitute Check" is a reproduced paper check document that meets the definition of a "substitute check" in the Check Collection for the 21 Century Act as implemented by Regulation CC of the Federal Reserve Board.
2. **Service.** Mobile Remote Deposit Capture provides Company with the option of making Electronic Deposits to Company's Accounts through a Mobile Device. For the avoidance of doubt, the provisions of the Agreement applicable to Remote Deposit shall also apply to Mobile Remote Deposits unless inconsistent with these specific terms governing Mobile Remote Deposit, in which case these terms governing Mobile Remote Deposit shall prevail.



3. **Processing Options.** As part of Mobile Remote Deposit Capture's remote deposit capture services, checks may be processed as a Check Image or Substitute Check. Company will capture and convert checks received into Check Images and transmit Check Images to Bank for processing and collection. Bank will collect such Check Images through the check collection system by presenting or exchanging Check Images or using Check Images to create Substitute Checks for collection.

4. **Mobile Remote Deposit Capture Requirements.** Company shall at all times maintain an Account with Bank. Company agrees to not use Mobile Remote Deposit Capture in a location outside the United States.

5. **Determination of Items Eligible for Mobile Remote Deposit Capture**

- a. Bank shall have no liability to Company or any other person in the event that Company's Electronic Deposit is processed as, or converted by Bank to, a Check Image or Substitute Check.
- b. Only a draft, payable on demand, and drawn on or payable through or at an office of a bank, is eligible for deposit as a Check Image. Without limiting the generality of the preceding sentence, the following items are not eligible for deposit as Check Images under Mobile Remote Deposit Capture, and Company must deposit these original paper checks with Bank for collection:
  - i. Checks, including travelers checks, that are drawn on banks located outside of the United States;
  - ii. Checks payable in a medium other than U.S. dollars;
  - iii. Non-cash items (as defined under Section 229.2(u) of Federal Reserve's Regulation CC);
  - iv. Promissory notes and similar obligations, such as savings bonds;
  - v. Third party checks;
  - vi. Substitute Checks; and,
  - vii. Any other class of checks or drafts as identified by Bank to Company from time to time.
- c. Company agrees not to use Mobile Remote Deposit Capture to take pictures of and deposit any paper checks or other items as shown below which shall be considered ineligible items:
  - i. Checks or items payable to any person or Entity other than Company;
  - ii. Checks made payable to Company, and Company attempts to deposit into a Personal Account or different Entity;
  - iii. Checks or items containing an alteration to any of the fields on the front of the paper check or item, or which Company knows or suspects, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the check or item is drawn;
  - iv. Checks that have been previously negotiated, including through the Services;
  - v. Checks that have been previously submitted through a service offered at another financial institution;
  - vi. Checks or items dated more than six (6) months prior to the date of the deposit;
  - vii. Post-dated Checks;
  - viii. Checks with any endorsement on the back other than that specified in the Agreement;
  - ix. Deposits which exceed Company per check or daily limit.

The above list is not meant to be exhaustive.

- d. Company agrees to restrictively endorse each paper check and ensure all other necessary endorsements are obtained prior to capturing Check Images for transmission to Bank.
- e. Company will include the words, "Bell Mobile Deposit," on the back of the paper check, below the endorsements.

6. **Capture of Checks and Check Information**

- a. Company shall be responsible for accurately capturing an image of each paper check and the correct dollar amount of the check into the System. In the event the condition of a paper check precludes a complete automated read, Company shall be responsible for visually inspecting the check. Company shall be responsible for the inspection of all Check Images to ensure the legibility of the Check Image (including without limitation the dollar amount and signature of the person who signed the check (the "Drawer").
- b. Company agrees to ensure that any and all information on a paper check is accurately captured and legible in the resulting Check Image and otherwise complies with any Check Image quality standards and guidelines that may be established by ANSI, ECCHO Rules, the Federal Reserve, other applicable regulatory agency or clearinghouse, or that Bank may provide to Company from time to time.
- c. Company acknowledges that current image technology may not capture all security features (e.g. watermarks) contained in the original paper checks, and agrees to assume any and all losses resulting from claims based on security features that do not survive the image process.
- d. Company further acknowledges that Bank does not verify the accuracy, legibility or quality of the Check Image or MICR Data prior to processing an Electronic Deposit. Bank may, in its sole discretion, reject, repair, alter, amend, reformat or convert the Check Image Metadata or MICR Data submitted in an Electronic Deposit in accordance with general check collection practices and industry presentment standards, but Bank shall have no obligation to reject, repair, alter, amend, re-format or convert the Check Image Metadata or MICR Data. If Bank requires that Company comply with certain formatting standards or other guidelines when submitting Electronic Deposits and Company declines to implement, or comply with, such standards or guidelines, Company acknowledges that Bank shall not be liable for any error or loss that results from Bank processing such Electronic Deposit or from Bank's re-formatting or conversion of the Electronic Deposit prior to processing.
- e. Bank shall not be liable to Company for failure to process an Electronic Deposit, or any error that results in processing or collecting an Electronic Deposit, including, without limitation:
  - i. For which Company has not provided Bank with full and correct MICR Data and dollar amount from the original paper check;
  - ii. For which Company has not provided an accurate and legible image of the original paper check;
  - iii. For which Company has failed to comply with formatting standards or other guidelines required by Bank; or,
  - iv. For which would violate the Agreement.

7. **Upload of Electronic Deposit to Bank**

- a. An Electronic Deposit is received when the entire Electronic Deposit transmission in which that Electronic Deposit is contained is received by Bank in accordance with section 6, above. If only a portion of that Electronic Deposit transmission is received by Bank for any reason, including and without limitation, a failure during the transmission to Bank, the Electronic Deposit transmission is deemed to have been not received by Bank.
- b. Bank will process Electronic Deposit transmission received from Company via Check Image collection only.
- c. Electronic Deposits received will post to Account within one (1) Business Day.

8. **Collection of Check Images.** Notwithstanding anything to the contrary in the Agreement, Bank may in its sole discretion determine the manner in which Bank will seek to collect a Check Image deposited by Company. Without limiting the generality of the preceding sentence, Bank may, at its option: (i) present or transfer the Check Image to the paying bank, a Federal Reserve Bank, image share/exchange network, or other collecting bank; (ii) create a Substitute Check from the Check Image and collect the Substitute Check; or (iii) request that Company provide to Bank the original paper check from which the Check Image was created and then collect the original paper check.

9. **Returns.** Customer agrees that Bank may charge Company's Account for any and all returned items, including a returned Check Image.

10. **Re-presentation of Returns.** In the event Bank, in its sole discretion, determines that it requires the original paper check for re-presentation in order to collect a returned Check Image, Company shall be responsible for providing to Bank the original paper check, or if the original paper check has been destroyed, for obtaining a replacement check.
11. **Items or Images Received for Deposit.** Bank reserves the right to reject any deposit (as an Electronic Deposit or otherwise) for any reason. Bank will notify Company of the rejection of any deposit.
12. **Retention and Destruction of Original Paper Checks.** Company agrees to prominently mark the item as "Electronically Presented" or "VOID" and to properly dispose of the item after fourteen (14) calendar days to ensure that it is not re-presented for payment. Company agrees never to re-present the item. Company will provide any retained item, or a sufficient copy of the front and back of the item, to Bank as requested to aid in the clearing and collection process, to resolve claims by third parties with respect to any item, or for Bank's audit purposes.
13. **Representations and Warranties.** With respect to each Check Image or Electronic Deposit that Company transmits to Bank, Company is deemed to make any representation or warranty that would have applied had Company deposited the original paper check. In addition Company is deemed to make to Bank any representation or warranty that Bank makes, under applicable law, clearinghouse rule, Federal Reserve Operating Circular, bi-lateral agreement or otherwise, to any person (including without limitation a collecting Bank, a Federal Reserve Bank, a Receiving Depository Financial Institution, a paying bank, a returning bank, the Drawer, any endorser, or any other transferee) when Bank transfers, presents or originates the Electronic Deposit or Check Image, or a Substitute Check created from that Check Image. These representations and warranties include but are not limited to, that: (i) the transmissions contain accurate images of the front and back of the original checks; (ii) the transmissions contain all necessary endorsements up until the original checks are imaged; and (iii) no depository bank, Drawer, or endorser will be asked to make a payment based on an item that it has already paid.
14. **Company's Responsibility.** With respect to each Check Image or Electronic Deposit that Company transmits to Bank, Company shall indemnify and hold Bank harmless from and against any and all claims, demands, damages, losses, liabilities, penalties and expenses (including, without limitation, reasonable attorney fees and court costs at trial or on appeal) arising directly or indirectly:
  - a. From breach of a representation or warranty as set forth in section 13 above;
  - b. As a result of any act or omission in the capturing, creation or transmission of the Check Image or Electronic Deposit, including without limitation the encoding of the MICR Data from the original paper check;
  - c. From any duplicate, fraudulent or unauthorized check, Check Image or Substitute Check;
  - d. For any loss caused by Bank's acceptance or creation of a Check Image instead of presentment of the original paper check; or,
  - e. From any other act or omission arising out of Bank's action or inaction taken pursuant to any request by Company or pursuant to the Agreement. This section 14 shall survive termination of the Agreement.
15. **Limited Use.** Company may use Mobile Remote Deposit Capture and the Remote Deposit Capture System for linked Personal Accounts for as long as Bank in its sole discretion provides Company with Mobile Remote Deposit Capture. Company and Account Owner acknowledge the risks associated with such use and agree to indemnify Bank for any losses resulting therefrom.
16. **Rules Applicable to Collection of Checks.** Company acknowledge and agrees that a Check Image or Substitute Check may, in the sole discretion of Bank, be collected through one or more check clearinghouses, one or more Federal Reserve Banks, or an agreement with another financial institution or image share/exchange network. In such cases, the Check Image or Substitute Check is subject to the rules of that clearinghouse, Federal Reserve Bank, or image share/exchange network or financial institution agreement.
17. **Security Procedures.** Company shall comply with all security procedures for Mobile Remote Deposit Capture that are established by Bank or set forth in any written user requirements communicated to Company. Company is solely responsible for (i) maintaining its own internal security procedures, (ii) safeguarding the security and confidentiality of Check Images, Check Image Metadata and other information that is either printed from, stored on, or downloaded to, the System, Remote Deposit Capture System, or other

computer/data systems or portable media; and (iii) preventing errors or unauthorized access to the System or the Remote Deposit Capture System.

## **ONLINE WIRE TRANSFER**

1. **Definitions.** For purposes of Online Wire Transfer Services, the following terms shall have the definitions assigned to them:
  - a. "Alternative Method" shall mean submitting Online Wire Transfer instructions to Bank via process described below or in Bank's current Online Wire Transfer Operating Procedures.
  - b. "Online Wire Transfer" shall mean the transferring of funds from Company's Wire Account to a Payee via Treasury Online Banking.
  - c. "Payees" shall mean the recipient Company has designated to receive the Online Wire Transfer.
  - d. "Security-related Items" shall mean information, including but not limited to, security procedures, instructions, Login Credentials, and other software and hardware that interface with, connect to, or allow access to Online Banking.
  - e. "USD" shall mean U.S. Dollars.
  - f. "Wire Account" shall mean the deposit Account Company designates to be debited to send an Online Wire Transfer.
2. **Online Wire Transfer Access.** If requested by Company and available as a Service by Bank, Bank will provide Online Wire Transfer Services to Company subject to and according to the terms and conditions of the Agreement and the related Service Documentation.
 

Company may use the Service to establish and authorize Online Wire Transfers to Payees by submitting Online Wire Transfer instructions to Bank via Treasury Online Banking or Alternative Method. Online Wire Transfer instructions submitted to Bank via Alternative Method may only be communicated to Bank by process described in Bank's current Online Wire Transfer Operating Procedures. Subject to the terms and conditions of the Agreement, Bank will follow Company's Online Wire Transfer instructions by debiting Company's Account, and remitting the funds on Company's behalf to the Payee. Company is solely responsible for choosing the Account, establishing the Payees, and providing accurate Payment Instructions.
3. **Authorization and Remittance.** By providing Bank with names and Account information of Payees Company wishes to wire funds to, Company has authorized Bank to follow Company's Online Wire Transfer instructions and to debit Company's Account and remit funds on Company's behalf to the designated Payees.
4. **Insufficient Funds.** Bank is not required to honor any Online Wire Transfer instructions if the Collected Balance in the Wire Account is not sufficient for the amount of the Online Wire Transfer instructions.
5. **Inconsistency of Online Wire Transfer Instructions.** Company represents that Online Wire Transfer instructions are complete and accurate. Company acknowledges that if Online Wire Transfer instructions include incorrect information, Company may lose funds instructed to be sent. It is not Bank's responsibility to attempt to detect erroneous or unauthorized Online Wire Transfer instructions. If Online Wire Transfer instructions define a Payee inconsistently by name and account number, the Online Wire Transfer may be made on the basis of the Account number even if the Account number identifies someone different from the Payee. If Online Wire Transfer instructions identify a financial institution inconsistently by name and identification number, the identification number may be relied upon as the proper identification required by the Payee's bank.
6. **Cancellations or Amendment of Wire.** For domestic Online Wire Transfers, Company shall have no right to cancel or amend any Online Wire Transfer after its receipt by Bank. However, Bank shall use reasonable efforts to act on a request by Company to cancel or amend an Online Wire Transfer. Company must call Bank in an attempt to cancel or amend the instructions. Bank shall have no liability if Bank fails to effect the cancellation or amendment. Company shall reimburse Bank for any expenses, losses or damages Bank incurs in effecting or attempting to affect Company's request for the cancellation or amendment.
7. **Compliance.** Company represents and warrants that it will comply with the Wire Account regulations, applicable laws, regulations, regulatory requirements and Bank's current Service Documentation.

8. **Currency of Foreign Online Wire Transfers.** Online Wire Transfers to foreign countries will be processed in either USD or the foreign currency contained in Company's Online Wire Transfer instructions. Company agrees to verify that Payee's Account accepts USD or the designated foreign currency.
  9. **Additional Foreign Online Wire Transfers Instructions.** In order to process an Online Wire Transfer to a foreign country, additional information is required. For online wires going to Europe, Company agrees to include a SWIFT Bank Identifier code (SWIFT BIC), International Routing Code (IRC) as applicable, and to participating countries the Payee's International Bank Account Number (IBAN). Requirements are subject to change at any time.
  10. **Transmittal of Online Wire Transfer Authenticity.**
    - a. Company shall transmit any and all wire transfer requests to Bank in accordance with the Agreement. Company shall comply with the security procedures described in Bank's current Online Wire Transfer Operating Procedures. Bank will send a confirmation on all Online Wire Transfer instructions submitted through Treasury Online Banking to Company's email included on the Online Wire Transfer application or as otherwise provided by Company to Bank. Company acknowledges that it has reviewed the security procedures and agrees that they are commercially reasonable for Company in light of the size, frequency and amount of transactions Company expects to initiate. Bank and Company both agree that the authenticity of Online Wire Transfers submitted to Bank in its name as sender will be verified solely pursuant to the security procedures and Company agrees to comply with the security procedures.
    - b. Company acknowledges that the security procedures are for verification of authenticity of an Online Wire Transfer sent to Bank in Company's name and not to detect errors in the transmission or content of the Online Wire Transfer. Bank and Company have not agreed to any security practice or procedure for the detection of any such error. All Online Wire Transfers sent to Bank (and cancellations and amendments) in Company's name and accepted by Bank in compliance with the security procedures desired by Company will be binding upon Company regardless of whether they are authorized by Company.
    - c. Company shall prevent and safeguard against unauthorized transmissions, disclosures and access to Security-related Items. Company shall establish, maintain and enforce physical and logical commercially reasonable security practices, techniques and procedures with respect to access, storage and maintenance to safeguard against unauthorized transmissions and unauthorized access to Security-related Items. Such practices, techniques and procedures shall be no less than the security-related requirements set forth in the Agreement.
    - d. Without limiting the foregoing, Company warrants that only System Managers and System Users will be allowed to initiate Online Wire Transfers. If Company suspects, knows, believes or has reason to believe that anyone who is not a System Manager or System User has transmitted or attempted to transmit one or more Online Wire Transfers, or that the security procedures or other Security-related Items have otherwise been compromised, Company agrees to immediately notify Bank and agrees that any Online Wire Transfer received by Bank before or within a reasonable time after such notice to Bank shall be treated as authorized by Company.
    - e. Company hereby authorizes Bank to transmit any Online Wire Transfer instructions received by Bank from Company in accordance with the terms and conditions of the Agreement and to debit the amount of such Online Wire Transfer from the Wire Account specified by Company.
    - f. Treasury Online Banking Instructions for Domestic Wires, Foreign Wires in USD, and Foreign Wires in Foreign Currency.
      - i. **Service Setup.** Bank offers its Treasury Online Banking Service to enable Company to issue Online Wire Transfer instructions directly from its terminal or personal computer directly to Bank's wire transfer system via the internet. Company authorizes System Managers and System Users to receive all confidential funds transfer materials from Bank including Login Credentials and setup instructions.
        1. For new Service or to change existing Service, Company must verbally specify:
          - a. The Account(s) to be available to the System Managers; and
- b. If System Managers can submit Online Wire Transfer instructions for domestic, foreign in USD, or foreign in foreign currency.
2. Bank will supply to the System Manager an access ID and an initial log-in password which must be changed immediately upon logging in the first time.
  - ii. Security Procedures.
    1. **Security Tokens.** Adding the Online Wire Transfer Service requires all System Managers or System Users at Company who will submit or approve Online Wire Transfers to use a security token when submitting Online Wire Transfer instructions to Bank. This requirement cannot be waived.
  - iii. Authorization Procedures.
    1. **Dual Authorization.** Bank's Standard Authorization Procedure recommends Company to require a secondary authorization for all Online Wire Transfer instructions. In order to provide the most security protection to Company, secondary authorization should be given by a different System Managers or System User using a security token furnished by Bank.
  - iv. Alternate Method used if System is Unavailable.
    1. In the event that there is an outage with Treasury Online Banking, Bank offers its Alternative Method to enable Company to issue Online Wire Transfer instructions to Bank through Treasury Online Banking's secure messaging service. If Treasury Online Banking's secure messaging service is unavailable, Company will utilize Bank's secure email service. Company authorizes Individuals with access to the Online Wire Transfer service to receive all confidential funds transfer materials from Bank related to this Service. In addition, Company must authorize Individuals to submit Online Wire Transfer instructions to Bank through Treasury Online Banking's secure messaging service or Bank's secure email service.
    2. In the event that the Security Token malfunctions, is lost, or is otherwise inaccessible, Bank will register a replacement Security Token to Individual, and complete the out-of-band authentication on behalf of the Individual for the Online Wire Transfer before sending the security token to Individual.

## POSITIVE PAY

1. **Definitions.** Statutory Definitions, unless otherwise defined in the Agreement, words or phrases shall have the meanings set forth in the North Dakota Century Code, Uniform Commercial Code, chapters titled Negotiable Instruments and Bank Deposits and Collections.
  - a. "ACH" shall mean Automated Clearing House.
  - b. "ACH Credit Entry Exception" shall mean an ACH order or request for the deposit of money to the Authorized Account included in any Rules created by Company.
  - c. "ACH Debit Entry Exception" shall mean an ACH order or request for the withdrawal of money from the Authorized Account included in any Rules created by Company.
  - d. "ACH Exception" shall mean either an ACH Credit Entry Exception or ACH Debit Entry Exception.
  - e. "Authorized Account" shall mean the Account(s) of Company identified in writing, to which the Positive Pay Services rendered by Bank will apply.
  - f. "Available Funds" shall mean funds on deposit in an Authorized Account and available for withdrawal pursuant to Regulation CC and Bank's applicable funds availability schedule and policies.
  - g. "Credit Entry" shall mean an ACH order or request for the deposit of money to the Authorized Account of a Receiver.
  - h. "Company Rules," as used herein, shall mean, collectively, the rules and policies of Company created to mitigate the risk of fraud, as the same may be amended, modified, updated, or otherwise changed from time to time.

- i. "Debit Entry" shall mean an ACH order or request for the withdrawal of money from the Authorized Account of a Receiver.
  - j. "Effective Entry Date" shall mean the date included in any Entry as the date upon or after which such Entry is to be effective.
  - k. "Exception Check" shall mean a Presented Check that does not match a check number and/or amount of a check included in an Issued Check File.
  - l. "Exception List" shall mean a list of exception item(s) provided by Bank to Company via the System. When the exception item is a check and an image is available, the image will be provided.
  - m. "Issued Check File" shall mean record describing checks drawn by Company on an Authorized Account, provided by Company to Bank.
  - n. "Originator" shall mean an organization or person that initiates an ACH transaction to an Account either as a debit or credit.
  - o. "Payee Match" shall mean an adapted Check Positive Pay process that additionally validates the payee name on the check image against the payee name Company records in the Issued Check File.
  - p. "Pay Request" shall mean the instructions of Company to Bank ordering Bank to pay an Exception Check or ACH Exception.
  - q. "Presented Check" shall mean a check drawn on an Authorized Account and presented to Bank for payment through the check collection system or directly with Bank as "over-the-counter" items.
  - r. "Receiver" shall mean a natural person or an organization that has authorized an Originator to initiate an ACH entry to the Receiver's account with the Receiving Depository Financial Institution.
  - s. "Return Request" shall mean the instructions of Company to Bank ordering Bank not to pay an Exception Check or ACH Exception.
  - t. "U.C.C." shall mean the North Dakota Uniform Commercial Code.
2. **Positive Pay Access.** If requested by Company and available as a Service by Bank, Company may use Positive Pay Services. Bank offers Check Positive Pay, ACH Positive Pay, and Payee Match Positive Pay.
3. **ACH Positive Pay Services.** Prior to the Service detecting and creating unauthorized ACH Debit Entry Exception(s), Company shall create and maintain Company Rules by using Login Credentials to access the System. A Company Rule can include the originating company, standard entry class, transaction type (debits and credits), and maximum authorization dollar amount. These Rules will determine if an Exception will be created.
4. **ACH Transaction Filter / Block Setup.** Company shall create Company Rules in the System to block Credit Entries and Debit Entries, pursuant to the requirements detailed in Bank's current Service Documentation.
5. **ACH Authorization Company Rules Setup.** If using ACH Positive Pay, Company shall define all pre-authorized ACH Company Rules in the System for Authorized Account pursuant to the Agreement and the requirements detailed in Bank's current Service Documentation. If an unauthorized ACH Credit Entry or ACH Debit Entry posts to Company's Authorized Account, Company Rules determine if an ACH Credit Entry Exception or ACH Debit Entry Exception will be created.
- If Company creates a Rule in the System to monitor for a specific Credit Entry or Debit Entry and chooses the value, Email Notification Only, Company will receive an email notification, but no ACH Credit Entry Exception or ACH Debit Entry Exception will be created. Bank shall have no obligation to act on any Credit Entry or Debit Entry as a result of an email notification.
6. **Payment or Dishonor of ACH Debit Entry Exceptions or ACH Credit Entry Exceptions.** If Company creates a Company Rule in the System to block a Credit Entry or Debit Entry, Company agrees that Bank will pay or return all Credit and Debit Entries on Company's Authorized Account in accordance with the default option selected by Company. Company agrees Bank shall have no liability for any Debit Entries that are paid, or Credit Entries that are deposited, prior to the time Company creates Company Rule to block such Credit Entry or Debit Entry.
- a. **Payment of Debit Entries.** Subject to the provisions of the Agreement, as long as the Collected Balance in the Authorized Account is sufficient to pay the Debit Entry, Bank will pay any Debit Entries from the Authorized Account that are consistent with the information in the Rule created by Company in the System. If the Collected Balance is not sufficient in the Authorized Account to pay the Debit Entries, then Bank, at its sole discretion and with no liability or obligation, may authorize or not authorize an overdraft of the Authorized Account.
  - b. **Return of Debit Entries.** Debits Entries drawn against the Authorized Account which are not consistent with information in Company Rule created by Company in the System shall be considered unauthorized and will be returned by Bank.
7. **Check Positive Pay Services.** Prior to issuing any checks on an Authorized Account, Company shall submit an Issued Check File to Bank one (1) Business Day before issuing checks to payees. The Issued Check File shall accurately state the complete check number, exact amount, and the date of every check issued on each Authorized Account since the last Issued Check File was submitted. Each Issued Check File must be submitted to Bank on designated Business Days by 6:00 pm Central Time by uploading/importing through the System. Company shall include the payee name in the Issued Check File when electing to use Payee Match Positive Pay.
- Company shall upload the Issued Check File on the System. The Positive Pay System is capable of mapping Check Files created from multiple software programs. Company will provide a sample file to Bank prior to training and Bank will map the file to create a template specific to Company.
- If Company issues a stop payment order on a check that was listed in an Issued Check File, check will be considered matched in the Positive Pay System.
- Bank may recommend Company use a certain designated vendor for check printing needs to assure that Company's business checks meet the standards of the ACH Rules. Company agrees to ensure the MICR encoding ink is of high quality. Not using business checks with high quality MICR ink could result in a large number of Positive Pay violations, Exceptions, and high costs to Company.
- With respect to the determination of an Exception Check:
- a. For each check presented for payment through the check collection system, Bank shall compare each Presented Check by check number and amount against each Issued Check File received by Bank on previous Business Days and not yet matched. On each Business Day, Bank shall pay and charge to the Authorized Account each Presented Check that matches the check number and amount of the check shown in any Issued Check File. Bank shall provide to Company an Exception Check Online List that indicates whether Bank has received any Exception Checks and, if so, specifies the check number and amount of any such Exception Check.
  - b. For each check presented for immediate payment to Bank "over the counter", such as by a teller transaction, Bank shall compare each Presented Check by check number and amount against each Issued Check File received by Bank. If the Presented Check is an Exception Check, Bank shall turn away the check regardless of the default option selected and refer the presenter of the Exception Check back to Company.
8. **Payment or Dishonor of Exception Checks.** Bank will pay or return Exception Checks in accordance with the default option selected by Company.
- a. **Return Default.** Where Company has selected the return default option to apply to an Authorized Account, Bank shall return to the depository bank any Exception Check drawn on that Authorized Account, unless Company instructs Bank to pay such check in a timely Pay Request through the System in accordance with the Operating Procedures and other Service Documentation. The Pay Request shall identify each Exception Check that Company desires to be paid by the check number and amount specified in the Exception Check Online List and shall instruct Bank to pay such Exception Check.
    - i. Bank shall pay and charge to the Authorized Account any Exception Check that Company directs Bank to pay as provided above.
  - b. **Pay Default.** Where Company has selected the pay default option to apply to an Authorized Account, Bank may pay and charge to the Authorized Account any Exception Check provided that Company has not objected to such payment in a Return Request through the System in accordance with the Operating Procedures and other Service Documentation. A Return Request shall identify each Exception Check that Company desires not to pay by the complete check number and amount specified in the Exception Check Online List and shall instruct Bank to return the Exception Check.
    - i. Bank shall return to the depository bank any Exception Check that Company instructs Bank to return as provided above.

9. **Payee Match Positive Pay Services.** For Payee Match Positive Pay, Company agrees to comply with the Payee Match Positive Pay Implementation Guidelines document.

10. **Compliance.** Company represents and warrants that it will comply with the Authorized Account regulations and all applicable laws, regulations, regulatory requirements and Bank's current Service Documentation.

11. **Company and Bank Communications.** Company or Bank, at its discretion, may each submit to the other party a revision of any communication, including but not limited to Issued Check Files, Exception Checks, and Pay and Return Requests, provided for under the Agreement. The revised communication must (i) be sent in its entirety and not in the form of a partial amendment to the communication originally sent, (ii) identify the original communication, and (iii) be sent in the format and medium, by the deadline(s), and at the place(s) established by the receiving party. A properly submitted revised communication serves to revoke the original communication.

12. **Warranties and Responsibilities.** Company is solely responsible for the integrity of the information it provides to Bank in Company Rules It creates in the System. If Company creates inaccurate or incomplete Company Rules, truly authorized Credit Entries or Debit Entries may be returned or unauthorized Credit Entries or Debit Entries may be paid, and Company shall bear any and all responsibility for any losses or other consequences that may occur in either event. Company waives any claim of wrongful dishonor associated with any returned Credit Entry or Debit Entry which was returned because (i) incorrect or incomplete information was provided in Company Rule; (ii) Company Rule was not created within a reasonable time for Bank to act prior to the Effective Entry Date of such Credit Entry or Debit Entry; or (iii) while an error may have occurred, Bank performed to the standard described in this paragraph.

Company warrants to Bank: that Its Issued Check Files, Pay Requests and Return Requests are accurate and timely and have been duly authorized by Company; that Company shall perform its obligations under the Agreement consistent with the U.C.C. and it shall otherwise perform its obligations under the Agreement consistent with all applicable laws and regulations. Company agrees to indemnify Bank against any loss, liability or expense resulting from or arising out of any breach of any of the foregoing warranties or the Agreement.

If System Manager or System User contacts Bank to inform Bank that an Individual uploaded an Issued Check File in error, Bank may act on Company's verbal request to purge that particular file, if the System allows.

13. **Indemnification and Limitation of Liability.** To the extent Bank incurs any such liability; in no event shall its liability exceed the lesser of Company's actual damages resulting from Bank's wrongful payment of a Credit Entry or Debit Entry or the amount of the Credit Entry or Debit Entry. Bank shall not be liable for violating its duties under the Agreement, or otherwise, if Company has sustained no actual damages because Bank's honor of a Credit Entry or Debit Entry discharged for value an indebtedness of Company.

14. **Remedies.** To the extent applicable, the liability provisions of U.C.C. shall govern the Agreement, except as modified below.

- a. **Wrongful Dishonor.** Except as provided below, it shall constitute wrongful dishonor by Bank if Bank dishonors an Exception Check that Bank has been ordered to pay pursuant to a properly submitted Pay Request. Bank's liability for wrongful dishonor of an Exception Check shall be limited to the damages for wrongful dishonor recoverable under the U.C.C. Bank shall have no liability to Company for wrongful dishonor when Bank, acting in good faith, returns or declines to cash an Exception Check:
  - i. That it reasonably believed was not properly payable;
  - ii. If there are insufficient Available Funds on deposit in the Authorized Account; or,
  - iii. If required to do so by the Service of legal process on Bank or the instructions of regulatory or government authorities or courts.
- b. **Rightful Payment and Dishonor.** Except as provided in the paragraph above, if Bank honors an Exception Check in accordance with the Pay Default option selected by Company or in accordance with a proper Pay Request issued by Company, such honor shall be rightful, and Company waives any right it may have to assert that the Exception Check was not properly payable. If Bank dishonors an Exception Check in accordance with the return default option selected by Company or in accordance with a Return Request issued by Company, the dishonor shall be just, and Company waives any right it may have to assert that the dishonor was wrongful. Company agrees that Bank exercises ordinary care whenever it

rightfully pays or returns an Exception Check consistent with the provisions of the Agreement.

## REMOTE DEPOSIT

### 1. Definitions.

- a. "Account Regulations" shall mean the provisions of any commercial deposit Account agreement, as amended from time to time, the Agreement and any and all schedules and addendums to the Agreement, which (i) have been issued by Bank and (ii) relates to the Accounts. The terms of the Account Regulations are made a part of the Agreement and are hereby incorporated by reference. If any term of the Account Regulations is inconsistent with any term of the Agreement, the terms of the Agreement shall control.
- b. "Consumer" shall mean a natural person who (i) with respect to a check handled for forward collection draws the check on a consumer Account; or (ii) with respect to a check handled for return, deposits the check into or cashes the check against a consumer Account.
- c. "Eligible Items" shall mean all valid items drawn on financial institutions located within the United States of America. Items drawn on foreign banks and items known to be forged or altered are not eligible. Eligible Items include consumer checks, corporate checks, government checks, money orders, travelers' checks, and cashier's checks. The name of the payee on each check must only be that of the customer, and the checks may not include any additional payee(s) nor may the checks be endorsed by a third party. Non-eligible Items are checks drawn on foreign banks and checks known to be forged or altered.
- d. "Items" shall mean checks, money orders, travelers' checks, and cashier's checks scanned for Remote Deposit into Company's Account.
- e. "MICR" shall mean the bottom line printed on all checks using a special font called Magnetic Ink Character Recognition.
- f. "Regulation CC" shall mean the Federal Reserve Board's Regulation CC, Availability of funds and Collection of Checks.
- g. "Substitute Check" shall mean a paper reproduction of an original check that meets the definition in Regulation CC and which substitutes for the original check for all persons and all purposes, including any provision of federal or state law if the substitute check (i) accurately represents all the information on the front and back of the original check as of the time the original check was truncated, and (ii) bears the legend, "This is a legal copy of Company's check. Company can use it in the same way Company would use the original check."

2. **Remote Deposit Access.** If requested by Company and available as a Service by Bank, Company may use the Service. Bank agrees to provide certain check clearing services known as "Remote Deposit" whereby Company uses a scanner specified by Bank to scan paper checks to create an image cash letter file to send to Bank. Images captured will be transmitted to Bank, processed by Bank and then sent to the Federal Reserve Bank and/or a check clearing or Automated Clearing House network, enabling Company to clear their daily check deposits electronically as images, instead of physically transporting the checks to Bank. When necessary, Bank will prepare "Substitute Checks" (as that term is defined in the Federal Reserve Board's Regulation CC) to facilitate the deposit and collection of Company's Items.

- a. Only checks drawn on United States (U.S.) banks are acceptable deposit items. Foreign checks must be mailed or brought to Bank for collection.
- b. All checks must be prominently marked as "Electronically Presented," or VOID, or properly endorsed by stamping checks with an approved endorsement stamp prior to placing in scanner.
- c. In addition to physical check endorsement, Bank will activate virtual endorsement to add an electronic endorsement on each item.
- d. Paper deposit tickets should not be scanned with checks.
- e. Company shall limit each deposit set to a maximum of fifty (50) checks.

3. **Deposit Accounts.** Company shall establish and/or maintain one or more Accounts. Each Account shall be subject to the terms and conditions set forth herein and the Account Regulations. Company acknowledges receipt of a copy of the Account Regulations. Company shall, from time to time, fund each Account with a sufficient amount of cash and/or other immediately available funds to pay

for (i) transfers from the Account, and (ii) fees and any other amounts due and owing to Bank by Company and any affiliate or subsidiary of Company. All checks will be subject to Bank's established funds availability policy, including Bank's policy for placing case-by-case and exception holds. Credit given for a file received is provisional and Company is responsible for any loss sustained by Bank for acceptance of the file.

4. **Items.** Bank hereby agrees to provide Services to Company to image and capture payment information from Items for the purpose of electronic clearing pursuant to the following terms and conditions. Consumer checks, corporate checks, money orders, cashier's checks, and government checks may be cleared as allowed by Regulation CC.

- a. Only Original Items to be scanned. Company may only scan original Items eligible for Remote Deposit into Company's Account.
- b. Eligible Items. All Items scanned by Company and submitted to Bank for Remote Deposit must be eligible for clearing pursuant to federal and state law.
- c. Image Quality. Company shall be responsible to complete proper scanning of the front and back of each Item. Company must insure that a full image is displayed and aligned properly, complying with the requirements of Regulation CC and any other applicable laws and regulations. Image quality shall meet the requirements of all applicable laws, regulatory agencies and Bank.
- d. Verification of MICR Accuracy. Company shall be responsible for verifying the accuracy of the MICR capture by visually viewing the Item displayed on its screen and comparing it to the MICR field. Company shall be responsible for insuring the MICR is captured accurately or, if not captured accurately, by re-scanning the Item or making necessary edits. In the event the Item cannot be properly read, Company acknowledges a deposit will have to be made by mailing or taking the Item to a Bank.
- e. Payee's Name. The name of the payee on each Item shall be only that of Company, and the Items may not include any additional payee(s), nor may the Items be endorsed by a third party.
- f. Alterations or Inconsistencies. Company shall enter the amount written on the original Item and shall not alter the amount or cause entry of the amount to vary from the portion of the Item where the amount of the Item is written in text. If the numeric amount on the original Item is inconsistent with the amount on the portion of the Item where the amount of the Item is written in text, Company shall not submit Item for Remote Deposit. If Company nonetheless submits for deposit an Item where the numeric amount varies from the portion of the Item where the amount of the Item is written in text, Company acknowledges and agrees that it will be liable for any claims resulting from the inconsistency of the amounts
- g. Drawer's Signature and Name. All Items must bear the Drawer's signature and indicate the Drawer's name on the original check before Company submits the Items to Bank for Remote Deposit.
- h. Remote Deposit Submission of Items to Bank. All Items submitted by Company as Remote Deposit Items must be submitted and processed in accordance with Bank's current Service Documentation. All Items will be subject to Bank's established funds availability policy, including Bank's policy for placing case-by-case and exception holds. Credit given for any file received is provisional and Company agrees to indemnify Bank for any loss sustained by Bank for acceptance of the file.
- i. Method of Payment of Items. Bank reserves the right in its sole discretion to select clearing agents and the manner in which Items are cleared or presented for payment, including electronically through the Automated Clearing House Network. Company agrees to be bound by any clearing house agreements, operating circulars, image exchange agreements and any other related agreements to which Bank is a party to.
- j. Return of Item. If any Item deposited to Company's Account is returned unpaid for any reason, it will be charged back to any Company's Account maintained at Bank. If an Item is dishonored, Company may receive an image of the original check or a Substitute Check as the charged-back Item. Customary fees for charged-back Items will apply. To represent a substitute check, Company can deliver to Bank as a normal deposit or resubmit return item via Bank's Remote Deposit system using proper format.

5. **Company Representations, Warranties, and Indemnification.**

- a. Non-Duplication of Item. Company warrants to Bank that only Eligible Items will be scanned for Remote Deposit and the original Item, as well as any other image or duplication thereof, will not be negotiated for payment or deposited at Bank or any other financial institution.
  - b. UCC Warranties. Company assumes Bank's warranties under Regulation CC, including, without limitation, that (i) the substitute check meets the "legal equivalence" requirements (e.g. the image of the original check that appears on the substitute check is illegible) and (ii) the check holder's account will not be charged more than once for the same check.
  - c. Indemnification and Disbursement. Company warrants to Bank that Company will indemnify and reimburse all damages claimed against Bank as to any alleged violation of Regulation CC or any other law, rule or regulation relating to any transaction subject to the Agreement. Substitute Checks. Company warrants to Bank that any deposited Substitute Checks shall meet all the requirements for legal equivalence described in Regulation CC.
  - d. General Warranties. With respect to all Items, Company warrants that: (i) Company is entitled to enforce the Item; (ii) all signatures on the Item are authentic and authorized; (iii) the Item has not been altered; (iv) the Item is not subject to a defense or claim in recoupment of any party which can be asserted against Company; (v) Company has no knowledge of any insolvency proceeding commenced with respect to the maker, acceptor, or Drawer of the Item; and (vi) with respect to a remotely-created consumer Item, that the person on whose Account the Item is drawn authorized the issuance of the Item in the amount for which the Item is drawn.
  - e. Indemnification by Company. Company shall indemnify Bank for any loss incurred as a result of Company's use of the Remote Deposit Services including, but not limited to, any Substitute Check warranties described in Regulation CC, any Substitute Check indemnity described in Regulation CC, and any claim made for the expedited re-credit by a consumer described in Regulation CC or the indemnification of a bank described in Regulation CC.
  - f. Amount of Indemnity. The amount of this indemnity and the measure of damages for breach of Company's warranty shall be the amount of any loss (including interest, costs, and reasonable attorneys' fees and other expenses of representation) proximately caused thereby.
6. **Adjustments.** Adjustments may be debited or credited to Account if Item is disputed; there is claim of duplicate deposit, missing or forged endorsement, counterfeit check, forgery, or other legal claim.
7. **Account Reconciliations.**
- a. Company shall reconcile Account statements within a reasonable time to confirm deposits.
  - b. Retain original checks until deposit is reconciled.
  - c. Any settlements not credited, credited in error, or in a different amount should be immediately reported to Bank.
8. **Bank's Right to Reject Items.** Bank has the right to reject any Item if Company has (i) failed to make any payment to Bank when due; or (ii) breached any of its obligations under the Agreement. Bank shall have no liability to Company by reason of the rejection of any such Item. Rejected checks that are not accepted through the scanner must be mailed or brought to Bank for deposit.
9. **Compliance.** Company represents and warrants that it will comply with the Account Regulations and all applicable laws, regulations, regulatory requirements and Bank's current Service Documentation.
10. **Equipment.** Scanning equipment must be approved by Bank. Company is solely responsible for purchasing, obtaining, installing, operating and maintaining any and all necessary hardware and software, as well as providing the required connection to Systems. Bank will provide minimum requirements for all such computer and scanning equipment and software as set forth in the Agreement. Company must meet Operating System, Browser and Scanner specifications. Company shall clean scanner regularly to reduce problems with jamming, blurred images and other scanner problems. Scanner shall be cleaned every five thousand (5,000) checks to ensure its longevity and optimal performance. Refer to the scanner's instruction manual for cleaning instructions. Company shall use compressed air to clean the scanner which will eliminate dust and paper fragments that may damage the scanner. Company shall complete a monthly "health check" of its scanner's replaceable parts (including cartridge, absorbing felt, ink rollers, stamp pads, and lens cover). Parts shall be replaced before they

show extreme wear. Replacement instructions are described in the scanner's instruction manual. Company's preventative maintenance schedules may vary depending on frequency of use and operating environment.

#### 11. **Additional Security Recommendations**

- a. **Authority.** The System does not require secondary authorization for originating transactions; however, Bank recommends that Company require a secondary authorization for scanning and approving deposits.
- b. **Back-Up Procedures.** In the event the System is not operational and Company cannot transmit deposits, Company acknowledges that deposits will have to be made by mailing or taking deposits to Bank.

### **CHECKING TO CHECKING AUTHORIZATION**

1. **Authorizations.** Company authorizes Bank to transfer funds between the designated funding Account(s) and the target balance Account(s) to maintain the designated target Collected Balance(s) as requested by Company through the System or otherwise in writing.
2. **Statements.** Company's monthly Account statements will show all transactions pursuant to this authorization. Bank has no further responsibility to notify Company of any transactions under this authorization.
3. **Sufficient Funds.** Bank shall not make any transfers pursuant to this authorization if sufficient funds are not available in the designated Account(s). Bank may assess its customary overdraft charges against any overdrawn account.
4. **Adjustments.** Bank may adjust the target Collected Balance(s) upon five (5) days written or oral notice to Company.

### **CHECKING TO LOAN BALANCE TRANSFER AUTHORIZATION**

1. **Authorizations.** Company authorizes Bank to transfer funds between the designated funding Account(s) and the designated loan ("Note") to maintain the designated target Collected Balance(s) ("Target Balance") as requested by Company through the System or otherwise in writing.
2. **Commercial Loan One-Way Sweeps.** Company agrees that whenever the checking Account balance falls below Company's designated Target Balance, Bank will automatically (i) advance an amount on the Note in designated increments and (ii) transfer to the designated checking Account to fund the checking Account balance to an amount equal to or greater than the Target Balance. All advances shall be subject to sufficient funds being available on the line of credit in order to fund the checking Account in the designated increments to an amount not less than the Target Balance. No partial advances will occur. No advances will be made after the maturity date of Company's Note.
3. **Commercial Loan Two-Way Sweeps.** Company agrees to maintain a designated Target Balance in its checking Account. The Target Balance may be adjusted upward or downward by Bank after giving Company five (5) days written or oral notice of said change. Company agrees that whenever its checking account Collected Balance falls below the Target Balance, Bank will automatically advance an amount on the Note in order to fund the checking Account Collected Balance to an amount equal to the Target Balance. All advances shall be subject to sufficient funds being available on the line of credit in order to fund the checking Account to an amount not less than the Target Balance. Partial advances funding the checking Account to a balance less than the Target Balance will not occur. No advances will be made after the maturity date of the Note. In addition to any terms and conditions of repayment, including any demand feature, which may be contained within the Note, Company agrees that whenever its checking Account Collected Balance exceeds the Target Balance, the amount over the Target Balance will be automatically transferred from its checking Account and applied as a principal payment on the Note.
4. **Statements.** Company's monthly Account statements will show all transactions pursuant to this authorization. Bank has no further responsibility to notify Company of any transactions under this authorization.
5. **Overdrafts.** Bank is not obligated to honor any overdraft. If any overdraft is honored, Bank shall have the election to treat it as an additional advance on the Note, or an overdraft that is immediately due and payable in full. Bank may assess its customary overdraft charges against any overdrawn account.

6. **Default.** If Company is in default under the terms and conditions of the Note, or any other agreement with Bank, Bank may refuse to make further advances on the Note, including any advances pursuant to this authorization.
7. **Security Interest; Right of Setoff.** Company grants to Bank a security interest, and Bank reserves a right of setoff, in Customer's checking Account to secure all obligations of Company to Bank, whether now existing or hereafter arising.
8. **Termination.** Either Bank or Company may immediately terminate this authorization by giving oral or written notice to the other party, but the termination shall not affect any liability on the Note or otherwise.
9. **Adjustments.** Bank may adjust the target Collected Balance(s) upon five (5) days written or oral notice to Company.
10. **Balance Recognition.** Under this authorization, funds are automatically withdrawn from your demand deposit Account and used to pay down your loan at Bank. Any funds in your deposit Account(s) are a deposit of Bank and will be insured by the FDIC to the extent of its deposit insurance limits. As to any swept funds, in the event of the failure of Bank, your reduced loan balance will be recognized by either the FDIC or a successor institution to Bank.

### **MONEY MARKET SAVINGS SWEEP AUTHORIZATION**

1. **Authorizations.** Company authorizes Bank to transfer (i) designated checking Account funds in excess of the target Collected Balance(s) as requested by Company through the System or otherwise in writing to the designated money market savings account (ii) funds in the money market savings account to the designated checking Account to fund the checking Account balance up to the target Collected Balance if the Collected Balance in the checking Account falls below \$10,000.
2. **Statements.** Company's monthly Account statements will show all transactions pursuant to this authorization. Bank has no further responsibility to notify Company of any transactions under this authorization.
3. **Sufficient Funds.** Bank shall not make any transfers pursuant to this authorization if sufficient funds are not available in the designated Account(s).
4. **Limits.** Federal regulations limit pre-authorized withdrawals from a money market savings account to six per statement cycle. Therefore, Bank will only transfer funds in the money market savings account to the designated checking Account six (6) times each statement cycle. Bank will not make any further transfers until the beginning of the next statement cycle. Upon Bank's request, Company shall fund the target Collected Balance from a separate Company Account after the sixth transfer.
5. **Adjustments.** Bank may adjust the target Collected Balance(s) upon five (5) days written or oral notice to Company.
6. **Not FDIC Insured.** Under your money fund account agreement with Bank, funds are automatically swept to purchase and redeem shares of money market funds as ordered pursuant to terms of the agreement. Any funds in your deposit Account(s) are a deposit of the institution and will be insured by the FDIC to the extent of its deposit insurance limits. The funds that have been swept out of Bank into your money market mutual fund are not a deposit of the institution and are not FDIC insured. In the event of the failure of Bank, any funds that have been swept out of Bank into your money market mutual fund will not be swept back into Bank and will not be insured. Nor will such amounts be subject to claims by the FDIC as receiver to pay other depositors or creditors of Bank. Company agrees to prominently mark the item as "Electronically Presented" or "VOID" and to properly dispose of the item after fourteen (14) calendar days to ensure that it is not re-presented for payment. Company agrees never to re-present the item. Company will provide any retained item, or a sufficient copy of the front and back of the item, to Bank as requested to aid in the clearing and collection process, to resolve claims by third parties with respect to any item, or for Bank's audit purposes.