

# Treasury Management Master Services Agreement (“MSA”)

Effective November 2020

**AmegyBank**<sup>®</sup>  
of Texas

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TRUST  
**CALIFORNIA BANK**  
TRUST<sup>®</sup>

**THE**  
**COMMERCE**  
**BANK**  
OF OREGON

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**COMMERCE**  
**BANK**  
OF WASHINGTON

 NATIONAL BANK OF ARIZONA<sup>®</sup>

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**ZIONS BANK**<sup>®</sup>

Zions Bancorporation, N.A. is a member of the Federal Deposit Insurance Corporation (FDIC). Zions Bancorporation, N.A. operates through multiple divisions that use the trade names shown above. These trade names or divisions of Zions Bancorporation, N.A. are not separate FDIC-insured banks. The FDIC coverage extended to deposit clients is that of one insured bank. Not all services for an account offered at one division are necessarily available at another division. Certain transactions between accounts at our different divisions (including but not limited to cut-off times and settlement times) may be deemed and processed by us as transactions between separate financial institutions.

As a client of Zions Bancorporation, N.A., your deposits are insured by the FDIC to at least \$250,000 per depositor for each account ownership category. To learn more, please visit the FDIC's website, [www.fdic.gov/deposit](http://www.fdic.gov/deposit).

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## **INTRODUCTION**

This Treasury Management Master Services Agreement (this “Agreement”), together with the Acceptance, the Specifications, and any related resolution you provide to us, sets forth the terms and conditions of the Treasury Management services (the “Services”) offered by Zions Bancorporation, N.A. (“the Bank”, “we” and “us”) to each Company that is a signatory to the Acceptance (“you”). (“Acceptance” and “Specifications” and certain other capitalized terms are defined in the Definitions section of this Agreement.) This Agreement is also supplemented by your Deposit Account Agreement. The Bank operates through its divisions, including: Amegy Bank of Texas, California Bank & Trust, The Commerce Bank of Oregon, The Commerce Bank of Washington, National Bank of Arizona, Nevada State Bank, Vectra Bank Colorado, and Zions Bank (each a “Division”). The Division through which you are contracting is indicated on the Acceptance that you have executed.

By executing an Acceptance or using any Service, now or in the future, you agree to be bound by the terms and conditions of this Agreement, the Acceptance, and any Specifications. Any Service described herein may have been marketed to you under a brand name that differs from how the Service is titled in this Agreement, the Acceptance, or any Specification, or exhibit. Service availability may differ between Divisions.

You may request a Service or change an Administrator, Authorized User, Account or other set-up detail in any manner accepted by us, but we shall not be obligated to provide any Service or make such change unless we send you one or more Specifications disclosing and verifying how your requested Service has been or will be configured or changed. Specifications may be issued and delivered by us in any manner permitted herein for written legal notices under this Agreement, e.g. by us sending an email to any authorized agent listed in your resolution or other instrument, or to any other contact person designated by you in any Specification as a “contact” for the applicable Service. Specifications sent to the customer listed as the primary company in your Acceptance shall be deemed sent to and received by that primary company both for itself and as agent for each additional customer that has signed or joined in that Acceptance.

You agree to promptly review all Specifications sent to you and to immediately contact us if any of those Specifications are not understood, are incorrect, or do not reflect your current preferences. You shall be bound by all listed Specifications sent to you (directly or through your Acceptance’s primary company) unless you instruct us in writing within those five (5) Business Days to make a specific change. We may choose to implement the new Specification during your review period. In addition, all Specifications shall become formal amendments to this Agreement ten (10) Business Days after being sent to you (directly or through your Acceptance’s primary company) unless you reject that Specification by written notice to us within that ten (10) Business Day period.

Before providing or continuing to provide any Service or change thereto, we may in our sole discretion require you to countersign and return one or more Specifications (e.g., for sweep service) or a supplemental agreement (e.g., for using a third-party processor or being a third-party sender), or require you to undergo additional underwriting (e.g., for ACH service). In no event shall we be required to obtain your countersignature for any Service or configuration.

This Agreement incorporates the dispute resolution provisions set forth in your Deposit Account Agreement as now or hereafter amended. Those provisions may include, for example, jury right waivers, class action waivers, and/or mandatory arbitration. For current dispute resolution terms, see the Deposit Account Agreement published in the Agreement Center of Bank’s public website.

The first part of this Agreement sets forth “Service-Specific Provisions.” Only the provisions for the Services that you order, now or hereafter, shall apply to you. However, both the second part (“General Provisions”) and third part (“Getting Started - Set Up”) shall govern, regardless of which Services you order.

## SERVICE-SPECIFIC PROVISIONS

### 1 ACCOUNT RECONCILIATION SERVICE

- 1.1 **The Service.** We offer both full and partial Account Reconciliation Services, as well as a deposit reconciliation Service.
- (a) “Full” Reconciliation - if you provide us with your check issuance data prior to the Cutoff Time in accordance with our guidelines, we will provide you with one or more reports regarding your Account activity.
  - (b) “Partial” Reconciliation - we provide you with information about the checks that have paid against your Account.
  - (c) “Deposit” Reconciliation - we provide you with a report of paper credit items. Reports are available online for viewing, printing and downloading.

You agree to use only checks and deposit slips that meet our specifications and to provide us with a sample of your checks and/or deposit slips upon our request. Your sole and exclusive remedy for any error, damage or loss in any way connected with this Service, however arising, shall be limited (at our option) to either a re-performance of the Service for the period in question or a refund or credit of an appropriate portion of the fees associated with this Service.

### 2 ACH POSITIVE PAY SERVICE

- 2.1 **The Service.** If you request this Service, we will suspend any ACH entry initiated by a third party to your designated Accounts if that entry does not meet your pre-established ACH filters, and we will present the suspended ACH entry to you electronically. You must then instruct us whether to permit or return the entry. You authorize us to act in accordance with your permit/return default election if we do not receive your instruction for any reason by the Cutoff Time.

Note: We may not suspend certain entries by Bank, its affiliates, its service providers, or designated third parties (e.g. Bank’s preferred Merchant Services Provider).

### 3 ACH DEBIT BLOCK

- 3.1 **The Service.** If you select this Service, all ACH debit entries will be blocked from posting to your account. This Service does not allow you to review and approve or reject ACH debit entries prior to them being returned unpaid by us to the originators. We will not take telephonic instructions to approve debit entries for payment when the account is set up for this Service and we shall not be liable for any debit entries that are returned unpaid due to the implementation of this Service.

Note: We may not block certain entries by Bank, its affiliates, its service providers, or designated third parties (e.g. Bank’s preferred Merchant Services Provider).

### 4 ACH CREDIT BLOCK

- 4.1 **The Service.** If you select this Service, all ACH credit entries will be blocked from posting to your account. This Service does not allow you to review and approve or return credit entries before we return them to the originator. We will not take telephonic instructions to approve credit entries for deposit when the account is set up for this Service and we shall not be liable for any credit entries that are returned due to the implementation of this Service.

## 5 BALANCE REPORTING AND PAYMENTS (“TREASURY INTERNET BANKING”)

- 5.1 **Overview.** Treasury Internet Banking provides a web browser-based suite of electronic Services that allow you to manage your banking activity online. If you request this Service and it is available, we will grant access to your Administrator to establish, maintain and delete Authorized User access and perform other administrative tasks with respect to your use of this Service.

Treasury Internet Banking allows you to enroll in the following Services: (a) Information Reporting Service, (b) e-Statement Service, (c) Stop Payments Service, (d) Payments Services, and (e) Mobile Treasury Internet Banking (each described below). Enrollment in some Services requires additional acceptance or underwriting.

- 5.2 **Information Reporting Services.** This Service consists of several reporting modules. The Balance Reporting module, for example, allows you to access current and previous day balances, transaction and float information, historical information, and information on certain pending transactions. You also can elect to receive images of items deposited or posted to your Account the previous day. The special reports feature enables you to access various reports online on the day we generate the information.

Since certain information and transactions are not processed by us until after the close of our Business Day, some transactions may not be reflected by our system until the next banking day. Posted items may be reversed due to insufficient funds, stop payment orders, legal process, and other reasons. Certain balances also may not be subject to immediate withdrawal. We assume no responsibility for any loss arising from incomplete information or for any temporary interruption in our Information Reporting Services. If you are unable to access our system for any reason, please contact your treasury services representative for assistance.

- 5.3 **e-Statements Service.** Our e-Statement Service makes periodic Account statements and certain other notices and disclosures (each herein a “**Statement**”) for your enrolled Accounts available to you electronically rather than by mail. The term “**e-Statement**” means any Statement that we make available to you electronically through this Service.

- (a) Request and Authorization for e-Statements. By enrolling in the e-Statement Service, you request and authorize us to make the following Statements available to you electronically rather than by mail: (i) any Statement that we may elect to give to you, and (ii) any Statement that we are required to provide to you by current law or by any law adopted in the future.

If an Account has more than one owner or authorized party, then (i) making e-Statements for an enrolled Account available to any one owner or authorized party shall constitute delivery to all owners and authorized parties and (ii) the Account may be enrolled, or its enrollment modified or cancelled, by any one owner or authorized party. We shall have no obligation or liability to any owner if we act upon the instructions of any one owner or authorized party.

Your consent in this Agreement is in addition to, and does not replace, any other consent for electronic delivery or notice that you may have previously given us. Your consent will survive any future consent you may hereafter give to us. We may at any time and for any reason elect to deliver or otherwise give notice of any Statement by U.S. mail or other commercially reasonable method in addition to, or instead of, our e-Statement Service.

- (b) Format. You may choose to have your e-Statements made available to you (i) as PDF documents through our Balance Reporting Service, and/or (ii) by any other means that we may offer from time to time (for example we may offer certain electronic file transfer options). Access to your e-Statements through our Balance Reporting Service is controlled by entitlements administered either by the Bank or by your company’s Balance Reporting Service Administrator.

- (c) Prompt Review of e-Statements. Your e-Statement will be dated the day it is first made available to you through our Balance Reporting Service or such other means that you have selected (the “**e-Statement Date**”). You must promptly review your e-Statements and any accompanying items and notify us in writing (within the applicable time periods specified in this Agreement and Deposit Account Agreement) of any error, unauthorized signature, lack of signature, alteration or other irregularity (collectively “**irregularities**”).

Any time periods within which you must notify us of irregularities on your Statements shall begin on the e-Statement Date regardless of when you access the e-Statement. You are responsible for checking frequently to determine if new e-Statements have been made available. You will not receive separate notices informing you when e-Statements have been issued. You are responsible for contacting us if you are not able to access your e-Statements or if you are not receiving your e-Statements. We may, but are not obligated, to send Statements by U.S. Mail or other method if we learn that your e-Statements are not being accessed.

- (d) Cancelling Enrollment; Termination; Suspension; Amendment. You may cancel your enrollment in the e-Statement Service at any time. Your cancellation notice must include a request to resume paper Statements if you wish to start receiving them again. (Cancelling enrollment will not automatically restart paper Statements.)

**5.4 Stop Payments Service.** This Service allows you to place stop payment requests for a specified period of time, cancel a stop payment request, and review current stop payment requests. You must designate all of the following information (or such lesser combination as we may specify at the time): Account number, check number, EXACT amount of check (dollars and cents), payee name(s), and issue date. We will have no liability for paying a check on which you have placed a stop payment request when any required information is missing or inaccurate. Your stop payment request will expire automatically after the period of time you designate (up to the maximum period we permit, which shall not be less than 12 months; if you do not designate a period, we will apply the standard period established in our sole discretion). If a single check or series of checks have been lost or stolen, you must notify us of the loss or theft and close the Account, because stop payment requests may be insufficient to protect you and the Bank. If you fail to notify us of the loss or theft of checks, you may become liable for their unauthorized use. Please note that this Service is not effective in stopping the payment of checks that have been converted to electronic transactions by the payee.

It is your responsibility to determine, through any of the methods we have made available, the status of the check prior to placing a stop payment request. We recommend that you not issue any replacement check for two (2) Business Days after placing any stop payment request with us. If the check for which the request is being placed has already cleared, and you reissue the check, the Bank has no liability for paying either or both checks. You agree that we may rely conclusively on any stop payment request placed through this feature on the Accounts that you use with this feature. We have no duty to verify the authenticity of a stop payment request or the authority of the person placing it, and a stop payment request on a check is effective regardless of who signed the check. A stop payment request made after the Cutoff Time will be considered placed on the next Business Day.

Additional terms appear in your Deposit Account Agreement.

**5.5 Payments Service.** This Service provides one mechanism for communicating Automated Clearing House (ACH) Entries, Fedwire wire transfer and internal book transfer requests to us. For Fedwire Wire Transfers and ACH credit payments initiated through our Payments Service:

- (a) We require that you utilize the Service’s Dual Control functions unless you execute a waiver and indemnification agreement acceptable to us.

- (b) We will notify you of the acceptance, execution or rejection of a Wire Transfer Order by making such information accessible to you online through the Service. You agree that such notice is acceptable under the applicable state's version of the Uniform Commercial Code (“**UCC**”).

**5.6 Mobile Treasury Internet Banking Service (“Mobile TIB”).** This Service offers mobile-optimized access to select Treasury Internet Banking (“**TIB**”) functions via a mobile device application (the “**TIB App**”). Mobile TIB is available to individuals that (i) you have enrolled as Authorized Users within your standard TIB service, (ii) have also been enrolled in the Mobile TIB Section of your TIB service, and (iii) have also downloaded the TIB App to their mobile devices.

- (a) Enrollment of Company in Mobile TIB Service. We will activate the Mobile TIB module within your TIB service.
- (b) Enrolling Authorized Users of the TIB Service into Your Mobile TIB Service. Only persons who are Authorized Users of your TIB may be enrolled in your Mobile TIB. Enrollment in Mobile TIB is performed through your TIB Service. You shall instruct us to configure your TIB to use one of the following methods of enrolling Authorized Users (Please note that Central Enrollment will be used unless instructed otherwise):
- i. “**Self-Enrollment**” by the Authorized User through the Mobile TIB page of his or her TIB Account. (Note: if you permit self-enrollment, then all Authorized Users for your TIB Service will have the ability to self-enroll in your Mobile TIB. You cannot limit which Authorized Users will be able to self-enroll in Mobile TIB).
  - ii. “**Central Enrollment**” by your Administrator for all of your Authorized Users. (Note: for each Authorized User that your Administrator centrally enrolls, you warrant that the Authorized User will go to the Mobile TIB page of his or her TIB Account and accept the Mobile TIB service “User Terms” described below. If the Authorized User fails to do so, you shall indemnify Bank under the Section entitled “Indemnification and Release”).
  - iii. Either Self-Enrollment or Central Enrollment.
- (c) Mobile TIB Service User Terms and Online Privacy Notice. Each Authorized User enrolled in your Mobile TIB must accept Bank’s Mobile TIB Service User Terms (“**User Terms**”). The User Terms will be automatically presented to Authorized Users during self-enrollment/prior to his or her initial access of the Mobile TIB module, and enrollment will not be completed until the User Terms are accepted by online acknowledgement.

If your Administrator centrally enrolls an Authorized User in Mobile TIB, you are responsible for ensuring that the Authorized User goes to the Mobile TIB page of his or her TIB Account to accept the User Terms. To prompt the Mobile TIB page to present the User Terms for acceptance, the Authorized User may need to request a profile update. Acceptance and enrollment are not complete until the Authorized User has responded affirmatively to a prompt for online acknowledgement.

In addition to the enrolled Authorized Users, you yourself also hereby accept the User Terms as amended from time to time. (Under the User Terms, both you and the Authorized User are deemed to be “**users**”.) You also hereby accept Bank’s Mobile App Privacy Notice posted within the TIB App. We recommend that you tell Authorized Users to only use mobile devices that are owned by you and (ii) restricted in use to your business purposes. You agree to indemnify us against all claims by, and losses or damages suffered by, you or any third person that would not have arisen if the mobile device was so owned and restricted.



- (d) Downloading the TIB App. The TIB App will be available for download at such sites as we may from time to time arrange. A person does not need to be an Authorized User to download the TIB App, but a person will not be able to activate and use the TIB App without being an Authorized User who has been enrolled in Mobile TIB. We may from time to time require that your Authorized Users download updates to or replacements of the TIB App.
- (e) Functionality of the Mobile TIB Service. Using the TIB App, an Authorized User can perform the select functions that are displayed in its menus. We may add, delete or change those functions and menus at any time without prior notice. You are responsible for training Authorized Users in the proper use of Mobile TIB, and for all transactions and instructions made by Authorized Users.
- (f) Security Procedure for Mobile TIB. In addition to the provisions stated in this Agreement, you hereby agree that the following is a commercially reasonable security procedure for accessing your Mobile TIB service and authorizing instructions to us (including payment orders): (i) logging in with the Access Credentials of an Authorized User who is enrolled in Mobile TIB, and (ii) not accepting any instruction via Mobile TIB that could not be authorized via TIB using the same Access Credentials. You represent that the foregoing security procedure is commercially reasonable for your particular needs, considering the size, type and frequency of your Accounts and treasury internet banking activities. You acknowledge that your enrollment in Mobile TIB is not a required part of Bank's TIB service. Any instruction received by us in good faith and in compliance with the foregoing security procedures shall for all purposes be effective as your authorized instruction, even if you did not in fact authorize or send it. (Please see, without limitation, the Section entitled "Security Procedure and User Guides").

If you no longer want a person to be enrolled in Mobile TIB, you are responsible for un-enrolling that person from Mobile TIB. Notify Bank AT ONCE if you have any information that the security of any Access Credentials might be compromised. You acknowledge that Mobile TIB service involves electronic transmission of information across wireless networks that are not under our control. You agree that we are not responsible for the privacy, security, accuracy or availability of your wireless data transmissions.

- (g) Fees. We do not charge a separate fee for the TIB App, or for enrolling in, or for using the Mobile TIB Service. We will send you reasonable prior notice if we decide to adopt such separate fees. Any transaction conducted using the Mobile TIB Service, however, is subject to the same fees that would apply if the transaction was conducted using the TIB Service. You and your Authorized Users should check with their mobile communication services providers regarding any charges (e.g., connection and data charges) that they may assess. We are not responsible for such third party charges that you or your Authorized Users may incur.
- (h) Miscellaneous. We do not guarantee functionality or availability of your TIB App or Mobile TIB service on any mobile device, on any communication network, in any geographic region, or at any time. In no event, regardless of cause, shall we be liable for your inability to access the Mobile TIB Service or to execute any mobile transaction. You agree to use the Mobile Service only from within the United States of America.

## **6 BILL PAYMENT SERVICE**

### **6.1 The Service**

Our Service enables you to schedule one-time payments or recurring payments to designated persons or entities, and to receive certain electronic bills for such payments. We provide the Service to you through one or more third-party service providers, including Fiserv Solutions, Inc. and its affiliates. Our third-party service providers are not parties to this Agreement. We are the sole party responsible to you for any payments you make through the Service, and for any liability that attaches in connection with the Service. Our third-party service providers shall be third party beneficiaries of this Agreement and will be entitled to all the rights and protections (including all limitations of liability) that this Agreement and provides to us,

including without limitation in connection with their recovery of Payment Amounts that you may owe to them as described below. Our third-party service providers are subject to change without prior notice to you. This Agreement does not alter your liability or obligations that currently exist between you and your Billers.

Any person enrolling in the Service on your behalf hereby personally represents and warrants to us that he or she is duly expressly authorized by you to do so.

## 6.2 Cost of Service

Business customers will be charged the fees set forth in the fee schedule supplementing this Master Agreement or deposit account agreement. A fee also applies for any request to expedite a payment using the Service.

## 6.3 Definitions

"Biller" is a person or entity you instruct us to pay via the Service. "Biller" includes but is not limited to an "e-Biller."

"Billing Account" is the checking account with us (or other account permitted by us) from which all Service fees will be automatically debited. Unless otherwise agreed, your Billing Account will be your Payment Account.

"Business Day" is every Monday through Friday, excluding Federal Reserve holidays and other days that banks are legally closed.

"Due Date" is the date reflected on your Biller statement for which the payment is due. It is not the late date or grace period.

"e-Bill" is an electronic invoice or other electronic statement for payment that an e-Biller may present to you via the Service.

"e-Biller" is a Biller that presents e-Bills to you via the Service either at your request or on a trial basis under the terms of the Service's e-Bill feature.

"Payment Account" is your checking account with us (or other account permitted by us) from which bill payments will be debited.

"Payment Instruction" is the information you provide to the Service to make a bill payment to a Biller (such as, but not limited to, the Biller's name, Biller's account number, payment amount, Payment Account, and Scheduled Payment Date).

"Provider Payment" is any amount of funds that our third-party service provider transfers on your behalf to a Biller when executing your Payment Instruction before debiting your Payment Account to reimburse itself. Each Provider Payment is made by our third-party service provider, not by us (your bank), and your obligation to reimburse all Provider Payments is incurred and owed directly to the third-party service provider (not to us). "Provider Payment" also includes the amount of any reimbursing debit by the service provider that may later be reversed.

"Scheduled Payment" is a payment that has been scheduled through the Service but has not begun processing.

"Scheduled Payment Date" is the day you want your Biller to receive your bill payment. However, if the Scheduled Payment Date falls on a non-Business Day, the Scheduled Payment Date will be deemed the previous Business Day.

## **PAYMENTS FEATURE**

### **6.4 Payment Scheduling**

The earliest possible Scheduled Payment Date for each Biller (typically four (4) or fewer Business Days from the current date) will be designated online by the Service when you are scheduling the payment. Therefore, the Service will not permit you to select a Scheduled Payment Date less than the earliest possible Scheduled Payment Date designated for that particular Biller. (The earliest possible date designated by the Service may vary based on factors such as the identity of the Biller, the Service's arrangements with the Biller, and the method of payment the Service elects to use to execute your Payment Instruction to that Biller.) When scheduling payments, you must select a Scheduled Payment Date that is no later than the actual Due Date reflected on your Biller statement unless the Due Date falls on a non-Business Day. If the actual Due Date falls on a non-Business Day, you must select a Scheduled Payment Date that is at least one (1) Business Day before the actual Due Date. Scheduled Payment Dates must be prior to any late date or grace period.

### **6.5 The Service Guarantee**

Due to circumstances beyond the control of the Service, particularly delays in handling and posting payments by Billers or financial institutions, some transactions may take longer to be credited to your account. The Service will bear responsibility for any late payment related charges you incur, up to \$50.00, if a payment posts after its Due Date. The preceding sentence applies (a) only if the payment was scheduled in accordance with the guidelines described above in the "Payment Scheduling" section, and (b) only if none of the exceptions listed below in the "Payment Authorization and Payment Remittance" and "Exception Payments" sections apply. We may require you to provide satisfactory supporting documentation before reimbursing you.

### **6.6 Payment Authorization and Payment Remittance**

By providing the Service with names and account information of Billers you wish to pay, you authorize the Service to follow the Payment Instructions you enter. In order to process payments more efficiently and effectively, the Service may edit or alter payment data or data formats in accordance with Biller directives. The service provider may also change the address of a Biller to whom a payment is sent, without notification, if the service provider receives commercially reasonable information that the address you provided is not valid or complete, is no longer accurate, or is no longer the address to which the Biller wishes us to send payments.

When the Service receives a Payment Instruction, you authorize the Service to debit your Payment Account and remit funds on your behalf so that the funds arrive as close as reasonably possible to the Scheduled Payment Date designated by you. If the Service's third-party service provider has made a Provider Payment to execute your Payment Instruction, you authorize the third-party service provider to debit your Payment Account to reimburse itself for that Provider Payment. You authorize the Service to honor debits to reimburse the third-party service provider's Provider Payments. The Service may (but is not obligated to) honor debits that create overdrafts in your Payment Account to execute any Payment Instruction or to reimburse any Provider Payment. (See the section "Payment Methods and When Your Account is Debited" for information on when your Payment Account will be debited.) You also authorize the Service to credit your Payment Account for amounts returned or remitted to you by the United States Postal Service, a Biller, the service provider, or another user of the Service. You also authorize the Service to make debit or credit entries to your Payment Account and to Billers to make adjustments and corrections.

The Service will use commercially reasonable efforts to make all your payments properly. However, the Service shall incur no liability and any Service Guarantee shall be void if the Service is unable to complete any payments initiated by you because of the existence of any one or more of the following circumstances:

1. If, through no fault of the Service, your Payment Account is closed or does not contain sufficient funds to complete the transaction (or the transaction would exceed the credit limit of your overdraft account);
2. The Biller rejects or returns the payment for any reason (or, except as provided in the Service Guarantee, the Biller mishandles or delays the handling or posting of any payment we send);
3. Your equipment, software or communications link is not working properly;
4. The payment processing center is not working properly and you know or have been advised by the Service about the malfunction before you execute the transaction;
5. You have not provided the Service with correct information, including the correct Payment Account information, or the correct name, address, phone number, or account information for the Biller;
6. Circumstances beyond control of the Service (such as, but not limited to, fire, flood, or interference from an outside force) prevent the proper execution of the transaction and the Service has taken reasonable precautions to avoid those circumstances;
7. Your Bill Pay Service has been frozen because you are in collections with our third-party service provider; and/or
8. There may be other exceptions in this or our other agreements with you.

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

## 6.7 Payment Methods and When Your Account is Debited

For each individual Payment Instruction, the Service's third-party service provider has sole and exclusive discretion to decide how it will cause payment to the Biller. Payment methods may include, but are not limited to:

- "Electronic payment" (e.g., an ACH credit to the Biller's account and an ACH debit from your Payment Account). This usually creates a Provider Payment by the third-party service provider.
- "Electronic to check payment" (e.g., a check drawn on the third-party service provider's account and an ACH debit from your Payment Account). This can create a Provider Payment by the third-party service provider.
- "Laser draft payment" (e.g., a "remotely created check" the Service writes for you against your Payment Account.) You authorize the Service to issue laser draft payments against your Payment Account.

The payment method determines when your Payment Account will be debited. Electronic payments are debited from your Payment Account no earlier than the Scheduled Payment Date. Electronic to check payments are generally debited no earlier than the Scheduled Payment Date but may be debited earlier if the check is mailed, arrives earlier, and is deposited by the Biller before the Scheduled Payment Date. A laser draft payment will debit your Payment Account no earlier than the date it is actually presented to us for payment. You warrant to us and to our third-party service provider that you will maintain available funds on balance in your Payment Account sufficient to timely pay the debit corresponding to each Payment Instruction. To ensure sufficient funds when your Payment Account is debited, you should assume that your payment may be sent by mailing a check or laser draft, and so you should have an available balance at least a few Business Days before the Scheduled Payment Date.

## 6.8 Failed or Returned Transactions

In using the Service, you are requesting the Service to make payments for you from your Payment Account. A laser draft will debit your account when it is presented to us for clearance. An electronic payment usually creates a Provider Payment by the third-party service provider before the provider reimburses itself by debiting your Payment Account. An electronic to check payment may also create a Provider Payment. (See "Payment Methods and When Your Account is Debited" above.) Therefore, you warrant to us and to our third-party service provider that you will maintain available funds on balance in your Payment Account sufficient to timely pay the debit corresponding to each Payment Instruction.

If your Payment Account has insufficient available funds for us to complete a transaction (including honoring the debit that corresponds to your Payment Instruction), then we have no obligation to complete any portion of that transaction; in some instances, you may receive a return notice as a result. We may, however, in our sole discretion complete the transaction and create an overdraft in your Payment Account or pursue collection against you by any other method permitted by law. Without limiting the foregoing, we may debit any other deposit account or draw on any other line of credit that you may have with us. All the terms of your deposit account agreement with us governing your Payment Account, and its associated fee schedule, including but not limited to those governing overdrafts, returned items, insufficient funds, credit reporting, fees and charges, collection rights, offsets and dispute resolution shall apply.

If our third-party service provider executed your Payment Instruction by making a Provider Payment but we dishonor its reimbursing debit, then you remain indebted directly to the service provider. The third-party service provider has the right to undertake collection activity against you. You agree to reimburse the third-party service provider upon demand. You agree that the third-party service provider may charge you interest at the rate of 1.5% per month (or the legal maximum rate, whichever is less) on unpaid amounts, together with reasonable attorney's fees and any returned payment fees that it may be charged by us, Billers or other financial institutions.

The third-party service provider may also report the facts to a credit reporting agency. You acknowledge that (a) Provider Payments, interest, attorneys fees and returned payment fees are obligations that you incur directly to the third-party service provider (not to us), and (b) all collection activity for Provider Payments and such associated amounts are undertaken by the third-party service provider for its own account (not at our direction or as our agent or our assignee). Such collection activity is undertaken solely by the third-party service provider and not on our behalf. Such collection activity by the third-party service provider is not part of the Service and shall not be deemed to occur in connection with the Service, and we shall bear no responsibility or liability for the third-party service provider's collections activities.

**All joint owners of the Payment Account are jointly and severally liable for Provider Payments by the third-party service provider, and for overdrafts in the Payment Account.**

## 6.9 Payment Amount Limits

For security purposes, the Service may impose limits on the amount of money you can send through the Service, in total over a time period or by transaction. Your limits may be adjusted from time-to-time in the Service's sole discretion. Also, Billers may impose their own limitations on bill payments or e-Bills that are beyond the control of the Service.

## 6.10 Cancelling or Editing a Scheduled Payment

There is no charge for canceling or editing a Scheduled Payment. Once a Scheduled Payment has begun processing by ACH or by issuance of any check or laser draft, it cannot be cancelled or edited. Instead, a Stop Payment must be requested.

On-Line Cancellation or Editing. You may cancel or edit a Scheduled Payment (including recurring payments).

Calling or Writing to Cancel. You may cancel a Scheduled Payment (including recurring payments) by contacting us at least three (3) Business Days before its processing. Contact us by calling Customer Service at the telephone number indicated in this Master Agreement. We may require you to confirm oral cancellations in writing within fourteen (14) days.

### **6.11 Stop Payments Requests**

The Service's ability to process a stop payment request will depend on the payment method and whether or not a check or laser draft has been issued or has cleared (see "Payment Methods and When Your Account is Debited" above). Also, if a payment has begun processing, the Service may not have a reasonable opportunity to act on your stop payment request. If you desire to stop any payment that has already begun processing, you must call Customer Service at the telephone number in this Master Agreement. Although the Service will make a commercially reasonable effort to accommodate your request, the Service will have no liability if it is unsuccessful. The Service may require you to confirm your request in writing within fourteen (14) days. Consult the deposit account agreement governing your Payment Account for additional information regarding requests to stop payment on checks, drafts and electronic transfers. The charge for each stop payment request will be the current charge for such service as set out in the schedule of fees for your Payment Account.

### **6.12 Prohibited Payments**

Payments to Billers outside of the United States or its territories are prohibited through the Service. In addition, payments that violate any law, statute, ordinance or regulation, and any payments related to illegal gambling, illegal gaming and/or any other illegal activity are prohibited through the Service. We have the right but no duty to monitor for, block, cancel and/or reverse prohibited payments. In addition to the foregoing prohibited payments, we may, but have no duty to, block and/or reverse payments that involve donations or payments to an unauthorized charity or non-profit organization, unless we have performed appropriate due diligence on and investigation of such charity or organization and have in our sole discretion determined its legitimacy. In no event shall we or our third-party service provider be liable for any claims or damages resulting from your scheduling of prohibited payments. We have no duty to research or resolve any claim resulting from a prohibited payment. All research and resolution for any misapplied, mis-posted or misdirected prohibited payments will be your sole responsibility and not ours.

### **6.13 Exception Payments**

"Exception Payments" means payments to deposit accounts or brokerage accounts, payments to settle securities transactions (including without limitation stocks, bonds, securities, futures (forex), options, or an investment interest in any entity or property), tax payments and court ordered payments. Exception Payments may be scheduled through the Service, but they are discouraged and must be scheduled at your own risk. In no event shall the Service be liable for any claims or damages resulting from or in connection with your scheduling of Exception Payments. The Service Guarantee as it applies to late payment related charges is void when Exception Payments are scheduled and/or processed by the Service. The Service has no obligation to research or resolve any claim resulting from an Exception Payment. All research and resolution for any misapplied, mis-posted or misdirected Exception Payments will be the sole responsibility of you and not of the Service.

## **e-BILL FEATURE**

### e-Bill Presentment; Sharing Your Personal Information for e-Bill Service

The Service includes a feature that electronically presents you with e-Bills from select Billers. e-Bills may not be available from all of your Billers. Our e-Bill feature is provided as a convenience only, and you remain solely responsible for contacting your Billers directly if you do not receive their statements.

Which of your Billers will Present you with e-Bills – You will receive e-Bills from a company only if both: (a) you have designated it in the Service as one of your Billers, and (b) it has arranged with our third-party service provider to deliver e-Bills. The Service may then present you with e-Bills from that e-Biller if either: (1) you affirmatively elect online within the Service to receive e-Bills from that e-Biller, or (2) that e-Biller chooses to send you e-Bills on a temporary “trial basis.” In either case, you can elect online within the Service to stop receiving e-Bills from that e-Biller. Electing to receive e-Bills, automatically receiving trial e-Bills, and declining further elected or trial e-Bills all occur on an individual e-Biller basis. The Service does not include an option to prevent ever participating in the automatic trial e-Bills feature. When affirmatively electing to receive e-Bills from a particular e-Biller, you may be presented with terms from that e-Biller for your acceptance (but we are not a party to that e-Biller’s terms).

Paper Copies of e-Bills – While receiving e-Bills on an automatic “trial basis” from an e-Biller, you will continue to receive your ordinary statements from that e-Biller (e.g., “trial basis” e-Bills do not stop paper statements). If you affirmatively elect to start receiving e-Bills from an e-Biller, that e-Biller may stop sending you paper or other statements. Check with the individual e-Biller regarding your ability to obtain paper copies of e-Bills on a regular or as-requested basis.

Sharing Information with Billers – You authorize the Service to share identifying personal information about you (such as name, address, telephone number, Biller account number) with companies that you have identified as your Billers and which the Service has identified as offering e-Bills for purposes of matching your identity on the Service’s records and the Biller’s records to (a) activate your affirmative request for e-Bills, and/or (b) confirm your eligibility for “trial basis” e-Bills.

Information Held by Billers – The Service is unable to update or change any personal information held by your Biller in its own records (e.g., name, address, phone numbers and e-mail addresses). Any changes will require you to contact the Biller directly. Additionally, it is your responsibility to maintain all usernames and passwords for all electronic Biller sites. You also agree not to use someone else’s information to gain unauthorized access to another person’s bill. The Service may, at the request of the Biller, provide to the Biller your e-mail address, service address, or other data specifically requested by the Biller for purposes of the Biller matching your identity against its records or informing you about the Service and/or bill information.

Activation – The Service may notify the e-Biller of your request to receive electronic billing information. The presentment of your first electronic bill may vary from e-Biller to e-Biller and may take up to sixty (60) days, depending on its billing cycle. While your e-Bill feature is being activated, it is your responsibility to keep your accounts current. Each e-Biller reserves the right to accept or deny your request to receive e-Bills.

Authorization to Obtain Bill Data – You authorize the Service to obtain bill data from your Billers that you have requested to send you e-Bills, and from your Billers that wish to send you trial e-Bills. For some Billers, you will be asked to provide the Service with your user name and password for that Biller. By providing the Service with such information, you authorize the Service to use it to obtain your bill data.

Notification – We will use commercially reasonable efforts to present all of your e-Bills promptly. In addition to notification within the Service, the Service may send an e-mail notification to the e-mail address listed for your Service account. It is your sole responsibility to ensure that this information is accurate. In the event you do not receive notification, it is your responsibility to periodically logon to the Service and check on the delivery of new e-Bills. The time for notification may vary from e-Biller to e-Biller. You are responsible for ensuring timely payment of all bills.

Cancellation of Electronic Bill Notification – The e-Biller reserves the right to cancel the presentment of e-Bills at any time. You may cancel electronic bill presentment at any time. The timeframe for implementing cancellation of your electronic bill presentment may vary from e-Biller to e-Biller. It may take up to sixty (60) days, depending on the billing cycle of each e-Biller. The Service will notify your e-Biller(s) as to the change in status of your account and it is your sole responsibility to make arrangements for an alternative form of bill delivery. The Service will not be responsible for presenting any e-Bills that are already in process at the time of cancellation.

Non-Delivery of e-Bill(s) – You agree to hold the Service harmless should the e-Biller fail to deliver your e-Bill(s). You are responsible for ensuring timely payment of all bills. Copies of previously delivered bills must be requested from the e-Biller directly.

Accuracy and Dispute of an e-Bill – The Service is not responsible for the accuracy of your e-Bill(s). The Service is only responsible for presenting the information it receives from the e-Biller. Any discrepancies or disputes regarding the accuracy of your e-Bill summary or detail must be addressed and resolved directly with the e-Biller.

## **GENERAL**

### **6.14 Password and Security**

You agree not to give or make available your password or other means to access your account (collectively “access credentials”) to any unauthorized individuals. You are responsible for all payments you authorize using the Service. If you permit another person (such as a family member or co-worker) to use the Service or your access credentials, or you entrust that person with your access credentials, you are deemed to have authorized and are fully liable for any transactions or other actions those other persons may take using the Service prior to you notifying us that transfers or actions by that person are no longer authorized.

If you believe that the security of any of your access credentials may be compromised, lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check, that someone may attempt to use the Service without your consent, or that someone has transferred money without your permission, you must notify the Bank AT ONCE by calling the telephone number indicated in this Master Agreement.

### **6.15 Information Authorization**

Your enrollment in the Service may not be fulfilled if we or our service providers cannot verify your identity or other necessary information. In order to verify ownership of a Payment Account(s) and/or Billing Account, the Service may in its discretion (but without obligation) choose to issue offsetting debits and credits to that account and then require confirmation from you. By requesting to enroll in or use the Service, you agree that we and/or our service providers may review your credit rating at our expense through an authorized bureau. In addition, we can share with our service providers personal information about you, including without limitation, financial information and transaction history regarding your Payment Account. We and our service providers can use personal information about you for our everyday business purposes and our service provider’s service to us and/or you, such as to maintain your ability to access the Service, to authenticate you when you log in, to send you information about the Service, to perform fraud screening, to verify your identity, to determine your transaction limits, to perform collections (including collection of Provider Payments), to comply with laws, regulations, court orders and lawful instructions from government agencies, to protect the personal safety of subscribers or the public, to defend claims, to resolve disputes, to troubleshoot problems, to enforce this Agreement, to protect our service provider’s rights and property, and to customize, measure, and improve the Service and the content and layout of the Site. Additionally, we and our service providers may use your information for risk management purposes and may use, store and disclose your information acquired in connection with this Agreement as permitted by law, including (without limitation) any use to effect, administer or enforce a transaction or to protect against or prevent actual or potential fraud, unauthorized transactions, claims (including Provider Payments) or other liability. We and our service providers may obtain financial information regarding your account from a Biller or your financial institution (e.g. to help resolve payment posting problems or for verification). We and our service providers shall have the right to retain such data even after termination or expiration of this Agreement for risk management, regulatory compliance, or audit reasons, and as permitted by applicable law for everyday business purposes. In addition, we and our service providers may use, store and disclose such information acquired in connection with the Service in statistical form for pattern recognition, modeling, enhancement and improvement, system analysis and to analyze the performance of the Service.



### **6.15 Service Fees and Additional Charges**

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. You agree to pay such charges and authorize the Service to deduct the calculated amount from your designated Billing Account for these amounts and any additional charges that may be incurred by you. Any financial fees associated with your standard deposit accounts will continue to apply. You are responsible for any and all telephone access fees and/or Internet service fees that may be assessed by your telephone and/or Internet service provider. The section entitled "Failed or Returned Transactions" applies to amounts you owe our third-party service provider or us, if you fail to timely reimburse our third-party service provider or us for Provider Payments or the fees and charges described in this Agreement.

### **6.16 Amendments**

We may change (i.e., add, delete, revise or update) this Agreement, applicable fees and service charges from time to time. We will provide you notice of the change if required by applicable law. Such notice may be sent (a) via electronic communication as provided in this Agreement, (b) in any manner allowed in this Master Agreement or (c) in any manner allowed by law. Any use of the Service after we provide such notice will constitute your agreement to such change.

We may, without prior notice, change the applications, screen operations, services, functions, features and/or related material, which may render all such prior versions obsolete. We may terminate such obsolete versions and restrict access to more recent versions.

If you do not agree to any change, you must stop using the Service after the effective date of the change and must cancel any payments (including automatic recurring payments) that you have previously scheduled to be processed after the effective date.

### **6.17 Banking Charges**

Any changes in your Payment Account should also be made in accordance with our procedures. All changes made are effective immediately for scheduled and future payments paid from the updated Payment Account information. The Service is not responsible for any payment processing errors or fees incurred if you do not provide accurate Payment Account or contact information.

### **6.18 Service Termination, Cancellation or Suspension**

In the event you wish to cancel the Service, your Administrative User may contact Customer Service at the number indicated in this Master Agreement. Any payment(s) the Service has already processed before the requested cancellation date will be completed by the Service. All Scheduled Payments including recurring payments will not be processed once the Service is cancelled, and your e-Bill service will be canceled. We have the right to terminate or suspend Service to you at any time. Neither termination shall affect your liability or obligations under this Agreement.

If the Service is terminated by you or us, your online bill payment information will be lost and unprocessed Scheduled Payments (including recurring payments) and e-Bills will be cancelled without notice.

### **6.19 Refusing Payment Instructions**

We reserve the right to refuse to pay any Payment Instruction in our sole discretion. Without limiting the foregoing, we may refuse (a) to pay any specific Biller or type of Biller, (b) to make any payment we believe or suspect might be prohibited by law, prohibited by this Agreement or the Payment Account's deposit account agreement, or inconsistent with our generally applicable banking policies, or (c) to make any payment that we believe or suspect might not be timely reimbursed or paid by you. The Service will make reasonable efforts to notify you promptly if it decides to refuse to pay a Payment Instruction. This notification is not required if you attempt to make a prohibited payment (as described in the section entitled "Prohibited Payments") or an Exception Payment (as defined in the section entitled "Exception Payments").

## 6.20 Returned Payments

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

## 6.21 Joint Owners

Each joint owner of the Payment Account (or Billing Account as applicable) has full and independent authority to use the Service as if he or she was the sole owner, and without the consent of or notice to any other joint owner. Such powers include, without limitation, authority to see (a) the transactions, e-Bills, and other data associated with the Service and Payment Account (or Billing Account as applicable), (b) order Payment Instructions from the Payment Account, (c) cancel Scheduled Payments or e-Bills, and (d) close the Payment Account (or Billing Account as applicable). We may honor the Payment Instructions and other instructions of any one joint owner without inquiry, notice or liability to any other joint owner. All joint owners are jointly and severally liable for Provider Payments by the third-party service provider and for overdrafts in the Payment Account (or Billing Account as applicable). Notice by the Service to any one joint owner of the Payment Account (or Billing Account as applicable) shall also constitute notice by the Service to all joint owners.

## 6.22 Acceptable Use

You agree that you are independently responsible for complying with all applicable laws in all of your activities related to your use of the Service, regardless of the purpose of the use, and for all communications you send through the Service. We and our third-party service providers have the right but no duty to monitor and remove communications content that we in our sole discretion find to be objectionable in any way. In addition, you are prohibited from using the Service for communications or activities that: (a) violate any law, statute, ordinance or regulation; (b) promote hate, violence, racial intolerance, or the financial exploitation of a crime; (c) defame, abuse, harass or threaten others; (d) include any language or images that are bigoted, hateful, racially offensive, vulgar, obscene, indecent or discourteous; (e) infringe or violate any copyright, trademark, right of publicity or privacy or any other proprietary right under the laws of any jurisdiction; (f) impose an unreasonable or disproportionately large load on our infrastructure; (g) facilitate any viruses, Trojan horses, worms or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information; (h) constitute use of any robot, spider, other automatic device, or manual process to monitor or copy the Service or any portion of our TIB sites or services without our prior written permission; (i) constitute use of any device, software or routine to bypass technology protecting, or interfere or attempt to interfere with, the Service or TIB; or (j) may cause us or our third party service providers to lose any of the services from our internet service providers, payment processors, or other vendors.

## 7 CASH VAULT SERVICE

**7.1 The Service.** This Service provides you with an efficient way to deposit and place orders for coins and currency.

**7.2 Deposits.** You will contract separately with an armored car service acceptable to us to pick up your deposits (including cash, coins, checks, and/or food coupons) and deliver them to one of our bank vaults or to a cash vault processor provided or designated by us (collectively, the "CVP") for credit to your designated Account. The armored car service will act as your agent, and neither we nor the CVP will be liable for any damage, destruction, theft or unexplained loss of any deposit prior to its receipt by the CVP.

We or the CVP may reject any shipment that we or it considers unacceptable or irregular (e.g. shipment bags that have holes or are not properly sealed). Any shipment receipt provided by the CVP shall not be deemed an acknowledgment of the contents of any shipment. Your deposits will not be deemed to be accepted for deposit by us until they are received, counted and reconciled against your deposit tickets by the CVP and we are notified that the shipment has been verified as correct by the CVP. We may charge your Account with us for adjustments made by the CVP (e.g., for counterfeit currency).

For deposits received before the Cutoff Time on a Business Day, you will receive provisional credit on that Business Day. For deposits received after the Cutoff Time or on a day other than a Business Day, you will receive provisional credit on the next Business Day. We may make adjustments to your Account at any time if we discover counterfeit currency, contaminated currency, or discrepancies resulting from mis-strapped denominations.

**7.3 Cash Delivery.** You may use this Service to request a delivery of cash. A request for a delivery received prior to the Cutoff Time will be delivered on the next Business Day. All deliveries will be made by armored car service. The armored car service will be considered your agent for all purposes connected with the Service, even if we have assisted you in selecting or obtaining the armored car service. Cash will be deemed received by you when given to the armored car service. The armored car service's written receipt of delivery will be conclusive evidence of the amount and date of the cash provided by us. We assume no risk, and you will hold us harmless from any loss, occurring after the armored car service takes possession of the cash for delivery to you.

**7.4 Your Instructions.** You authorize us to accept Service instructions from any signer on your Account and/or from any other person you designate for that purpose. We also may act upon any online or telephone instructions that are made in accordance with our prescribed security procedures. We may refuse any Service instruction that we cannot confirm to our satisfaction.

**7.5 Smart Safe Service.** You may use this Service to deposit Currency (defined below) from a vault approved by us to receive verified credit or provisional credit to your Accounts in accordance with such procedures as we determine from time to time. Any required adjustments to provisional credit provided to your Account will be debited as required based on the verified count, in accordance with such procedures, and at such time(s), as we determine from time to time.

The responsibility to deposit Currency is ultimately your obligation and the obligation of the Third Party Vendor (defined below). Currency deposited in a side-drop that may be part of the vault unit will be deposited to us or our designated correspondent bank.

(a) Using the Service. You agree to: (i) follow the vault's operations, maintenance and use instructions as provided by your Third Party Vendor for depositing United States currency, United States coins, and checks drawn on United States banks (collectively, "**Currency**"); (ii) report "*said to contain*" information as may be available based on the vault used; (iii) contract with a vault vendor (approved by us) designated in the Specifications (a "**Third Party Vendor**") to maintain and service their vault; and (iv) pay us the fees we quote for the processing and accounting of the Currency deposited in the vault. In the event of a Third Party Vendor's insolvency, a stolen or damaged vault unit, counterfeit currency, contaminated currency, or other events causing the loss of, or fitness of, the currency from the vault, we are not liable and any provisional credit will be debited accordingly.

In the event that there are recurring shortages in deposits relating to Third Party Vendor count of any Currency, the parties hereto shall fully cooperate with one another (and, to the extent required under the Third Party Vendor agreements, the Third Party Vendor) in conducting an investigation of any question relating to the shortage, or the cause thereof, to the extent reasonably possible. Any such investigation may, at our election, be conducted by us or the Third Party Vendor. Each party agrees that if it finds any discrepancy, overage or shortage in the deposits, it shall use commercially reasonable efforts to immediately notify the other party of such event.

- (b) Permissible Items. You may only use the Service to deposit Currency, and only into approved localized depository vaults maintained in accordance with Third Party Vendor requirements and subject to the terms and conditions of this Agreement.
- (c) Customer's Representations. When using this Service, you make the following representations and warranties with respect to the Currency and information provided regarding the contents of the localized depository vault transmitted and/or reported to us by your Third Party Vendor: (i) the Currency deposited in the vault was not obtained by any illegal or fraudulent means or in violation of any law, rule or regulation, (ii) the information input into the vault by you accurately represents the amount of Currency deposited into the vault; and (iii) you have not taken any action that would obscure, alter or impair the capture or transmission of Currency information, or that may misrepresent the true value of Currency within the vault.
- (d) Hours of Operation and Deposit Timing. You may use the Service to deposit Currency at the times listed in the Specifications. Business Day Vault Cutoff Times (which we may change from time to time in our sole discretion upon providing you notice) are designated in order to receive content information timely for accounting purposes. Deposit information received from the Third Party Vendor vault will be deemed by us as deposited according to the current Bank approved Third Party Vendor processing schedule. Deposit information received on or after the Cutoff Time on a particular Business Day, or on a non-Business Day, may be deemed by us as received as of the next Business Day. We are not responsible for the unavailability of the Service or any damages that may result from its unavailability for any reason, including our own fault, act or omission. If the Service is not available for any reason or a deposit cannot be processed by means of the Service, you may deposit your Currency directly at any of our branches, if applicable.
- (e) Rejected Currency. If the vault rejects the Currency due to fitness of the Currency or other reason, then you should deposit the Currency in the vault side-drop. If the Currency is found to be counterfeit or contaminated based on Federal definitions during validation, any provisional credit provided to you based on "said to contain" information will be debited by the Third Party Vendor before being deposited to us. We may notify you by email (or other notification service deemed reasonable by Bank) if we are unable to or decline to process a deposit, in whole or in part.
- (f) Indemnification. In addition to the other indemnification requirements set forth in this Agreement, you agree to indemnify, defend, and hold us and our affiliated companies and their respective officers, directors, agents and employees harmless from and against any and all actions, proceedings, liabilities, losses, costs, expenses, damages, including injury or death (including those by third parties), attorney fees and claims, including (without limitation) warranty claims that result from or arise in connection with: (i) any misuse of this Service or the vault by you or your employees or agents; (ii) your breach of the terms and conditions of this Service (including without limitation any covenant, representation or warranty made by you); (iii) actions by third parties (such as the Third Party Vendor) that delay, alter or corrupt the reporting or transmission of deposit information to us; (iv) our acts or omissions that are in accordance with this Agreement, your agreement(s) with the Third Party Vendor or your instructions; (v) your negligence; (vi) your willful misconduct or the misconduct of your employees, agents, or the Third Party Vendor; (vii) robberies or attempted robberies; (viii) other acts of physical violence of any nature or any kind related to an attempt on the part of any person(s) to remove, damage or destroy the contents of the vault or the vault itself. This provision shall survive the termination of this Agreement.
- (g) Limitations on Liability. In addition to any limitations on its liability as contained in the Section entitled "Limitation of Liability -- General", we will not be liable to you for any of the following, unless the liability or loss is a result of our gross negligence or willful misconduct: (i) any damages, costs or other consequences caused by or related to our actions or omissions that are in accordance with this Agreement as it pertains to this Service, your agreement with the Third Party Vendor, or your instructions; (ii) any unauthorized actions initiated or caused by you or your employees or agents or the actions of the Third Party Vendor; (iii) the failure of third persons or vendors (including the Third Party Vendor) to perform satisfactorily, other than persons to whom Bank has delegated the performance

of its specific obligations hereunder; (iv) any counterfeit, altered or contaminated currency deposited in the vault; (v) any party's (including the Bank or the Third Party Vendor) lack of access to the vault, or the Internet or inability to transmit or receive vault data; (vi) failures or errors on the part of Internet service providers, telecommunications providers or any other party's own internal systems; (vii) actions by third parties, such as system failures or the introduction of a virus, that delay, alter or corrupt the reporting or transmission of vault content information to the Bank; or (viii) any of the matters for which you are obligated to indemnify us.

Our liability for errors or omissions with respect to the data that we receive from your Third Party Vendor will be limited to correcting the errors or omissions once validated. Correction will be limited to adjusting your Account accordingly. Third Party Vendor will need to notify you and/or us of the nature of the error, along with the recommended or necessary resolution as appropriate, in a timely manner from when the issue was first discovered.

## 8 CHECK IMAGING SERVICE

- 8.1 The Service.** We will provide to you scanned images of your designated Account statements, canceled checks (front and back), and/or other processed items, on CD ROM, through file transmission, or through our internet banking service. We will arrange for you to receive a license for software and services from an imaging vendor so that you can view the CD or transmission file images.
- 8.2 Errors, Retention of Information.** You acknowledge that scanning technology is subject to error, such as distortions. You agree to notify us promptly of any Service errors or problems. We may destroy the original items within 30 days of their receipt. We will attempt to reprocess the information and/or provide another CD or transmission file, but assume no liability for our inability to produce better copies.

## 9 COLLECTION DRAFT SERVICES

- 9.1 The Service.** We provide collection draft deposit and payment Services. The term "**Drafts**" refers to auto drafts, oil and gas drafts, bearer bonds and coupons, claims drafts, items denominated in foreign currencies, and other domestic drafts that do not clear as cash items through the ordinary check clearinghouse system or Federal Reserve system. It also includes documents, securities, instructions, instruments and the like that accompany a Draft and are to be received by you before acceptance or payment of the Draft.
- 9.2 Deposit Service.** We will forward the Drafts you deposit with us for collection. You may only deposit Drafts that are properly payable to you and in a form and of a type approved by us. We may refuse any Draft in our sole discretion.

Ordinarily, an Account is not given credit for a Draft until we receive finally collected funds for the item. If we provisionally credit your Account for any Draft, we may charge the amount back against your Account if we do not receive payment for any reason (or payment is reversed). You are responsible for ensuring that we are provided with the correct address for processing each Draft to ensure timely receipt and payment by the Draft's payor. We will not be responsible for confirming or correcting addresses. Our sole responsibility with respect to any Draft is to exercise the ordinary care of a collecting bank in forwarding the Draft for collection and settling with you when final payment is received by us. We may discontinue providing this Service at any time upon notice to you.

- 9.3 Drafts Payment Service.** We will process Drafts that you issue for payment through us. All Drafts must be in a form consistent with applicable law and acceptable to us. You must provide us with a sample Draft form for our approval before the Service begins and before you make any change in the form that might affect our Service.

Drafts received by us for payment after the Cutoff Time or on a day other than a Business Day may be deemed received on the following Business Day. We will present Drafts to you in the manner agreed upon by you and us. If you fail to designate a method or we cannot use a designated method for any reason, we may

present Drafts to you: (a) in person; (b) by notifying you by telephone, fax, or email that the Drafts are available for your review at our premises; (c) by sending images of the Drafts to you electronically or by fax; or (d) using any other method reasonably calculated to notify you of the Drafts awaiting your review. Sending notice to you that a Draft is being held for review at our premises shall constitute presentment for purposes of calculating the time of presentment and the time by which you must instruct us to pay or not pay the Draft.

If we allow you to remove presented Drafts from our premises for review, you must execute a trust receipt acceptable to us and return the Draft to us by the designated Cutoff Time on the next Business Day. We may place an administrative freeze on your Account for the amount of the Drafts that you remove from our premises and may pay the Drafts if they are not returned to us in a timely manner.

You must advise us to pay or refuse a Draft no later than the designated Cutoff Time: (a) on the Business Day following the day it is presented to us if the Draft is payable on demand, or (b) on the day payment is due pursuant to the terms on the face of the Draft. If payment is due on a day other than a Business Day, your instruction must be communicated to us by the Cutoff Time on the preceding Business Day. We may charge your Account for the Draft on that preceding day. Your instruction must be communicated to us in the manner we approve and actually received by us.

We may pay Drafts in any order. Our election to pay a Draft without sufficient available funds in your Account will not obligate us to do so on other occasions, and we may discontinue doing so without cause or prior notice. If we do not receive your instruction to pay or return a Draft by the Cutoff Time, we may pay or return the Draft, unless we have agreed upon a specific procedure in such situations. We may return and mark dishonored Drafts "Refer to Maker" or with another appropriate designation. If a Draft is processed and presented to us as a cash item (e.g., by a Federal Reserve Bank or clearinghouse), and we do not recognize that it is a Draft, we may process the Draft like an ordinary check without presenting it to you first.

- 9.4 Indemnification and Hold Harmless.** Should you elect to receive originals or facsimile copies (either electronically or by fax) of the contents of your collection Draft envelopes in lieu of a personal, in-bank inspection of the contents of said envelopes, you hereby agree to indemnify and hold us harmless from any and all losses, claims, exclusions, damages, expenses (including without limiting the generality of the foregoing, attorney's fees and court costs) or causes of action of whatsoever nature by, through, or under you, or anyone else that may arise from such removal or the release and/or transmittal via facsimile of such records to you by us, for your use and benefit,

## 10 CONTROLLED DISBURSEMENT SERVICE

- 10.1 The Service.** We can arrange for you to draw checks on a designated Disbursement Account (defined below) that you open with us and will transfer available collected funds from a separately designated Account with us (the "**Funding Account**") to the Disbursement Account to cover those checks and any adjusting debit and credit entries. We may (but are not required to) also agree to permit other types of debits to your Disbursement Account, in which case we may also transfer available collected funds to the Disbursement Account to cover those transactions. (Checks drawn on the Disbursement Account, and other debits permitted against the Disbursement Account, are called "**Controlled Disbursement Items**".) Wire Transfer and ACH transactions, other than the funding credits and adjusting debits created by us, are not permitted in the Disbursement Account and therefore are NOT included in the definition of "**Controlled Disbursement Items**."
- 10.2 The Disbursement Account.** You will complete and submit documentation provided by us to open a zero balance controlled disbursement checking account (the "**Disbursement Account**") with us. We do not review items drawn on or debits to the Disbursement Account and assume no responsibility for any fraud or errors related to such items or debits on that Account (e.g., forged or altered items, misencodings, missing endorsements, counterfeit items, legends or notations, postdated items, unauthorized debits or other irregularities).

You will maintain sufficient collected funds in your Funding Account to pay all Controlled Disbursement Items.

- 10.3 Check Format.** You will only use checks for the Disbursement Account that comply with the Specifications that we provide to you. You will provide us with a sample of a voided check before you issue any checks in connection with the Disbursement Account.
- 10.4 Report of Transactions.** Each Business Day, we will provide you with information on the aggregate amount of Controlled Disbursement Items presented to the Disbursement Account as well as other such information identifying the components of such aggregated dollar amount as is reasonably necessary or convenient for us to provide the Service (including, but not limited to, MICR line information and Check images), and such other information as we may otherwise mutually agree. We will then make such information available to you electronically by such time of day as we may from time to time establish so that you can ensure adequate collected funds are available in the Funding Account each day to cover that day's Controlled Disbursement Items. If, for any reason, the Federal Reserve Bank does not provide us with the information on or before our Cutoff Time, we may estimate the amount of Controlled Disbursement Items for that day.
- 10.5 Transfer of Funds to the Disbursement Account.** We may charge the Funding Account for the actual or estimated total amount of Controlled Disbursement Items and transfer the funds to the Disbursing Bank for credit to the Disbursement Account. Funds will be transferred electronically the same day as the Disbursement Account checks are presented for payment.

If there are insufficient available collected funds in the Funding Account but you have an overdraft protection product with us for that Account, we will draw on that overdraft protection in accordance with the agreement governing that product, up to the amount of its remaining available credit. If there are insufficient available collected funds in the Funding Account and you do not have an overdraft product with us for that Account (or the overdraft product has insufficient credit remaining available), then we may (but are not obligated) in our sole discretion draw on any other available credit facility that you may have with us, up to the amount of its remaining available credit and subject to the terms of the agreement governing that facility. We may also (but are not obligated) in our sole discretion create an overdraft in your Funding Account, and such overdraft shall be governed by your Deposit Account Agreement with us. Furthermore, we may also (but are not obligated to) in our sole discretion clear any such overdraft by offsetting against other Accounts with us that are owned by you.

- 10.6 Return of Unpaid Items and Debits.** We, in our sole discretion, may return any or all Controlled Disbursement Items if: (a) there are insufficient collected and available funds on deposit in the Funding Account by the established deadline to fund the total of Controlled Disbursement Items; (b) charges cannot be posted to the Disbursement Account because it is closed, suspended, frozen, subject to a dispute, or unavailable for any other reason; (c) there is a communications failure or another condition that prevents us from obtaining information from or transmitting information or funds; or (d) there are insufficient collected and available funds in the Disbursement Account because presentments exceeded the estimated amount that we transferred to the Disbursement Account. We assume no responsibility for determining which Items or debits should be returned unpaid if there are insufficient funds in the Funding Account or the Disbursement Account, and you agree not to assert any claim against us arising out of the order that items and debits in the Funding Account or the Disbursement Account are or are not paid. We may pay and return Items and debits in any order that we choose.

We may (but are not obligated to) create an overdraft in your Disbursement Account. Such overdraft shall be governed by your Deposit Account Agreement.

**Ancillary Services.** You may choose to request certain ancillary services with respect to your Disbursement Account (“**Ancillary Services**”). For example, the following and/or other Ancillary Services may be available for your Disbursement Account:

- (a) Stop Payments Service
- (b) Account Reconciliation Service
- (c) Positive Pay Services
- (d) Check Imaging Service

We can assist you in requesting and setting up Ancillary Services. You are responsible for reviewing and confirming any variables or specifications for how your Ancillary Services are set up. To obtain Ancillary Services, you must accept any of our applicable agreements.

## 11 DATA EXCHANGE SERVICE

- 11.1 The Service.** With this Service, you can obtain consolidated daily balance and float status information, as well as summary and detailed transaction level information, from multiple financial institutions in one consolidated data file. You can receive this information from us or our designated Data Collection Agency, or you may arrange for us to send account data from your Accounts with us to your Data Collection Agency.

This Service is made available on an “as-is” and “as available” basis. Neither we nor the Data Collection Agency provide any warranty, express or implied, regarding this Service. Neither we nor the Data Collection Agency assume any liability for the unavailability of the service or for information provided or withheld by any institution.

- 11.2 In-Bound Data Exchange.** With this feature, you may authorize other financial institutions to submit to our Data Collection Agency account data that will be consolidated with Account data from us. You will then retrieve the consolidated data file either (a) through our Treasury Internet Banking Service or (b) directly from our Data Collection Agency. You are responsible for authorizing any other financial institutions to provide account data to our Data Collection Agency. Our ability to process such information will depend, in part, on presentation of the information in a manner and format that is compatible with our system. We are not responsible for the accuracy or timeliness of delivery of any account data furnished by other financial institutions or Data Collection Agencies.
- 11.3 Out-Bound Data Exchange.** With this feature, you authorize us to extract data on your Accounts with us, and report it to your Data Collection Agency. We will have no obligation to update such information or confirm its receipt by your Data Collection Agency.
- 11.4 Direct File Reporting.** With this feature, you authorize us to extract data on your Accounts with us and make it available to you via file transmission.

## 12 ELECTRONIC DATA INTERCHANGE SERVICE (“EDI”)

- 12.1 The Service.** If you request this Service, you may originate or receive data transmissions that consist of documents and payment instructions. This Agreement applies only to the EDI Services that we provide to you. The legal relationships, and the terms and conditions relating thereto, between you and your trading partners will be governed by the terms of the EDI contracts between you and them, and will not be binding on us.



## 13 ELECTRONIC INVOICING AND RECEIPTS

**13.1 The Service.** This Service provides the software for you to communicate and track invoices and receive payment instructions from your customers or enter payment orders (i.e. payment card charges or ACH debit instructions) pursuant to express authorization previously received from your customers in the ordinary course of your business. (This Service is sometimes called “e-Invoicing and Payments.”)

In addition to selecting this Service in the Specifications, you must enroll online for the Service at a designated website (the “**PS Website**”). The PS Website is owned by PaySimple, Inc. (“**PaySimple**”) who is not an affiliate of Bank. When you enroll at the PS Website, you will be presented with and must accept the then-current terms of service (the “**PS Terms of Service**”). The parties to the PS Terms of Service are you, PaySimple and the Bank. A preview copy of the PS Terms of Service can be obtained from your treasury services representative upon request.

**13.2 Service Parameters.** You acknowledge that the Service consists solely of the software provided to you as described in this Electronic Invoicing and Receipts Section.

**13.3 No Debt Collection Services.** You agree that you shall be using the Service as a tool for you to collect on your own Accounts. By selecting this Service, you acknowledge that neither we nor PaySimple at any time shall undertake to provide you with debt collection services or to act as a debt collector within the scope or meaning of the Fair Debt Collection Practices Act or similar state or federal laws.

**13.4 Prohibited Uses of the Service.** You are prohibited from using the Service to:

- (a) Collect any accounts that you acquired by assignment from any third party (whether or not affiliated with you).
- (b) Collect accounts for or on behalf of any third party (whether or not affiliated with you).
- (c) Collect any accounts that were not originally generated by your delivery of your goods or services to your customer.
- (d) Enter into the Service any customer who (when entered) is in default or past due in making any payment to you on any account.
- (e) Enter into the Service any account that (when entered) is in default or past due.
- (f) Enter into the Service any account that is current when entered, but owed by a customer who is then in default or past due to you on any other account.

If requested by PaySimple and/or us, you will from time to time provide a certificate in a form acceptable to us attesting to and warranting your compliance with these prohibitions, and will permit PaySimple and/or us to audit your records in connection therewith.

**13.5 Intellectual Property.** You agree not to use Bank’s or PaySimple’s, names, logos or marks in or in connection with any invoice or other communication with your customers without first obtaining our specific prior written consent, except: (a) as may be reasonably necessary in response to an inquiry from your customer seeking to identify how a payment was processed, or (b) where PaySimple, itself has placed its name, logo or mark on a webpage, invoice or other PaySimple, service template.

**13.6 Acceptable Payment Types.** You agree that this Service will only be used to collect the following types of payments:

- (a) Your customer’s credit card payments and debit card payments that you process through First Data Merchant Services (or other merchant services agreed to in writing by us) as arranged in connection with your other Services with us; and
- (b) Your customer’s e-check or other ACH payments that you process through us pursuant to your Services and your Deposit Account Agreement.

- 13.7 Customer Complaints.** You agree that complaints, inquiries and customer service requests by your customers shall be received and addressed by you directly with your customers, and are not the responsibility of Bank or PaySimple.
- 13.8 Governing Laws, Rules or Agreements.** You acknowledge that the transactions you process through this Service are subject to governing laws, regulations, payment system rules and agreements with payment service providers (collectively “**Laws & Rules**”), including but not limited to (a) rules of card associations such as Visa, MasterCard, American Express, and Discover, etc., (b) your agreements with your merchant card services provider such as First Data Merchant Services, (c) rules of NACHA, (d) your agreements with ACH services providers, (e) federal Regulation E, and (f) federal Regulation Z. You agree that you are responsible for compliance with said Laws & Rules. **You acknowledge that the Service is not designed, intended, or represented to satisfy all of your obligations under the Laws & Rules. For example, before you initiate a payment transaction, you must first obtain your customer’s express authorization in the form required by the Laws & Rules governing that type of transaction; and before initiating a recurring electronic funds transfer in a new amount, you must send your customer prior notice of that amount.**

PaySimple markets directly to customers of its own, independent of the Bank. Bank shall have no responsibility or liability for promises, terms, representations or warranties made by PaySimple on its web pages or other direct communications. Bank’s sole contract with and duties to you are as set forth in this Agreement. Bank’s referral of you to the PS Website for specific content (e.g., for the PS Terms of Service, or for API toolkits) shall not be deemed a referral to or adoption of other communications by PaySimple on its website.

- 13.9 Prohibited Transactions.** You shall not use this Service to process payments in connection with participation by your customer, its/their obligors, or others in (a) any activities that are illegal or otherwise prohibited by law, or (b) Internet gambling. Bank and/or PaySimple may at any time block or notify you of additional types of transactions (even if not illegal) that Bank and/or PaySimple prohibit you from using this Service to collect or process.
- 13.10 Dispute Resolution Relating to this Service.** Any claim between you and Bank that arises under or in connection with this Service, or any transaction in connection herewith, shall be resolved in the manner set forth in our Deposit Account Agreement (as amended from time to time) as stated herein. Provided, however, if PaySimple is a necessary party to such claim between us, and if PaySimple does not agree to resolve such claim in accordance with our Deposit Account Agreement dispute resolution provisions, then such claim between us shall be resolved in accordance with the dispute resolution provisions of the Terms of Service.

## 14 FUNDS TRANSFER SERVICES

- 14.1 The Service.** Funds Transfer Services allow you to make payments to others and to transfer funds between Accounts by making a credit entry through the Automated Clearing House (“**ACH**”), by wire transfer, or by internal book transfer. Upon our prior approval and agreement, you may also originate certain ACH debit entries or drawdown wires on accounts of third parties who have given you their authorization. At all times, we retain the right to suspend or terminate, in our sole discretion, any payment order or your use of any or all of our Funds Transfer Services.
- 14.2 Orders.** When you transmit a transfer request, payment instruction or ACH entry (collectively “**Order**”), you authorize us to debit and/or credit the designated Account(s) for the amount indicated. You must submit your Order to us in the manner we designate.

**14.3 Available Funds.** We may refuse to process Orders unless there are sufficient collected and available funds in your designated Account on the date we initiate the transaction or the transaction payment/settlement date (the “**Effective Date**”). We may also place a hold on funds pending our processing of your Order.

For ACH credit entries, you acknowledge that your origination of such transactions must be pre-funded (unless we have agreed otherwise in writing, after credit underwriting). Pre-funded means that we will debit (charge) your designated Account (for an amount equal to the amount of your ACH file) on the day the file is sent to the ACH network for processing. The file is not sent more than two days prior to the Effective Date.

Each ACH file sent to us may consist of one or more batches of ACH entries. If prefunded, sufficient collected funds must be available in your designated Account at the time these batches are sent to the ACH network. If there are insufficient funds available in the designated Account at the time the batches are sent to the ACH network, we will process only those batches for which collected funds are available, in the order the batches appear within the file.

Batches for which collected funds are not available will suspend, and will retry in the next available collection window. Batches for which collected funds are not available by the last collection window of the Business Day prior to the Effective Date may be held overnight. For holdover batches, if funds are available on the morning of the Effective Date, you must provide instruction to release the batch for Same Day or Next Business Day settlement; absent instruction for Same Day release, the batch will be released for Next Business Day settlement. Premium pricing applies to Same Day settlement.

If we nevertheless process any batch without having first debited collected funds from your Account, you shall remain responsible for any resulting overdrawn balance and associated fees.

Nothing in this Agreement or in any course of dealing between you and us shall be construed as our commitment or obligation to lend money to you.

**14.4 NACHA Rules.** You agree to comply with the NACHA Operating Rules and Guidelines, as amended from time to time. We will provide you with a copy of the Rules, upon request, when you are first approved for originating ACH entries using our ACH Service. Thereafter, you can purchase a copy of the current Rules at <https://www.nacha.org> or by telephoning NACHA at 703-561-1100. You agree to reimburse us for any penalties, fines and/or charges that we incur as a result of your failure to comply with this Agreement or any Rule. Without limiting your duty to comply with all of the Rules, you specifically acknowledge your obligations (a) for proper re-initiation when the originator receives Notices of Change, unauthorized returns, stops or NSF notifications; (b) to adhere to all Rules regarding pre-notifications; (c) to obtain proper authorizations from receivers; and (d) to adhere to all Rules regarding reversals and when reversals are deemed improper.

**14.5 Processing Wire Transfers.** We may, at our discretion, process wire Orders through the Federal Reserve Bank System, SWIFT, or other commercially reasonable wire processing system. If we are also the beneficiary's bank, we may simply debit and credit the appropriate Accounts as requested in the wire Order. You must pay us at or before the time we execute the Order with available funds on deposit in the amount of the transfer plus our current Wire Transfer Fee (unless you are using Account Analysis). If you fail to do so, we may in our discretion attempt to cancel the transfer, or undertake any other legal means to collect the amount of the transfer, including offsetting against any of your Accounts with us.

**14.6 Order Instructions.** You will comply with the Order form, format and other requirements set forth in the Specifications, applicable law, the Rules (if applicable), and any security procedures that we establish for the Service. We are not responsible for detecting or rejecting duplicate Orders. If you give us an Order that is incorrect in any way, we may charge your Account for the payment whether or not the error could have been detected by us. We are not liable for acts or omissions by you or any other person including, without limitation, any funds transfer system, any Federal Reserve Bank, any intermediary bank or beneficiary's bank, or any beneficiary, none of which shall be deemed our agent. Without limitation, we shall not be liable for delaying or failing to act if caused by legal constraint, interruption of transmission or communications

facilities, equipment failure, war, emergency conditions, strikes, or other circumstances beyond the Bank's control. You must accurately describe transaction beneficiaries, intermediary financial institutions, and the beneficiary's financial institutions in your Orders. If you describe any beneficiary or institution inconsistently by name and number, we, the beneficiary's bank and other institutions may process the Order solely on the basis of the number, even if the number identifies a person or entity different from the named beneficiary or institution.

You will not allow others to initiate Orders on your behalf without our prior written consent. You must not engage in the business of initiating Orders on behalf of third parties without our prior written consent. You will be solely responsible for the acts and omissions of such agents.

**14.7 SWIFT MT101 or MT103 Messaging Wire Instructions.** Should you elect in the Specifications to send any electronic wire Orders through an MT101 or MT103 SWIFT message ("**Message**"), you agree to the following security procedures:

- The Message must contain your SWIFT Bank Identifier Code ("**BIC**");
- The Message must identify (by Account number) the Account to be debited, as stated in the Specifications.
- The Message must state a transfer amount that is within the dollar limits (if any) stated in the Specifications.

Furthermore, if you select this option, you agree to the following additional terms and conditions:

- (a) You may, from time to time, amend the Specifications. We shall have a reasonable time to act thereon before accepting it, and are not required to accept any amendment. Additional data or specifications may appear in the Specifications (e.g., Authorized Users), but such additional data or specifications shall **not** be considered part of the parties' agreed security procedure and shall not be the basis for you to dispute our good faith or your liability for transactions or actions that are others in accordance with the above security procedures.
- (b) You agree that any Order or other communication (including an instruction to amend or cancel an Order) issued in your name or BIC that is verified by us pursuant to the above security procedures, and acted upon by us in good faith, shall be effective as your valid, authentic and authorized instruction, fully binding upon you, even if it was in fact not valid, authentic or authorized. You hereby represent and warrant to us that you have determined these security procedures to be commercially reasonable and sufficient for you, according to your expressed wishes and needs, including the size, type and frequency of payment Orders normally issued by you to us. You shall be deemed to renew that representation and warranty each time you send a Message to us.
- (c) You acknowledge that the above security procedures may offer fewer controls than our standard wire transfer processes of (i) entering wires into Treasury Internet Banking after log-in with Access Credentials, with two person "dual" authorization controls, (ii) telephoning Orders to our central wires department with PIN code verification and two person "dual" authorization controls, and (iii) ordering wires in person at our branches.
- (d) You acknowledge that this "SWIFT MT101 or MT103 Messaging Wire Instructions" Subsection's security procedure (i) is not designed or intended to detect errors in content or transmission, and does not attempt to identify the specific individual person(s) who prepared and/or sent the Message in your name or BIC to us. Nevertheless, you wish to use this Subsection's security procedure, and agree to be bound by any Order, instruction and other communication that is acted upon in good faith and verified pursuant to this Subsection's security procedure.

- (e) You warrant to us that each MT101 you send or cause to be sent to us shall fully comply with all applicable law and the SWIFT rules and regulations as amended from time to time. You have chosen to enter into a separate service agreement with SWIFT for the ability to send SWIFT messages. We make no representations or warranties to you regarding the security or accuracy of messages you send us via SWIFT. You agree that we are entitled to rely in good faith upon all messages received via SWIFT bearing your BIC, and shall hold us harmless with respect to any claims or damages that you or we may incur in connection with those messages.
- (f) Orders not received by us prior to the applicable Cutoff Time, with reasonable time to act thereon, shall be deemed received on and be executed on the next funds transfers Business Day. Cutoff Times may be changed by us from time to time. Current Cutoff Times are available from your Customer Service Representative.

**14.8 Batch Wire Instructions/Batch Electronic File Transfers.** If you elect in the Specifications to submit your electronic wire Orders to us in batch files (each a “**Wire Batch**”), and to deliver Wire Batches via Secure FTP (SFTP) or through the SWIFT FileAct processes, you agree to the following additional security procedures:

- For files transmitted via SFTP, the Wire Batch’s sending IP Address must appear to match the IP Address (or range of IP Addresses) stated in the Specifications;
- For files transmitted via SWIFT FileAct, the Wire Batch must originate from the BIC stated in the Specifications;
- The Wire Batch’s name must match the file name stated in the Specifications;
- In the Specifications, you shall elect to use PGP Encryption of Wire Batches for file transfers; and the Wire Batch received by us must be accompanied by the keys and/or “Access Credentials” necessary for decryption by us. If an unencrypted Wire Batch satisfying the security procedures above is received by us, we may in our sole discretion (but shall not be required to) call you to validate that the Wire Batch in fact came from you and then proceed to process it and this Subsection shall be deemed satisfied. (If you do not specify PGP Encryption in the Specification form, then you knowingly decline this recommended additional step in this security procedure, and agree that the remaining portions of these security procedures are and remain commercially reasonable for your needs.)

Furthermore, by selecting this option, you agree to the following additional terms and conditions:

- (a) You may, from time to time, amend the Specifications. We shall have a reasonable time to act thereon before accepting it, and we are not required to accept any amendment. Additional data or specifications may appear on the Specification form (e.g., funding Account numbers or Authorized Users), but such additional data or specifications shall **not** be considered part of the parties’ agreed security procedure and shall not be a basis for you to dispute our good faith or your liability for transactions or actions that are otherwise in accordance with the above security procedures.
- (b) You agree that any Order or other communication (including an instruction to amend or cancel an Order) issued in your name that is verified by us pursuant to the above security procedures, and acted upon by us in good faith, shall be effected as your valid, authentic and authorized instruction, fully binding upon you, even if it was in fact not valid, authentic or authorized. You hereby represent and warrant to us that you have determined this security procedure is commercially reasonable and sufficient for you, according to your expressed wishes and needs, including the size, type and frequency of payment orders normally issued by you to us. You shall be deemed to renew that representation and warranty each time you send a Wire Batch to us.

- (c) You acknowledge that the above security procedures may offer fewer controls than our standard wire transfer processes of (i) entering wires into Treasury Internet Banking after log-in via Access Credentials, with two person “dual” authorization controls, (ii) telephoning payment orders to our central wires department with PIN code verification and two person “dual” authorization controls, and (iii) ordering wires in person at our branches. You acknowledge that the security procedure in this Subsection does not include other control options that may be available with our standard processes such as restrictions on the funding Account or dollar amount.
- (d) You warrant to us that each Wire Batch you send or cause to be sent to us, by any method, shall fully comply with all applicable law as amended from time to time.
- (e) For Wire Batches sent via SwiftAct, you have chosen to enter into a separate service agreement with SWIFT for the ability to send Wire Batch files. You warrant to us that each Wire Batch you send or cause to be sent to us shall fully comply with the SWIFT rules and regulations as amended from time to time. We make no representations or warranties to you regarding the security or accuracy of Wire Batches sent to us by you via SWIFT. You agree that we are entitled to rely in good faith upon all Wire Batches received via SWIFT originating from your BIC, and shall hold us harmless with respect to any claims or damages that you or we may incur in connection with those Wire Batches.
- (f) You acknowledge that this “Batch Wire Instructions/Batch Electronic File Transfers” Subsection’s security procedure (i) is not designed or intended to detect errors in content or transmission, and (ii) does not attempt to identify the specific individual person(s) who prepared and/or sent the Wire Batch to us. Nevertheless, you wish to use this Subsection’s security procedure, and agree to be bound by any Order, instruction and other communication that is acted upon in good faith and verified pursuant to this Subsection’s security procedure.
- (g) Orders not received by us prior to the applicable Cutoff Time, with reasonable time for us to act thereon, shall be deemed received on and be executed on the next Business Day for funds transfers. Cutoff Times may be changed by us from time to time. Current Cutoff Times are available from your Customer Services Representative.

**14.9 ACH Direct Send.** You may request to directly send your originating ACH Entry Orders (each an “**ACH Entry**”) to us in batch files (each a “**File**”) and to deliver Files via Secure FTP (SFTP) processes (“**ACH Direct Send**”). Such request shall be made in the Specifications.

- (a) Security Procedure. Should you elect in the Specifications to send your ACH Entries in Files, you agree to the following additional security procedures for each ACH Entry communicated via File:
  - i. For All Files, the File’s name must match the file name stated in the Specifications. In addition, paragraph (ii) or (iii) must be satisfied, depending on how the File was transmitted.
  - ii. For Files Transmitted Via Manual Transmission Secure Mailbox, our portal must be accessed using your valid user ID and Password;
  - iii. FOR FILES TRANSMITTED AUTOMATICALLY VIA SFTP: (1) the File’s sending IP Address must appear to match the IP Address (or range of IP Addresses) stated in the Specifications, and (2) you shall elect in the Specifications to use PGP Encryption, and the File received by us must be accompanied by the keys and/or Access Credentials necessary for decryption by us.
    - 1 Note: If an unencrypted File satisfying (i) and (iii)(1) above is received by us, we may in our sole discretion (but shall not be required to) call you to validate that the File in fact came from you and then proceed to process the File, in which case procedure (iii)(2) shall be deemed satisfied.

- 2 Note: If you do not specify PGP Encryption in the Specification form, then you knowingly decline our recommendation of procedure (iii)(2), and represent that (i) and (iii)(1) alone comprise a commercially reasonable security procedure that is adequate for your needs.

You may, from time to time, amend the Service Specifications. We shall have a reasonable time to act thereon before accepting it, and we are not required to accept any amendment. Additional data or specifications may appear in the Specifications (e.g., funding account numbers or authorized users), but such additional data or specifications shall not be considered part of the parties' agreed security procedure and shall not be a basis for you to dispute our good faith or your liability for transactions or actions that are otherwise in accordance with the above security procedure.

You agree that any instruction or other communication (including an instruction to amend or cancel a payment order) issued in your name that is verified by us pursuant to the above security procedure, and acted upon by us in good faith, shall be effective as your valid, authentic and authorized instruction, fully binding upon you, even if it was in fact not valid, authentic or authorized. You hereby represent and warrant to us that you have determined this security procedure is commercially reasonable and sufficient for you, according to your wishes and needs, including the size, type and frequency of payment orders normally issued by you to us. You shall be deemed to renew that representation and warranty each time you send a File to us.

(b) Additional Terms and Conditions.

- i. You acknowledge that the above security procedure may offer fewer controls than our standard ACH processing service whereby you manually enter ACH entry instructions into Treasury Internet Banking after log-in via Access Credentials, with Dual Controls. You acknowledge that the security procedure in this Section does not include other control options that may be available with our standard ACH services such as restrictions on the funding account or dollar amount.
- ii. Separate from the above security procedure, you shall promptly verify the control total of each File ("**Control Total**") you send. Control Totals can (but are not designed or warranted to) indicate possible problems with a received File, such as the sending of an unauthorized or erroneous File, unauthorized or erroneous entries being included in the File, or corruption of the File in transmission.
  1. **If we email you with the Control Total of the File received from you**, then you shall have 30 minutes from that email to call and notify us of an incorrect Control Total, and to instruct us to not process that File. The number for you to call is stated in our email. If you do not call us within those 30 minutes, we are authorized to process the File. You shall indemnify and hold us harmless from any loss that could have been prevented by timely notifying us of an incorrect Control Total.
  2. **If we instruct you to email us with the Control Total of the File sent by you**, then we shall compare the Control Totals received in your emails to the Control Totals received in your Files. If the Control Totals in a File does not match that in the corresponding email, then we will notify you of the discrepancy and not execute that File unless further instructed by you to do so. You shall indemnify and hold us harmless from any loss that would not have occurred if you did not instruct us to execute a File after being informed of the Control Total discrepancy.
- iii. You warrant to us that each File you send or cause to be sent to us, by any method, shall fully comply with all applicable law as amended from time to time.
- iv. You acknowledge that this Subsection's security procedure (a) is not designed or intended to detect errors in content or transmission, and (b) does not attempt to identify the specific individual person(s) who prepared and/or sent the File to us. Nevertheless, you wish to use this Subsection's security procedure, and agree to be bound by any order, instruction and other communication that is acted upon in good faith and verified pursuant to this Subsection's security procedure.

- v. Files not received by us prior to the applicable Cutoff Time, with reasonable time for us to act thereon, shall be deemed received on and be executed on the next Business Day for funds transfers. Cutoff Times may be changed by us from time to time. Current Cutoff Times are available from your treasury services representative.
- vi. Nothing in this Subsection shall preclude you from entering into agreements to communicate ACH entry instructions via Treasury Internet Banking, or by other methods. ACH instructions received via those methods shall be governed by those separate agreements, including those agreements' security procedures.

**14.10 Foreign Transfers; Currency Conversion.** If your Order involves a transfer to a beneficiary in a foreign country, we may execute the Order in the currency of the country of the beneficiary's financial institution. You consent to conversion of the funds into foreign currency by us (or our agents or processors), any correspondent bank or intermediary bank, the beneficiary's bank, or any other third party reasonably involved in the completion of the funds transfer, at conversion rates generally applied by that converting party. If the transfer is returned for any reason, you agree to accept the refund in U.S. dollars in the amount of the foreign money credit, based on the current buying rate on the day of the refund, less any charges and expenses incurred by us. Foreign transfers may be subject to delays and changes in foreign currency exchange rates. Fees imposed by intermediary banks may be deducted from the amount of your Order. A portion of those charges may be shared with us.

**14.11 Authorization and Record Retention.** You will initiate ACH debit and drawdown wire Orders only with the prior written authorization of the owners of the Accounts affected by such Orders. You agree to maintain a copy of each authorization for a period of two years following its termination, and to provide us with a copy upon request. (Where the ACH Rules permit or require alternate methods of obtaining, evidencing, and retaining authorizations from receivers, such as for WEB and TEL entries, you will comply with those Rules as applicable. See the Subsection below entitled "Restricted ACH Orders".) You warrant to us whatever we are required or deemed to warrant to others regarding your Orders.

**14.12 Internal Book Transfers.** Transfers between your Accounts with us are subject to the terms of your Deposit Account Agreement. Although you may instruct our online system to make transfers between your Accounts at any time on any day, transfers occurring after the Cutoff Time or on a day other than a Business Day may not be posted until the next Business Day.

**14.13 Cancellation and Amendment of Orders.** You may not cancel or amend an Order after we receive it. If we attempt to reverse an Order at your request, we assume no liability for any interest or losses that result if the reversal is not effected. You agree to indemnify, defend, hold harmless and reimburse us for all expenses, losses, claims, actions, proceedings and damages we incur in effecting or attempting to effect any reversal. You are solely responsible for providing notice to receivers that a reversal is being transmitted and the reason for the reversal no later than the Effective Date of the reversing entry.

**14.14 Rejection of Orders.** We may reject any Order if: (a) the Order does not conform to the limitations, security procedures or other requirements set forth in this Agreement (including any applicable Specifications); (b) there are insufficient collected funds in your Account on the transaction date or Effective Date; (c) the Order involves funds subject to a lien, hold, dispute or legal process which prevents their withdrawal; (d) the Order is not authenticated to our satisfaction or we have reason to believe the Order may not be authorized (notwithstanding compliance with any security procedure); (e) the Order contains incorrect, incomplete, or ambiguous information; (f) the amount of the Order exceeds any limit established for the specific Order or for your Account; (g) we believe the beneficiary of the Order may be prohibited, e.g., on the list of Specially Designated Nationals and Blocked Persons issued by the U.S. Treasury's Office of Foreign Assets Control (which may require us to not complete the transfer and to "block" the funds until that Office issues a written release); (h) the Order appears to be in contravention of applicable law, regulation or executive order; (i) the Order would cause us to exceed any limitation on our intraday net funds position established pursuant to Federal Reserve guidelines; (j) the Order would result in violation of any other law or regulation, or any applicable governmental risk control program; (k) the Order presents any other risk to us or third persons that we deem unreasonable in our sole discretion; or (l) we elect in our discretion to not provide the Service for any or no reason. We may notify you orally, electronically, or in writing if we reject any Order no later



than two (2) Business Days after the date the Order was to be effected. We are not required to pay you interest on a rejected Order for the period between the rejection of the Order and your receipt of the notice of rejection.

- 14.15 Notice of Returned Orders.** We may notify you electronically, in writing, by telephone, or otherwise regarding any Order that is rejected or returned for any reason. We will not be obligated to credit your Account with any interest, unless the return is caused by our failure to properly execute the Order. We may attempt to remake the Order if the return is due to our error and we have sufficient data to remake the Order. You agree to reimburse us promptly for the amount of any ACH debit or wire drawdown Orders that are reversed, adjusted or returned. You may not resubmit any ACH debit or wire drawdown Order where the payment was stopped by the accountholder.
- 14.16 Notices and Statements.** Information on transfers to or from your Accounts will be reflected on your periodic statements and may be available to you online. We are not required to provide you with any other notice of the receipt, transmittal or debiting of Orders. Please see also the Section entitled “Notices – Duty to Notify Us” regarding your obligation to notify us in the event of unauthorized or erroneously paid Orders.
- 14.17 Provisional Credit.** Under the Rules, if you originate an ACH credit entry to transfer funds to a receiver, any credit given by the receiving financial institution to the receiver’s account is provisional until the receiving financial institution receives final settlement. If final settlement does not occur, then the receiving financial institution is entitled to a refund of that provisional credit, and you will not have paid the amount of that credit transfer to the receiver. In addition to the Rules, you agree that any amount we credit to your Account for any type of funds transfer to you is provisional until we receive final settlement through a Federal Reserve Bank (or payment is otherwise made as provided in Article 4A-403(a) of the Uniform Commercial Code), and we are entitled to a refund from you of that provisional credit if final settlement does not timely occur.
- 14.18 Unauthorized Order.** We may process any Order or other instruction (including an amendment or cancellation of an Order) that we believe is transmitted or authorized by you if we act in compliance with the security procedure (including any applicable callback procedure) agreed upon by you and us. Such Orders will be deemed effective as if made by you, and you will be obligated to pay us in the amount of such Orders, even though they are not transmitted or authorized by you. We strongly recommend that you impose a dual control internal environment in connection with the transmission and confirmation of Orders. We may refuse or delay execution of any Order that we have reason to believe may not be authorized by you. We shall have the right, but no duty, to question the authorization of any Order received with your Access Credentials or compliance with any agreed security procedure (including any applicable callback procedure). If we fail to follow the agreed security procedure but can prove that the Order was originated or authorized by you, then the Order shall be deemed authorized for all purposes.
- 14.19 Audit.** You hereby grant us the right (but we shall have no duty) to audit from time to time your practices, procedures and controls in originating Orders, complying with the Rules and the terms of this Agreement, and reviewing reserve requirements (collectively “**Order Controls**”). You are also responsible for providing us with access to the personnel, records and facilities of any third party contractor or vendor (such as third-party processors) you may employ in using our Funds Transfer Services, as reasonably necessary to complete our audit of your Order Controls. You also agree to provide us with copies of reports you may create or receive of audits conducted by you or third party parties concerning your Order Controls.
- 14.20 Payment Transaction Limits.** You agree not to: (a) exceed the transaction limits we establish from time to time for your Service; (b) allow anyone to initiate Orders without proper supervision and adequate safeguards; or (c) submit ACH debit Orders for Accounts receivable (ARC), represented check (RCK), international (IAT), back-office conversion (BOC), telephone-initiated (TEL), Internet- initiated (WEB), point-of-purchase (POP), point-of-sale (POS), machine transfer entry (MTE), shared network entry (SHR), check truncation (TRC or TRX), customer-initiated (CIE), or destroyed check (XCK) entries (each a “**Restricted Order**”) unless we otherwise consent in the Specifications, or some other writing. (Should we consent to any of the above Restricted Orders please see the Subsection below entitled “Restricted ACH Orders” for the

terms and conditions governing those Orders). We may from time to time and without notice prohibit your use of any other type of ACH entry unless you obtain our prior written consent to do so. You will regularly audit the actions of your employees, agents and Authorized Users of the Service.

**14.21 Restricted ACH Orders.** We may process certain types of Restricted Orders (listed in the “Payment Transaction Limits” Subsection above) that are otherwise prohibited, that you have requested and that we have consented to in the Specifications or a separate writing. By requesting permission to submit any Restricted Orders and by our expressing written consent, you and we agree to all other terms of this Agreement surrounding ACH entries, to the general terms in Subsection (a) below, and to the terms listed in each Subsection below that corresponds to certain Restricted Order types. All capitalized terms used in this Subsection that are not otherwise defined in this Agreement shall have the same meanings as those terms are used in the Rules.

(a) General Terms and Conditions for Restricted Orders. You and we agree to the following:

- i. Suspension or Termination. We may suspend or terminate your right to engage in any Restricted Order transactions at any time by providing you with notice. We may immediately suspend or terminate your right to engage in Restricted Order transactions if: (a) you breach the Rules, applicable law, this Agreement, the Acceptance, or Specifications; (b) there is a material increase in the number or amount of claims or returns related to any of your Restricted Orders or other ACH Entries; or (c) you or we terminate this Agreement or ACH Service generally.
- ii. Service Availability. For each Restrictive Order, we will notify you when you may begin to process such respective Order.
- iii. As used herein, “**RDFI**” means the receiving depository financial institution (as defined in the Rules).

(b) Accounts Receivable (ARC) and Back-Office Conversion (BOC) entries. You can convert Checks into accounts receivable entries (“**ARC Entries**”), or into back-office conversion entries (“**BOC Entries**”). If you request this Restrictive Order and we consent in writing, you and we agree as follows:

- i. ARC Entries. You may initiate ARC Entries only for Checks that you receive via the U.S. mail or at a dropbox location for the payment of goods and services. You agree to submit ARC Entries in accordance with the technical specifications and formatting requirements set forth in the Rules and the Specifications.
- ii. BOC Entries. You may initiate BOC Entries only for Checks that you receive in person or at a manned bill payment location for the payment of goods and services. You agree to submit BOC Entries in accordance with the technical specifications and formatting requirements set forth in the Rules and the Specifications.
- iii. Restrictions. You may not initiate an ARC/BOC Entry for Checks that are not permitted by this Agreement or the Rules. This includes (without limitation):
  - 1 Checks that contain an Auxiliary On-Us Field in the MICR line;
  - 2 Checks in an amount greater than \$25,000;
  - 3 Third party checks;
  - 4 Demand drafts, remotely created checks, and third party drafts that do not contain the signature of the Receiver (i.e., your customer);
  - 5 Checks provided by a credit card issuer for purposes of accessing a credit account or checks drawn on home equity lines of credit;
  - 6 Checks drawn on an investment company, as defined in the Investment Company Act of 1940;

- 7 Obligations of a financial institution (e.g., traveler's checks, cashier's checks, official checks, money orders, etc.);
- 8 Checks drawn on the U.S. Treasury, a Federal Reserve Bank, or a Federal Home Loan Bank;
- 9 Checks drawn on a state or local government that are not payable through or at a participating depository financial institution; and
- 10 Checks payable in a medium other than United States currency.

You will not submit ARC/BOC Entries to collect: payments for goods or services sold by third parties; payments relating to adult entertainment or gambling services; or obligations owing to third parties. An ARC or BOC Entry may only be submitted as a single entry debit to a Receiver's (defined in the Rules) account for a payment that is made to you. No fees may be added to the amount of the Check when it is transmitted as an ARC/BOC Entry.

During initial processing of an ARC/BOC Entry, you must use a reading device (not key-enter) the routing number, account number, or check serial number from the Check. You may, however, key-enter such information to correct errors relating to MICR misreads, misencoding, or processing rejects. Checks must contain a preprinted serial number and must be completed and signed by the Receiver.

- iv. Limitations. You will not submit ARC/BOC Entries for more than the maximum single entry, daily total, and/or monthly total amount(s) we designate from time to time. We also may impose limits on files submitted by a third party service provider.

We may refuse to process entries that exceed the limitations described above. Our processing of ARC/BOC Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision. We may cease processing ARC/BOC Entries in a greater amount at any time without cause or prior notice.

- v. Notice to Your Customers. Prior to your receipt of a Check that is to be converted to an ARC/BOC Entry, you must provide your customer (the Receiver) with a clear and conspicuous notice, compliant in form and manner of communication with the Rules and applicable law, that the receipt of each Check will be authorization for the Check to be used as a source document for an ACH debit transaction to the Receiver's account at his or her financial institution. If the Receiver is a consumer, the notice shall comply with the requirements of Federal Reserve Regulation E, for example:

"When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution."

In the case of BOC Entries, your Notice must also state:

"For inquiries, please call <phone number>."

Note: Transactions to collect returned items fees require additional disclosures.

- vi. Warranties. In addition to any other warranties and representations made to us under the Agreement, you warrant the following to us with respect to each ARC/BOC Entry:

- 1 The amount of the Entry, the routing number, the account number, and the Check serial number are obtained from and in accordance with the source document;

- 2 You will retain a reproducible, legible, image, microfilm, or copy of the front and back of the source document for two years from the Effective Date of the ARC/BOC Entry. You will provide us with the copy promptly, but no later than five (5) Business Days following our request. The copy shall be clearly marked on its face as being a copy.
  - 3 You will not use the Check other than as a source document and will not enter the Check in the check collection process. The source document will not be presented or returned such that any person will be required to make payment based on the source document.
  - 4 The source document to which the ARC/BOC Entry relates will be securely destroyed within 14 days of the Effective Date for the Entry.
  - 5 You have established and implemented, and will maintain, commercially reasonable methods to securely store the source document pending its secure destruction; and to securely store all banking information relating to the ARC/BOC Entry for so long as it is retained by you and until it is securely destroyed or purged.
- vii. Additional Warranties for BOC Entries. In addition to any other warranties and representations made to us under this Agreement, you warrant the following to us with respect to each BOC Entry that you have established and implemented, and will maintain:
- 1 Commercially reasonable procedures to verify the identity of the Receiver for each BOC Entry; and
  - 2 A working telephone number that is answered during normal business hours for Receiving inquiries regarding BOC Entries, and you display that telephone number on the notice you provide to Receivers in accordance with the Subsection above entitled "Notice to Your Customers."
- viii. Opt-Out by Receivers. The Rules no longer require Originators (defined in the Rules) to allow Receivers to opt out of ARC/BOC Check conversion. Presently, we do not impose any requirement of our own in this Agreement that you allow Receivers to opt-out. We retain the right, however, to notify you in the future that, in our sole discretion and as a condition to continuing to allow you to submit ARC/BOC entries, you must establish and maintain an opt-out program satisfactory to us.
- (c) RCK Entries. You can use a re-presented Check entry (each an "**RCK Entry**") to collect Checks that have been returned because of insufficient or uncollected funds, and that meet all the other requirements of this Subsection and the General Terms and Conditions for Restricted Orders above. You agree to submit such entries in accordance with the technical specifications and formatting requirements set forth in the Rules and as directed by us from time to time.
- i. Notice of Your RCK Policy. Before first receiving the Check, you must have provided the Receiver with a conspicuous notice stating in clear and readily understandable terms that giving you the Check authorizes you to initiate an ACH debit entry to the Receiver's account for the amount of the Check if it is returned for insufficient or uncollected funds. Notices provided at the point-of-sale must be clearly displayed on a prominent sign at the point-of- sale. If you are a billing firm (i.e., you issue invoices or statements to be paid by the Receiver), the notice must be clearly displayed on each invoice or statement. You must provide us with a copy of the notice within three (3) Business Days of our request. You agree that, if the Receiver signs a written statement that a required notification was not provided, the amount may be charged against your Account and re-credited to the Receiver.
  - ii. Copy of Check. You must retain a copy of the front and back of the Check to which the RCK Entry relates for 7 years from the Effective Date. You agree to provide us (for our use or the RDFI's use) a copy of the Check (front and back) promptly, but in no event more than three (3) Business Days after our request. If the Check has been finally paid prior to providing us with the copy, you must mark the face of the copy as paid.

- iii. Warranties that RCK Entries Relate to Eligible Checks. You warrant that all RCK entries relate to returned Checks that are eligible in accordance with this Agreement and the Rules. For example, the Check must:
  1. be in an amount less than \$2,500;
  2. indicate on its face that it was returned due to “Not Sufficient Funds,” “NSF,” “Uncollected Funds,” or comparable language;
  3. be dated 180 days or less from the date the RCK Entry is being transmitted to the RDFI;
  4. be drawn on a consumer account;
  5. have been previously presented (i) no more than two (2) times through the check collection system (as a paper check, a substitute check, or an image) if the entry is an initial RCK Entry, or (ii) no more than one time through the check collection system and no more than one time as an RCK Entry if the entry is a reinitiated RCK Entry;
  6. be a “check” within the meaning of Article 4 of the Uniform Commercial Code, as amended;
  7. be a negotiable demand draft drawn on or payable through or at a participating depository financial institution, other than a Federal Reserve Bank or Federal Home Loan Bank; and
  8. contain a pre-printed serial number
- iv. Ineligible Items. You shall not submit RCK entries for any of the following (“**ineligible items**”): (1) non-cash items (as defined in Regulation CC); (2) drafts drawn on the U.S. Treasury, a Federal Reserve Bank, or a Federal Home Loan Bank; (3) U.S. Postal Service money orders; (4) items not payable in United States currency; (5) items payable to a person other than the Originator; (6) remotely-created items and other drafts that do not contain the original signatures of the Receivers; (7) drafts drawn on a state or local government that are not payable through or at a Participating DFI; (8) any other type of item prohibited by the Rules; and (9) any other type of item that we may notify you from time to time that we have in our discretion declared ineligible under this Section.
- v. Additional Warranties. In addition to all other warranties given by you under the Agreement and the Rules, you warrant the following to us with respect to each Check and the RCK Entry:
  1. you have good title or are entitled to enforce the Check, or are authorized to obtain payment or acceptance on behalf of one who has good title or is entitled to enforce the Check;
  2. all signatures on the Check are authentic and authorized;
  3. the Check is not counterfeit and has not been altered;
  4. the Check is not subject to a defense or claim in recoupment of any party that can be asserted against you or us;
  5. you have no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor, or, in the case of an unaccepted draft, the drawer of the item;
  6. the Check is drawn on, payable through, or payable at the RDFI, and the amount of the Check, the Check number, and the Account number contained on the Check have been accurately reflected in the RCK Entry;
  7. subsequent to the origination of the RCK Entry, the Check or a copy of the Check will not be presented to the RDFI unless the related RCK Entry has been returned by the RDFI;
  8. the information encoded after issue in magnetic ink on the Check is correct;
  9. any restrictive endorsement made by you, your agent or third-party sender on the Check is void and ineffective upon initiation of the RCK Entry; and
  10. the RCK Entry is only for the face amount of the Check only; no collection fees have been added to the amount of the Check transmitted as an ACH entry. (See the Rules for the origination of an ACH debit entry to collect fees).

- (d) XCK Entries. You can use a destroyed check ACH entry (each an “**XCK Entry**”) if you are: (i) acting in the capacity of a collecting financial institution; and (ii) acting to collect checks that were lost or destroyed in connection with the loss or destruction of an entire cash letter (and not with respect to individually lost or destroyed checks).

You acknowledge that any RDFI may, in its sole discretion, refuse to accept and elect to return any XCK Entry. You shall not assert, and we shall not accept, any responsibility for any RDFI refusing to accept or returning any XCK Entry that you initiate.

- i. **Formatting.** You agree to submit such XCK Entries in accordance with the terms of this Agreement, the Specifications, and the technical specifications and formatting requirements set forth in the Rules, and as directed by us from time to time.

Without limiting the preceding sentence, the words “NO CHECK” and “CHECK DESTROYED” must appear in the Company Entry Description and Company Name fields so that they can appear on customers’ statements and help identify the entries.

- ii. **Copy of Check.** You must retain a copy of the front and back of the check to which the XCK Entry relates for 7 years from the Effective Date. You agree to provide us (for our use or the RDFI’s use) a copy of the check (front and back) promptly, but in no event more than three (3) Business Days after our request. If the check has been finally paid prior to providing us with the copy, you must mark the face of the copy as paid.
- iii. **Warranties that XCK Entries Relate to Eligible Checks.** You warrant that all XCK Entries relate to returned checks that are eligible in accordance with this Agreement and the Rules. For example, the check must:
  1. be in an amount less than \$2,500;
  2. be lost or destroyed in connection with loss or destruction of an entire cash letter;
  3. be dated 180 days or less from the date the XCK entry is being transmitted to the RDFI;
  4. not have been previously paid or returned as a check, or previously submitted as an ACH Entry;
  5. be a check within the meaning of Article 4 of the Uniform Commercial Code, as amended;
  6. be a negotiable demand draft drawn on or payable through or at a participating depository financial institution, other than a Federal Reserve Bank or Federal Home Loan Bank; and
  7. contain a pre-printed serial number
- iv. **Ineligible Items.** You shall not submit XCK Entries for any of the following (“**ineligible items**”): (1) non-cash items (as defined in Regulation CC); (2) drafts drawn on the U.S. Treasury, a Federal Reserve Bank, or a Federal Home Loan Bank; (3) U.S. Postal Service money orders; (4) items not payable in United States currency; (5) items payable to a person other than the Originator; (6) remotely-created items and other drafts that do not contain the original signatures of the Receivers; (7) drafts drawn on a state or local government that are not payable through or at a participating depository financial institution; (8) items drawn in amounts of \$2,500 or more; (9) any other type of item prohibited by the Rules; and (10) any other type of item that we may notify you from time to time that we have in our discretion declared ineligible under this Section.
- v. **Additional Warranties.** In addition to all other warranties given by you under the Agreement and the Rules, you warrant the following to us with respect to each check and the XCK Entry:
  1. you have good title or are entitled to enforce the check, or are authorized to obtain payment or acceptance on behalf of one who has good title or is entitled to enforce the check;
  2. all signatures on the check are authentic and authorized;

3. the check is not counterfeit and has not been altered;
4. the check is not subject to a defense or claim in recoupment of any party that can be asserted against you or us;
5. you have no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor, or, in the case of an unaccepted draft, the drawer of the item;
6. the check is drawn on, payable through, or payable at the RDFI, and the amount of the check, the check number, and the account number contained on the check have been accurately reflected in the XCK Entry;
7. the item has not been and will not be presented to the RDFI;
8. the information encoded after issue in magnetic ink on the check is correct;
9. any restrictive endorsement made by you, your agent or third-party sender on the check is void and ineffective upon initiation of the XCK Entry; and
10. the XCK Entry is for the face amount of the check only; no collection fees or other amounts have been added.

(e) TEL Entries. You can submit ACH Orders for telephone-initiated debit entries (each a “**TEL Entry**”). You may initiate Single Entries to consumer accounts pursuant to oral authorizations you obtain from Receivers (“**Consumers**”) by telephone. (For recurring TEL Entries, see also the Subsection below entitled “Additional Terms for Recurring TEL Entries”). You agree to submit TEL entries in accordance with the technical specifications and formatting requirements set forth in the Rules and as directed by us from time to time. An entry based on a consumer’s oral authorization must utilize the TEL Standard Entry Class Code.

- i. **Limitations**. You must not submit TEL Entries for more than the maximum single entry, daily total, or monthly total amounts that we designate from time to time. You will not divide a transaction into more than one TEL Entry in order to avoid these limitations. We may adjust these limitations from time to time by providing notice to you. Our processing of TEL Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision. We may cease processing TEL Entries in a greater amount at any time without cause or prior notice.

You will not use TEL Entries to collect: (1) payments for goods or services sold by third parties; (2) payments relating to adult entertainment or gambling services; or (3) obligations owing to third parties; or other amounts or transactions prohibited in the Rules, the Agreement, or any other publication by us.

- ii. **Consumer Authorization**. You will obtain the consumer’s oral authorization for each TEL Entry to the consumer’s account. A TEL Entry may not be initiated in situations where a consumer has provided you with a standing authorization for the transmission of multiple (but not recurring) ACH debit entries to an account (e.g., where there is a written authorization to charge the consumer’s account for occasional purchases made over the telephone).

A TEL Entry may be transmitted only in circumstances in which: (1) there is an existing relationship between you and the consumer, or (2) there is not an existing relationship, but the consumer initiated the call to you. A TEL Entry may not be used by you when there is no existing relationship between you and the consumer, and you either have initiated the telephone call or instructed the consumer through a mail or email solicitation to initiate the telephone call to you. Subject to the Rules, you and the consumer are considered by us to have an existing relationship when either: (1) there is a written agreement in place between you and the consumer for the provision of goods or services, or (2) the consumer has purchased goods or services from you within the past two years. You are not deemed to have an existing relationship based on any relationship your affiliates may have with a consumer.

In obtaining authorization over the telephone, you must: (1) state clearly during the telephone conversation that the consumer is authorizing an ACH debit entry to his or her account, and (2) express the terms of the authorization in clear and readily understandable terms (including the six items of information described in the “Disclosures to Consumers” Subsection below).

The consumer must then unambiguously express consent. Silence does not express consent. If you use a voice response unit (VRU) to capture a consumer’s authorization for a TEL Entry, please note that key-entry responses by the consumer to input data and to respond to questions does not qualify as an oral authorization. A VRU may be used by the consumer to key enter data and to respond to questions, provided that the actual authorization by the consumer (including the six pieces of information described below) is provided orally.

The authorization and your record thereof must conform to the requirements of the Rules and must provide evidence of the consumer’s identity and assent to the authorization. You must either (a) audio record the consumer’s oral authorization, or (b) provide written notice to the consumer that confirms the oral authorization in advance of the Effective Date of the entry. If you opt to provide the consumer with written notice confirming the consumer’s oral authorization, you must disclose to the consumer during the telephone call the method by which such notice will be provided (e.g., U.S. mail, fax, or other delivery method). The written notice must include, at a minimum, “Disclosures to Consumers” set forth in the “Disclosures to Consumers” Subsection below.

You must retain either the original or a duplicate audio recording of the consumer’s oral authorization, or a copy of the written notice confirming the consumer’s oral authorization, for 2 years from the date of the authorization. Within three (3) Business Days of our request, you must provide us with a copy of the authorization recording or confirming notice.

- iii. Disclosures to Consumers. You must ensure that, at a minimum, the following specific information is disclosed to the consumer during the telephone call and in any confirming written notice: (1) the date on or after which the consumer’s account will be debited; (2) the amount of the debit entry to the consumer’s account; (3) the consumer’s name; (4) a telephone number that is available to the consumer and answered during normal business hours for consumer inquiries; (5) the date of the consumer’s oral authorization, and (6) a statement by you that the authorization obtained from the consumer will be used to originate a one-time ACH debit entry to the consumer’s account. When written notice is used to confirm an authorization, Consumers must be afforded the right to contact you, using the telephone number provided, to correct any erroneous information contained in the notice.
- iv. Verification of the Consumer’s Identity. For each TEL Entry, you will use commercially reasonable procedures to verify the identity of the consumer. You will use a commercially reasonable method to verify the consumer’s name, address, and telephone number. You also will verify the consumer’s identity by verifying pertinent information with the consumer.
- v. RDFI Routing Number Verification. For each TEL Entry, you will use commercially reasonable procedures to verify that routing numbers are valid. If appropriate, this may include the use of available databases or directories, or contact with the consumer’s financial institution. You also will employ reasonable procedures (if available) to verify the validity of account number structures.
- vi. Warranties. You warrant that all TEL entries comply with the Rules (including associated operating guidelines) and this Agreement. In addition to any other warranties given by you under this Agreement and the Rules, you warrant the following to us with respect to each TEL Entry:
  1. You have established and implemented commercially reasonable procedures to verify the identity of the consumer;



2. You have established and implemented commercially reasonable procedures to verify that the routing number is valid; and
  3. The TEL Entry is in accordance with the Receiver's authorization.
- vii. Recurring TEL Entries Are Prohibited Without Separate Bank Permission. You must not initiate "recurring" (also called "preauthorized") TEL entries unless we have specifically granted you permission in writing to do so. We may give you that permission in a separate signed writing, but in either case your initiation of recurring TEL entries shall be subject to the "Additional Terms for Recurring TEL Entries" set forth below. The prohibition on initiating recurring TEL entries is applicable both to ACH files that you or your agents may submit to us, and to files or entries that you submit directly to us via any online platform (e.g., our treasury internet banking platform). In no event shall your physical or technical ability to submit recurring TEL entries constitute implied permission to do so.
- viii. Additional Terms for Recurring TEL Entries. You may initiate recurring TEL Entries **only if** we give you written permission in a separate writing signed by us. You hereby represent, promise and warrant as follows with respect to each recurring TEL entry you may transmit to us and each authorization for such entries:
1. General. Applicable Rules and Law, Including Regulation E. All recurring TEL Entries and their authorizations shall be in accordance with the applicable Rules and all applicable law (including but not limited to Regulation E pursuant to the Electronic Funds Transfer Act governing debits to consumer accounts). The general scope of this Subsection (e) is not limited by the specific provisions of the other Subsections herein.
  2. Notices to Receivers. You shall comply with the Rules and applicable law, including Regulation E which governs advance notice to a Receiver when a recurring debit entry may vary in amount. Such notice shall be your (not our) responsibility, shall state the amount and date of the scheduled debit, and shall be sent to the Receiver at least ten (10) days before that date. You shall also notify the Receiver of its right to receive notice of all varying transfers. All disclosures, notices and agreements shall comply with applicable governing law, including but not limited to the Electronic Signatures in Global and National Commerce Act ("ESIGN Act").
  3. Authenticating Authorizations. The Receiver's authorization for recurring TEL Entries shall be obtained by you in a writing that is signed or similarly authenticated by the Receiver. In the case of any "similar authentication" you shall comply with applicable governing law, including but not limited to the ESIGN Act.
  4. Copy of Authorization. For any authorization for recurring TEL Entries, you shall promptly provide the Receiver with a written copy thereof promptly after your receipt (and always prior to the first settlement date). Providing the written copy is in addition to (not instead of) the requirement to make and retain an audio record of that authorization.
  5. Retaining Authorizations. For recurring TEL Entries, you shall retain for two years from the termination or revocation of the authorization (i) the original, copy, or other accurate record of the oral authorization, and (ii) evidence that a copy of the authorization was provided to the Receiver in compliance with Regulation E. At our request, you shall provide us with a copy of the Receiver's authorization.
  6. Field Code "R". Each recurring TEL transaction shall be field coded "R".
  7. No Compulsory Use for Extensions of Credit. You shall not condition any extension of credit to a consumer upon the consumer authorizing you to initiate recurring debit entries.
  8. Cumulative and Conflicting Provisions. For recurring TEL Entries and their authorizations, the provisions of this subchapter are in addition to the provisions of the Subsection below entitled "Web Entries" and this Agreement. In cases of express conflict (e.g., the duty to send a copy of the authorization, the period for retaining the authorization, and the field code "R"), the provisions of this subchapter shall prevail.

(f) WEB Entries. You can submit ACH Orders for internet-initiated/mobile entries (“**WEB Entries**”). You may initiate single or recurring WEB entries only to consumer accounts. A WEB Entry must be based on (i) an authorization that is communicated (but not by oral communication) by the Receiver to you via the Internet or a Wireless Network; or (ii) any form of authorization otherwise permissible under the Rules if the Receiver’s instruction to initiate the individual debit entry is designed by you to be communicated (but not by oral communication) to you via a Wireless Network. You agree to submit such entries in accordance with the technical specifications and formatting requirements set forth in the Rules and as directed by us from time to time. You may not use the WEB Standard Entry Class (SEC) Code in connection with authorizations obtained from customers by mail or verbal telephone communication. The WEB SEC code may not be used to initiate credit entries except for reversals of WEB debit entries.

- i. **Limitations.** You must not submit WEB Entries for more than the maximum single entry, daily total, or monthly total amount(s) that we designate from time to time. You will not divide a transaction (other than for regular recurring payments) into more than one WEB Entry in order to avoid these limitations. We may adjust these limitations from time to time by providing notice to you. We also may impose limits on files submitted by a third-party service provider.

We may refuse to process entries that exceed the limitations described above. Our processing of WEB Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision. We may cease processing WEB Entries in a greater amount at any time without cause or prior notice.

You must not use WEB Entries to collect: (1) payments for goods or services sold by third parties; (2) payments relating to adult entertainment or gambling services; (3) obligations owing to third parties; or (4) obligations related to cash advances by you.

- ii. **Consumer Authorization.** You must obtain the consumer’s authorization prior to initiating a WEB Entry. The authorization must conform to the requirements of the Rules and must provide evidence of the customer’s identity and assent to the authorization. You must satisfy the authorization requirement either by (1) obtaining written authorization from the Receiver via the Internet or a Wireless Network; or (2) obtaining the Receiver’s authorization in any manner permissible under Rule 2.3.2 (Authorizations and Notices with Respect to Consumer Accounts, as amended), with the Receiver’s instruction for the initiation of the individual debit entry being communicated (but not by oral communication) to you via a Wireless Network.

Consumers must be able to read the authorization language displayed on any computer screen, mobile device or other visual display. Consumers should be prompted to print the authorization or otherwise retain a copy. You must provide a copy of the authorization to the customer upon request. Only customers may authorize WEB Entries; a third party service provider may not do so on behalf of the customer.

- iii. **Authentication.** You must employ a commercially reasonable method to identify and authenticate consumers. The method you employ must not only identify the consumer, but also must demonstrate the consumer’s assent to the WEB Entry authorization.
- iv. **Fraud Detection System.** You must establish, implement and maintain a commercially reasonable fraudulent transaction detection system to screen each WEB Entry in order to minimize the risk of fraud. The level of authentication used shall reflect the risk of the transaction, based on factors such as the transaction amount, the type of goods being offered, whether Consumers are new or existing customers, and the number and average dollar amount of WEB transactions. The system must authenticate your identity, as well as that of the customer. You agree to provide us with a description of the system, upon request, and evidence that the system is commercially reasonable. (Please see the Rules regarding the requirements for a commercially reasonable system.)

- v. **RDFI Routing Number Verification.** You must establish, implement and maintain commercially reasonable procedures to verify that the routing number of each WEB Entry is valid. If appropriate, this may include the use of available databases or directories. You also will employ reasonable procedures (if available) to verify the validity of account number structures.
- vi. **Encryption.** You shall establish a secure Internet session with each consumer using a commercially reasonable security technology that, at a minimum, is or is equivalent to a commercially reasonable updated version of Transport Layer Security (“TLS”). The secure session must be in place prior to the key-entry of the customer’s banking information and through the transmission of the data to you, your agent or service provider.
- vii. **Security Audit.** You must conduct, or have conducted on your behalf, annual or more frequent security audits to ensure that the financial information you obtain from consumers is protected by security practices and procedures that include, at a minimum, adequate levels of: (1) physical security to protect against theft, tampering, or damage; (2) personnel and access controls to protect against unauthorized access and use; and (3) network security to ensure secure capture, storage, and distribution of financial information. (See the Rules for details of the minimum components that must be addressed in the audit report.) You must provide us with a copy of each audit within 30 days from your receipt of the audit.
- viii. **Corrections.** Neither you nor your service provider will initiate corrections to files that have already been transmitted to the ACH operator.
- ix. **Warranties.** You warrant that all WEB Entries are in compliance with the Rules and the Operating Guidelines of NACHA. In addition to any other warranties given by you under this Section, the Agreement and the Rules, you warrant the following to us with respect to each WEB Entry:
  1. You have established, implemented and employed a commercially reasonable fraudulent transaction detection system to screen the entry;
  2. You have established, implemented and employed a commercially reasonable method to establish the identity of the entry’s Receiver;
  3. You have established, implemented and employed commercially reasonable procedures to verify that the RDFI’s routing number for the entry is valid;
  4. You established a secure Internet session prior to and during the key entry by the customer of any banking information;
  5. You have handled all aspects of the transaction in a commercially reasonable manner;
  6. There has been no change in your operations or other circumstance that would have a negative effect on the security practices identified or examined during your last security audit; and
  7. The Receiver authorized the WEB Entry as you have communicated it to us or our agent.
- (g) **IAT Entries.** You can submit International ACH entries (each an “**IAT Entry**”). The IAT format accommodates detailed information unique to cross-border payments (e.g., foreign exchange conversion, origination and destination currency, country codes, etc.). These entries must be batched separately from other ACH transactions. Credit and debit entries can only be made to the countries supported by the Outgoing Gateway Operator.

IAT Entries can be used to send entries only to those foreign countries permitted by the US Originating Gateway Operator as amended from time to time. We reserve the right to further restrict, without prior notice, the list of countries to which we are willing to send entries.

- i. **Limitations.** You will not submit IAT Entries for more than the maximum single entry, daily total, or monthly total amount(s) that we designate from time to time. You will not divide a transaction (other than for regular recurring payments) into more than one IAT Entry in order to avoid these limitations. We may adjust these limitations from time to time by providing notice to you. We also may impose limits on files submitted by a third party service provider.

We may refuse to process entries that exceed the limitations described above. Our processing of IAT Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision. We may cease processing IAT Entries in a greater amount at any time without cause or prior notice.

You will not use IAT Entries to collect: (1) payments for goods or services sold by third parties; (2) payments relating to adult entertainment or gambling services; (3) obligations owing to third parties; or (4) obligations related to cash advances by you.

- ii. Warranties. You warrant that all IAT Entries are in compliance with the Rules and the Operating Guidelines of NACHA. In addition to any other warranties given by you under this Agreement and the Rules, you warrant the following to us with respect to each IAT Entry:
  1. You are and shall remain in compliance with U.S. Legal Requirements with respect to each IAT Entry, including your obligations under programs administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and the Financial Crimes Enforcement Network FinCEN).
  2. Your origination of each IAT Entry complies with the laws and payment system rules of the applicable receiving country(s).
- iii. OFAC. You acknowledge that, if an IAT Entry is identified by our screening criteria for review and examination under the Office of Foreign Assets Control's rules and regulation ("**OFAC Rules**"), then settlement for such entry may be delayed or suspended pending our review, and may be terminated under applicable OFAC Rules. You acknowledge that we may be required to place an indefinite hold on funds covered by the identified IAT Entry in the event of termination under OFAC Rules. You agree that any delay in connection with the provisions of this Agreement is a permissible delay for all purposes, including the laws and regulations applicable to the availability of funds held in deposit accounts. In the event an IAT Entry is delayed or terminated, we will provide you with such notice as may be required by the Rules, OFAC Rules, or other applicable laws and regulations.
- iv. Cutoff Times. Cutoff times may be different than Domestic ACH transactions, as published in the user guides.
- v. Exchange Rate. Exchange rate will be governed and performed by the Receiving Gateway Operators rate. Rates are available daily at <http://www.frb services.org/app/fedachfx>. ACH returns will be returned at the rates that are based on the effective date of the return entry. Originators (and Third-Party Senders) should also be aware that the FX spread will be applied both on the Original transaction, as well as any subsequent return transactions. Settlement will always be executed in US dollars, and will be executed in the receiving countries' currency, as defined by the Receiving Gateway Operator.
- vi. Differences in International Law; Erroneous Entries. You understand that each country is governed by its own domestic clearing rules and practices, and that these rules may not correspond directly with the NACHA or United States rules for payments. You agree to conform with the laws of the country to which you are sending payments. You will need to explore any differences within International Law, and we will not be responsible for identifying differences for you. You further acknowledge that, in addition to our right to payment for all ACH Entries that we process on your behalf and our limited ability to recover for you any erroneous entries you may transmit to us, our ability to recover for you any IAT erroneous entry is even more limited; accordingly, you expressly assume all risk of any IAT erroneous entry you transmit to us, and you agree to indemnify and hold us harmless against any loss you or we may experience in connection with any IAT erroneous entry.

- vii. **Holiday Schedule.** You agree that foreign countries may have different holiday schedules than Domestic ACH transactions. Any transaction that is effective dated for a foreign holiday will be posted on the first Business Day following the holiday date.
- (h) **POP Entries.** You can submit one-time debit entries to accounts to facilitate the in-person purchase of goods and/or services by your customers at the point-of purchase (each a **“POP Entry”**). You may not submit POP Entries in connection with goods or services sold by third parties. POP Entries may only be made for non-recurring, in-person entries for which there is no standing authorization with you for the origination of ACH entries to the Receiver’s account. Checks for POP conversion must be received either in person or at a manned bill payment location.
- i. **Posted Notice, Copy of Notice and Written Authorization.** Prior to submitting a POP entry, you must provide the Receiver with the following notice and also obtain the Receiver’s written authorization.
1. **Posted Notice.** Prior to receiving the Receiver’s check, you must post conspicuous notice to the Receiver, placed in a prominent and conspicuous location, containing the following or substantially similar language:
- “When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from you check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day you make your payment.”
2. **Written Copy of Notice.** At the time of the transaction, you must provide the Receiver with a written notice containing the same or substantially similar language as posted notice.
3. **Written Authorization.** You must obtain written authorization from the Receiver that meets the requirements of applicable law and the Rules, including the following: the authorization must (a) be in writing, signed or similarly authenticated by the Receiver, be readily identifiable as an ACH debit authorization, and (c) clearly and conspicuously state its terms. We also recommend that the authorization contain a statement that the check will not be processed. This will assist customers in understanding the nature of the transaction. You must provide a copy of the authorization to the customer, as required by the Rules. You must retain authorizations for two (2) years and provide us promptly with copies upon our request.
- ii. **Initiation of Pop Entries/Source Documents.** To initiate a POP entry, your customer must present a check or source document containing the Receiver’s routing number, account number, and check serial number. The source document need not be signed or completed by the Receiver. However, the source document must not have been previously voided, negotiated or used as a source document. You may not deposit or negotiate the source document.

You must use a reading device (not key entry) to initially capture the routing number, account number, or check serial number from the source document. Key entry may be used only to correct errors resulting from MICR misreads or processing rejects.

You must submit POP Entries in accordance with the technical specifications and formatting requirements set forth in the Rules and as directed by us from time to time.

You must promptly void the source document (i.e., stamp it “VOID”) at the conclusion of the transaction and return it to the Receiver at the point of purchase.

- iii. **Prohibited Source Documents.** Checks that may not be used as source documents for POP Entries include: checks that contain an Auxiliary On-Ups Field in the MICR line; checks written for more than \$25,000; third party checks; credit card checks; obligations of a financial institution (e.g., cashier’s

checks, money orders, traveler's checks, official checks, etc.); checks drawn on the Treasury of the United States, a Federal Reserve Bank, or a Federal Home Loan Bank; checks drawn on a state or local government that are not payable through or at a participating depository financial institution; demand drafts and third party checks that do not contain the signature of the Receiver; checks drawn on a home equity line of credit; checks drawn on an investment company as defined in the Investment Company Act of 1940; and checks payable in a medium other than United States currency. We may, in our discretion from time to time, notify you of additional types of checks that we prohibit you from using for POP Entries.

- iv. **Receipt Requirements.** You must provide your customer with a receipt that contains the following information: Originator's name; Originator's (or third-party sender's) phone number; date of transaction; transaction amount; check serial number of source document; merchant number (or other unique number that identifies the location of the transaction); and the terminal city and terminal state (as defined in Regulation E). It is recommended that the receipt also provide the following additional information: Originator's address; Originator's merchant identification number; Receiver's financial institution routing number; Receiver's truncated account number; Receiver's truncated identification number; and transaction reference number. Note: the customer's complete account number and complete identification number must not be placed on the receipt.
- v. **Warranties.** In addition to the warranties stated in this Agreement, you warrant to us for each POP entry that the source document used to initiate that entry (1) has been voided and returned to the Receiver at the time of the transaction, and (2) had not been provided by the Receiver for use in initiating any prior POP entry. You assume sole responsibility for any losses arising from POP Entries that are fraudulent or not authorized by the Receiver, that you cannot establish were authorized by the Receiver, or for which you cannot establish compliance with all of your obligations under this Agreement.
- vi. **Limitations.** You will not submit POP Entries for more than the maximum single entry, daily total, or monthly total amount(s) that we designate from time to time. We may impose additional limitations on files submitted by a third party service provider.

We may refuse to process entries that exceed the limitations described above. Our processing of POP Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision. We may cease processing POP Entries in a greater amount at any time without cause or prior notice.

You will not reinitiate a POP entry more than two (2) times following the return of the original entry due to insufficient or uncollected funds. You should establish reasonable written procedures to identify and contact Receivers relating to any unpaid debit entry, bearing in mind that you will not be retaining the consumer's voided check (which contains the consumer's name and address).

You will not use POP Entries to collect: (a) payments for goods or services sold by third parties; (b) payments relating to adult entertainment or gambling services; or (c) obligations owing to third parties.

## 15 LOCKBOX SERVICE

- 15.1 **The Service.** We will process payments which you receive by mail from others ("**Customers**") by: establishing a post office box address where Customers may mail payments to you; arranging for the collection of such payments each Business Day; endorsing checks on your behalf; depositing payments to your designated Account; and providing related accounting and record keeping services.
- 15.2 **Commencement of the Service.** Once we notify you that we are ready to commence the Service, you may direct Customers to mail payments to you at the post office box address we designate. We will have exclusive and unrestricted access as your agent to the mail at such address.

### 15.3 Processing of Checks and Credit Card Payments.

- (a) Check Processing. You authorize us to endorse all checks we receive on your behalf through this Service. We may accept checks for deposit to your Account without endorsement and regardless of any difference between the name of the payee and your legal name (e.g., “Acme”, as opposed to “Acme Publishing, Inc.”). You will be deemed to warrant the endorsement of all items we receive through this Service, as well as your right to receive such items for deposit to your Account.
- (b) Credit Card Payments. You may request for us to manually enter credit card payment information (“**Payment Information**”) contained in credit card payment instructions (each a “**Payment Instruction**”) that we receive from your customer(s). You agree that if the Payment Information in any Payment Instruction is ambiguous or damaged then we may take any of the following actions in our sole discretion: (1) enter the Payment Information as reasonably interpreted by us; (2) forward the Payment Instruction (either the original or a scanned copy) to you to process yourself; or (3) return the Payment Instruction to your customer without being processed. If we in our discretion determine we are unable to read any part of a Payment Instruction, we may reject and return it to your customer, or we may forward it to you without processing. “Payment Information” includes data for both the card to be charged and for the obligation to be credited.

You agree that we shall have no liability for, and you shall indemnify us against, any losses, damages, costs, and expenses suffered by you or any third party arising from us not processing any ambiguous, damaged or unreadable Payment Instruction, or from us entering our reasonable interpretation of such ambiguous or damaged Payment Instruction. Without limiting the foregoing, our liability for inaccurate entry of any Payment Instruction, including legible Payment Instructions, shall not exceed the difference between any incorrect payment amount(s) entered and the corresponding correct payment amount(s) – or, if there is no incorrect payment amount, the total payment amount on the applicable Payment Instruction in question. The limitations of liability and indemnity in this Section are in addition to those in this Agreement, the Specifications, and your Deposit Account Agreement.

Entry of Payment Information is subject to certain Cutoff Times based on the output deadline selected above. We may not process a Payment Instruction received after that Cutoff Time until the next Business Day.

- 15.4 **Bill Pay Items (E-Lockbox)**. For items from certain Bill Payment vendors, we may elect to receive these items electronically (e.g., through ACH and not as paper items), and report them to you as part of your standard reporting.
- 15.5 **Deposit of Checks**. We will deposit Customer payments to the Account you have designated, pursuant to the terms of your Deposit Account Agreement. We may process items received after the Cutoff Time or on a day other than a Business Day as of the next Business Day.
- 15.6 **Record of Checks and/or Payment Instructions for Credit Cards**. For any Credit Card Payment Instructions, we will send you originals, and/or image or otherwise make a record of the source documents for each Payment Instruction as you designate in the Specification. For checks we will image or otherwise make a record of each check and accompanying documents processed pursuant to this Service.

We will retain all images and/or records of checks and/or source documents for at least thirty (30) days. You acknowledge that image processing is subject to error on occasion and agree to hold us and any third-party processor that we use harmless from all claims, actions, damages, attorney’s fees and costs associated with our inability to produce copies or images of checks or source documents of Payment Instructions.

Check image files will be available after the Cutoff Time on the day of deposit. In order to create indexes for web research, the remitter name, check number and check amount must be entered for each client. Other data (e.g., invoice number and invoice amount) also can be captured. Keystroke fees will apply for each data field entered.

**15.7 Irregular Items.** We may in our discretion reject items for deposit that are irregular in any way (e.g., illegible or ambiguous) or forward them to you without processing them. At our discretion, we may process, send for collection, or forward to you for disposition: checks that contain discrepancies or minor errors (e.g., a difference between the written and numerical amounts), postdated checks, stale dated checks, checks bearing payee names different from your name, checks that do not bear the drawer's signature, altered checks, checks drawn on a foreign bank or in a foreign currency, and other irregular items. Although we may attempt to discover and forward (without processing) items bearing notations such as "Payment in Full," you agree that we will not be liable for our failure to do so, even if we could have done so with the exercise of ordinary care. Note: Some Customers imprint such notations on checks as a normal business practice. We generally process such items, but may refuse to do so at any time without prior notice. Unless we agree otherwise in writing, we assume no duty to confirm that any payment equals the amount of any accompanying payment coupon, statement or invoice. You agree not to send or have others send demand drafts (items that do not bear the maker's signature, but purport to be authorized by the maker) to the Lockbox.

**15.8 Your Instructions to Customers.** You agree to instruct Customers not to send cash, returned merchandise, notices, communications or other materials (not previously approved by us in writing) with their payments to the address specified for this Service. Unless we agree otherwise in writing, you also agree that you will not provide Customers with marketing reply forms or other materials in connection with your billing process which Customers may return with their payments to the Service address. You agree to notify us at least 30 days in advance of any material change in your remittance statements and/or mailing schedule.

Unless otherwise agreed in writing, we assume no duty to you or others with respect to returned merchandise, property, or correspondence mailed to the address provided for this Service. We may return such items to the sender (if known by us) or, at your request, forward them to you at your sole risk and expense.

**15.9 Post-Termination.** You agree to notify Customers to stop sending payments through the Lockbox following the termination of this Service. At your request, we may (in our sole discretion) agree to continue processing payments and/or will forward mail received through the Lockbox to you for a short period of time following the date of termination. Such processing will be subject to the terms of this Agreement in effect on the date of termination. Otherwise: (a) we may terminate the Lockbox and/or refuse to pick up any further mail from the Lockbox; (b) we may forward or send to you by courier (at your expense) any Lockbox mail that comes into our possession; and (c) if you fail or refuse to pay our expense for sending you such mail, we may return or send, at your expense, any Lockbox mail to the sender (if known).

**15.10 Processing Indemnification.** You acknowledge that Bank is not able to specifically inspect each individual check, Payment Instruction or other document received in your Lockbox (collectively "lockbox items"), whether physically or electronically. Accordingly, in addition to the other indemnity provisions in this Agreement, you agree to indemnify and hold us harmless from any claim, loss or damage ("claims") asserted by you or any third party as a result of or in connection with us receiving, possessing, depositing, collecting or otherwise processing or disposing of, lockbox items on your behalf or for your benefit, whether in your name or our name, including but not limited to claims resulting from or in connection with lockbox items (a) that may be delivered to your Lockbox, and processed by us, but which you do not own (e.g., misdelivered items), (b) that were assigned to you but are payable to a third party or lack all necessary endorsements, or (c) that are illegible or ambiguous. You also hereby warrant that you and we are both authorized to endorse all items for the current named payee for purposes of deposit into your account and presentation for payment.

Without limiting the foregoing, if we choose to process an irregular lockbox item or send it for collection rather than reject it or forward it to you for disposition, you shall indemnify and hold us harmless from any claim asserted by you or a third party so long as we do so in conformity with the apparent facial terms of the lockbox item.



## 16 POSITIVE PAY SERVICES

**16.1 The Service.** We may provide any of the Positive Pay Services listed in this Section to you upon your request in order to increase the chance of identifying fraudulent or unauthorized checks drawn on your Accounts.

**16.2 Positive Pay Service.** If you request this online Service and provide us with the dates that the checks are issued, check numbers, EXACT dollar and cent amounts, and Account numbers on checks that you issue on a designated Account (“**Check Issuance Data**”), we will compare that Check Issuance Data with the information encoded on items presented to us for payment against that Account. If the information matches, we will treat the matching items as validly issued and properly payable, and will process such items for payment. If the information does not match or the item is otherwise deemed to be an Exception Item (defined below), we will use the Service to provide you with an Exception Report (“**Exception Report**”) that describes each exception item and the reason for the exception. You must then instruct us if you want us to pay or return an Exception Item. You authorize us to act in accordance with your pay/return default election if we do not receive your instruction for any reason by the Cutoff Time for such instructions. We may refuse to pay any item if there are insufficient funds in your Account to cover the item. Please review the Section entitled “**Fraud Detection and Prevention – Positive Pay/ACH Positive Pay – Indemnification**” in the General Provisions below if you do not enroll in our Positive Pay Service in connection with your checking services.

(a) Positive Pay with Payee Match Service. If you also provide us with checks’ Payee names in addition to Check Issuance Data on a designated Account, we will compare those names against the names in presented items in addition to comparing Check Issuance Data with the Positive Pay Service in accordance with the requirements and procedures described herein.

(b) Exception Items. Exception Items may include duplicate checks, checks that do not match the check issuance data that you provided, checks with duplicate serial numbers, misencoded items, checks lacking an encoded serial number, and any other items that you advise us to treat as exception items in the Specifications (each, an “**Exception Item**”). The Services do not apply to items that have been finally paid before the effective date of any listing.

Note: Our stop payment and Positive Pay systems operate separately. Therefore, if you ask us by telephone or online to stop the payment of a check, the item may not show up as an exception. You agree not to use this Service (via a return report) as a substitute for a stop payment order.

(c) Reliance on MICR Encoding. We will not be obligated to verify signatures on any checks that match the information that you provide or fail to reject. You understand and agree that we may compare your information on approved checks with information that is encoded on the items presented to us for payment. We will not be required to physically examine matching checks to confirm that they are properly signed, completed and encoded. You agree that we may rely on the process described above and that it will be deemed an acceptable standard of care for these Services and your Account. You understand that these Services may not identify counterfeit or duplicate checks which contain the same check serial number and amount as the items described in your Check Issuance Data. Therefore, you agree to review promptly all statements, returned checks, reports and other check and transaction information that we make available to you.

(d) Issue Information and Timing. You agree to provide Check Issuance Data and instructions to us in the manner, form and format that we specify for each Service. You assume full responsibility for the completeness and accuracy of all information furnished to us. Our willingness to process nonconforming information will not be considered a waiver of any requirement of this Agreement, and we may discontinue processing nonconforming information without prior notice.

We must receive your Check Issuance Data on or before Bank’s Cutoff Time each Business Day. Check Issuance Data received after the Cutoff Time or on a day other than a Business Day may not be processed by us until the following Business Day. We will provide you with an Exception Report on the morning of the Business Day following the Business Day that the Check Issuance data is processed by us. You must instruct us to pay or return exception items by the Cutoff Time for such instructions on the same Business Day that the Exception Item was presented for decision.

**16.3 Reverse Positive Pay Service.** This Service allows you to review all checks presented against your Account instead of reviewing individual exception items. Each day, we will provide you with information and images of the checks presented the previous Business Day. The Reverse Positive Pay Service will show each check paid, along with its serial number and amount, and will give you access to an image of the check. You can compare this information to the checks as you issued them.

If you notify us of any check or item to be returned before the Cutoff Time on the Business Day after the check is presented, we will return the check to the bank of first deposit.

By enrolling an Account in the Reverse Positive Pay Service, you satisfy your obligation under the Section entitled “Fraud Detection and Prevention – Positive Pay/ACH Positive Pay - Indemnification” to enroll that Account in Positive Pay.

Note: enrollment in the Reverse Positive Pay Service does NOT satisfy your separate obligation under this Agreement to enroll in our ACH Positive Pay Service (or to indemnify the Bank against losses that use of ACH Positive Pay could prevent). Reverse Positive Pay does not block, limit or filter any ACH activity in your designated Accounts. Furthermore, under certain circumstances, checks can be converted by holders into ACH debits against your designated Account rather than presented as checks. Reverse Positive Pay will not block payment of ACH debits from converted checks. Accordingly, enrollment in Reverse Positive Pay does not modify your responsibility to monitor your designated Account on a daily basis, to review all designated Account periodic statements, and to promptly report any unauthorized or erroneous activity that is identified or identifiable by such monitoring and review.

**16.4 Check Block (“Check Block”) Service.** With this Service, you instruct us to dishonor and return all checks and drafts drawn against your designated Accounts. You shall enroll each desired Account as a designated Account in the Specifications. Unlike Positive Pay, Positive Pay with Payee Match, or Reverse Positive Pay, Check Block is an account setting to block all checks, and does not allow you to instruct or notify us or return or pay checks on an individual basis. By selecting this Service, you and we further agree as follows:

- (a) Satisfaction of Positive Pay Enrollment Obligations. By enrolling an Account in Check Block, you satisfy your obligation under the Section entitled “Fraud Detection and Prevention – Positive Pay/ACH Positive Pay - Indemnification” to enroll that Account in Positive Pay.

Note: Enrollment in Check Block does NOT satisfy your separate obligation under this Agreement to enroll in our ACH Positive Pay Service (or to indemnify the Bank against losses that use of ACH Positive Pay could prevent). Check Block does not block, limit or filter any ACH activity in your designated Accounts. Furthermore, under certain circumstances, checks can be converted by holders into ACH debits against your designated Account rather than presented as checks. Check Block will not block payment of ACH debits from converted checks. Accordingly, enrollment in Check Block does not modify your responsibility to monitor your designated Account on a daily basis, to review all designated Account periodic statements, and to promptly report any unauthorized or erroneous activity that is identified or identifiable by such monitoring and review.

- (b) Do Not Issue or Authorize Checks. You agree to not issue any checks, or authorize the issuance of any checks (such as “remotely created items”), against your designated Account. Therefore, you will not be asked whether to pay, or be able to instruct us to pay, any check that may be presented; and (ii) you will not receive notice of any check being presented or our dishonor of that check.

Note: Your obligation to not authorize the issuance of any checks includes checks that are issued by us, our service providers, or other third parties engaged by you or for you in connection with other services. Certain other services available from us (such as bill payment, outsourced disbursements and integrated payables) can result in the issuance of checks; you and not Bank shall be responsible for ensuring that such checks are not created, for such checks being dishonored due to your enrollment in Check Block, and for any damages caused by such dishonor.

- (c) Additional Limitation of Liability. Although Check Block is intended to prevent any check from posting to a designated Account, Bank does not waive any defense or subrogation arising under the Uniform Commercial Code or common law if a check is paid. Bank shall have no liability if a check: (i) was written or issued by you, an employee or agent who is otherwise authorized by you to make transfers, payments or withdrawals from the designated Account; (ii) was written or issued through the misconduct of your own employee or agent; (iii) discharged or was applied to a bona fide obligation of you; or (iv) is held by us with the rights of a holder in due course (which right shall not be denied on the basis of our knowledge that you are enrolled in Check Block).

We retain all defenses based on your own negligence contributing to the creation, alternation or payment of an unauthorized item.

- (d) No Consumer Accounts. You shall not enroll a designated Account that is a consumer account, or otherwise one that you use primarily for personal, family or household purposes.

**16.5 Checks Covered by these Services.** The Services in this Positive Pay Section only apply to checks that are presented for payment through normal interbank check clearing procedures (e.g., local clearinghouse, Federal Reserve, or direct send presentment cash letter) and posted to your Account each night. Checks that are presented in any other manner will be paid in accordance with our standard procedures.

**16.6 Stale-Dated and Postdated Checks.** We may pay stale-dated and postdated checks unless you place a stop payment or postdated check order on such items, remove them from your list of checks approved for payment, or fail to notify us through any of the Positive Pay Services not to pay the items.

**16.7 Mobile Positive Pay.** Select functionality of your web-based Positive Pay Service(s) ("**Web PP**") may also be accessed with our mobile device application ("**Mobile PP App**"). Mobile access to Positive Pay services is sometimes called "**Mobile PP**". (If you separately subscribe to our Returned Items Service, the same application provides mobile access to that Service as well.)

- (a) User Access and Functionality. Mobile PP is automatically available for use by all Authorized Users of your Web PP service who have downloaded the Mobile PP App to their compatible mobile device and accepted the User Terms therein. Bank may also choose to require a separate Specification for Mobile PP service. If a specific Web PP function is available in Mobile PP, then any access to that function which you grant to an Authorized User in Web PP will also be granted to that Authorized User in Mobile PP. Furthermore, each Account to which you grant an Authorized User access in Web PP will also be accessible to that Authorized User in Mobile PP.

Using the Mobile PP App, an Authorized User can perform those select functions that are displayed in the App's menus. Bank may add, delete or change those functions and menus at any time without prior notice. Mobile PP functions shall be some of (but no more than) the functions available in your Web PP. You are responsible for training Authorized Users in the proper use of Mobile PP, and for all transactions and instructions made by Authorized Users. Bank may from time to time require your Authorized Users to download updates to or replacements of the Mobile PP App

- (b) User Terms and Online Privacy. Each Authorized User of Mobile PP must accept the mobile application's User Terms ("**User Terms**"). The User Terms will be presented to each Authorized User when first logging into the installed Mobile PP App. Bank may re-present the User Terms at any time to reaffirm existing terms or for acceptance of modified terms.

In addition to the enrolled Authorized Users, you too hereby accept the User Terms as amended from time to time. (Under the User Terms, both you and your Authorized User are deemed to be "users.") You also hereby accept Bank's Mobile App Privacy Notice (the "**Privacy Notice**") posted within the Mobile PP App. Bank recommends that you tell Authorized Users to only use mobile devices that are (i) owned by you and (ii) restricted in use to your business purposes. You agree to indemnify Bank against all claims by, and losses or damages suffered by, you or any third person that would not have arisen if the mobile device was so owned and restricted. You agree that all notices and information sent by Bank to an Authorized User are received by you, even if you do not own that device and are not told by the user or device owner.

- (c) Security Procedure. You hereby agree that the following is a commercially reasonable security procedure for accessing your Mobile PP service and verifying the authenticity and authority of instructions to Bank (including but not limited to instructions to pay or return checks or ACH entries): Bank may accept, rely upon and execute instructions received through Mobile PP from a person that has logged in using the Access Credentials of an Authorized User, so long as that instruction through Mobile PP could have been delivered to Bank via Web PP using the same Access Credentials. You represent that this foregoing security procedure is commercially reasonable for your particular needs, considering the size, type and frequency of your accounts, checks, ACH activity, positive pay activity, and treasury internet banking activities. Any instruction received by Bank in good faith and in compliance with the foregoing security procedures shall for all purposes be effective as your authorized instruction, even if you did not in fact authorize or send it. (See also that section of this Agreement entitled “Security Procedure and User Guides.”)

If you no longer want a person to be enrolled in Mobile PP as an Authorized User, you are responsible for un-enrolling that person from Web PP. Please note that if you un-enroll a person as an Authorized User from Web PP, they will be automatically un-enrolled as an Authorized User from Mobile PP. Notify Bank AT ONCE if you have any information that the security of any Access Credentials might be compromised. You acknowledge that Mobile PP service involves electronic transmission of information across wireless networks that are not under control of the Bank. You agree that Bank is not responsible for the privacy, security, accuracy or availability of your wireless data transmissions.

Bank strongly recommends use of all Dual Control features that are made available through the Mobile PP and Web PP services.

- (d) Fees. Bank does not charge a separate fee for the Mobile PP App, or for enrollment in, or for having the Mobile PP service. Bank will send you reasonable prior notice if it decides to adopt such separate fees. Any transaction conducted using the Mobile PP service, however, is subject to the same fees that would apply if the transaction was conducted using the Web PP service. You and Authorized Users should check with their mobile communication services providers regarding any charges (e.g., connection and data charges) that they may assess. Bank is not responsible for such third party charges that you or Authorized Users may incur.
- (e) Miscellaneous. Bank does not guarantee functionality or availability of Bank’s Mobile PP App or Mobile PP service on any specific mobile device, on any communication network, in any geographic region, or at any time. In no event, regardless of cause, shall Bank be liable for your inability to access the Mobile PP service or to execute any mobile transaction. You agree to use Mobile PP only from within the United States of America. The Mobile PP service and Mobile PP App do not support all types of mobile devices or all types of positive pay services. Mobile PP services are available only to companies that subscribe to the corresponding web- based positive pay service.

Except as expressly provided herein, all terms and conditions of the MSA and Deposit Documents (as defined therein) remain in full force and effect, including but not limited to all indemnifications, disclaimers and limitations of liability in those agreements.

## 17 REMOTE DEPOSIT CAPTURE SERVICE

- 17.1 **The Service**. You can use this Service to convert Checks into electronic form and transmit those items together with other necessary information (e.g. MICR line data) to us for deposit into your Account. (In this Section, the term “**Check**” shall refer to the original paper check or other item, or the image of such paper item that you transmit to us, as the context requires.) The Checks will then either be collected electronically or reprinted as substitute paper checks (“**Substitute Checks**”).

You may only use scanners and software that meet our requirements for capturing and transmitting images.

The Service may also permit you to upload certain optional remittance data in connection with your Check images. See the subsection below entitled “Remittance Data Feature.”

**17.2 Using the Service.** You agree to: (a) follow our Service instructions for capturing and transmitting Check images and other information to us; (b) view each Check as it is scanned to ensure that the images (front and back) have been captured properly; **(c) allow us (but we shall have no duty) to examine the physical location where you capture and transmit Check images and store Checks to confirm your compliance with this Agreement;** (d) adequately train your employees on the use of the Service and evaluate the need for separation of employee duties to reduce the risk of fraud; (e) allow us (but we shall have no duty) to inspect any audit report related to your operational process for the Service; and (f) provide us with the original Check (if it is within your possession) or a sufficient copy of the Check within five (5) Business Days of our request. A “sufficient copy” of a Check is a paper reproduction of an original Check that accurately reflects all of the information on the front and back of the original Check as of the time the image was transmitted to us by means of this Service. You agree to retain all information about your imaging of Checks and transmittal of Check images for no less than 7 days. In the event of lost, mistaken, incomplete or unusable Checks or Check images, or in the event of claims of fraud, alteration, counterfeit or otherwise, you agree to cooperate fully with us in providing information, including access to such records.

You bear sole responsibility for the care and security of any original Checks in your possession.

You agree to apply the following endorsement to each scanned Check you transmit for deposit, either (a) on the original paper Check before scanning, or (b) by virtual endorsement applied to the Check image by your scanner:

“Pay to the Order of *[insert Bank Name and Bank’s Routing Number]* For Remote Deposit Capture Only”.

The foregoing endorsement language is the default setting for your scanner. You may request that your scanner’s virtual endorsement language also include **“Deposit To *[insert your account Name and/or account Number]*.”** Any other variations in endorsement language must be approved in advance by the Bank in writing.

We have the right (but no duty) to reject any remote deposit that does not readily appear to contain the foregoing endorsement, even if we accept other remote deposits from you or others without that endorsement. You agree that you will not attempt, directly or indirectly, to negotiate, deliver, transfer or deposit any original Check (or copies of such Check, whether in paper or electronic form) more than once, whether with us and/or with others.

You are prohibited from using the Service for the benefit of any entity or person other than you (e.g. employees, officers, subsidiaries or non-affiliated persons).

**17.3 Non-permissible Checks.** You may use the Service only to process the deposit of original paper Checks that are payable to you. Unless we specifically agree otherwise in writing, you may not use the Service to deposit (each of the following a “Non-Permissible Check”): (a) Checks payable to a third party (even if endorsed over to you); (b) demand drafts or remotely created checks (i.e., checks lacking the original signature of the drawer); (c) Substitute Checks (i.e., paper checks created from an electronic image) other than Substitute Checks we have returned to you; (d) Checks that are irregular in any way (e.g., where the numerical and written amounts are different); (e) Checks that have previously been returned unpaid for any reason; (f) Checks that are postdated or more than 6 months old; (g) Checks drawn on a foreign bank or payable in a foreign currency; (h) Checks payable to “Cash”; (i) Checks issued by you or any company affiliated with you through common ownership or control; (j) any Check that you suspect is fraudulent or not properly authorized; (k) registered government warrants; (l) prohibited “Third-Party-Issued-Items Outside the Ordinary Course of Business” as described in the next Subsection; or (m) documentary drafts (even if you use the Service to upload the necessary accompanying documents); (n) Checks that do not readily reflect the required endorsement specified in the preceding section; or (o) any Check(s) that exceed the transaction limitation(s) that we establish from time to time.

Our processing of any of the Checks described above shall not obligate us to continue that practice, and we may stop doing so without cause or prior notice. If you process a previously truncated and reconverted Substitute Check through this Service, you will ensure that the identification of previous truncating and reconvert banks are preserved and that the Substitute Check meets the requirements for legal equivalency under Federal Reserve Regulation CC. We may refuse any Check for deposit, with or without cause, or may elect to take a Check on a collection basis only. In addition, we may immediately suspend the Service or the processing of any Check if we have reason to believe that there has been a breach in the security of the Service, fraud involving your Accounts or such Check, or any uncertainty as to the authorization, authenticity or accuracy of Checks.

- 17.4 Money Orders, Travelers Checks and Similar Items.** You may deposit money orders, travelers checks and similar items purchased by remitters from third party issuers (collectively “**Third-Party-Issued-Items**”) if, but only if, they were delivered to you, received by you, and deposited by you all in the ordinary course of the remitter’s business and your business. Deposit of Third-Party-Issued- Items that were delivered to you or received by you outside the ordinary course of the remitter’s business or your business (collectively “**Third-Party-Issued-Items Outside the Ordinary Course of Business**”) is strictly prohibited.
- 17.5 Your Representations and Warranties.** You make the following representations and warranties with respect to each Check: (a) you have the legal right to transfer the Check for deposit and negotiation, regardless of the name of the payee shown on the Check; (b) the images and information that you transmit accurately represent all of the information on the front and back of the original Check, including (without limitation) all endorsements, at the time of transmission; (c) you have not taken any action that would obscure, alter or impair the capture or transmission of information on the front or back of the Check or that otherwise may prevent us or another institution from capturing or processing such information; (d) the image of the Check as transmitted contains all endorsements applied by parties that previously handled the Check in any form for forward collection or return; (e) all warranties that would otherwise apply to the Check if it had been deposited with us in paper; and (f) all encoding, transfer, presentment and other warranties that we (or any correspondent bank we use) are deemed to provide to others (e.g., as a reconvert bank).
- 17.6 Hours of Operation.** You can use the Service to transmit Check information twenty-four (24) hours a day, seven (7) days a week, except when our system is unavailable due to needed maintenance or system outages. Deposit information received on or after the Cutoff Time or on a day other than a Business Day may be deemed received by us as of the next Business Day. We are not responsible for the unavailability of the Service or any damages that may result from its unavailability. If the Service is not available for any reason or a Check cannot be processed by means of the Service, you may deposit your Checks directly at any of our branches.
- 17.7 Rejected Checks.** If your Check information is incomplete, a Non-Permissible Check, or cannot be processed by us for any reason, we may reject the Check for deposit, notwithstanding any transmission confirmation that you receive, and may charge the amount back against any provisional credit to your Account. We may notify you by email if we are unable to process a Check. Depending on which online service you use, you can confirm your Check deposits online with us either on the day of deposit or on the following Business Day.
- 17.8 Returned Checks and Claims.** If a Check is returned unpaid to us for any reason, we may return it to you in the form of a Substitute Check. If you decide to redeposit the returned item, you may only redeposit the Substitute Check; you may not deposit the original Check. If the drawee of a Check or another third party makes a claim against us or seeks a recredit with respect to any Check processed through this Service, we may provisionally freeze or hold aside a like amount in your Account pending our investigation and resolution of the claim. We may also charge your Account for any item that is returned, whether or not the return is timely or proper.

**17.9 INDEMNIFICATION.** IN ADDITION TO THE OTHER INDEMNIFICATION REQUIREMENTS SET FORTH IN THIS AGREEMENT, YOU AGREE TO INDEMNIFY, DEFEND, AND HOLD US AND OUR AFFILIATED COMPANIES HARMLESS FROM AND AGAINST ANY AND ALL ACTIONS, PROCEEDINGS, LIABILITIES, LOSSES, COSTS, ATTORNEY FEES, AND CLAIMS (INCLUDING WITHOUT LIMITATION WARRANTY CLAIMS) THAT RESULT FROM OR ARISE IN CONNECTION WITH: (A) OUR PROCESSING OF ITEMS, OR DEBITING OR CREDITING THE ACCOUNT OF ANY PERSON, IN ACCORDANCE WITH THIS AGREEMENT OR YOUR INSTRUCTIONS; (B) YOUR ACTIONS OR OMISSIONS, INCLUDING YOUR BREACH OF ANY REPRESENTATION OR FAILURE TO COMPLY WITH THIS AGREEMENT; (C) ANY MISUSE OF THE SERVICE BY YOU, YOUR EMPLOYEES OR AGENTS; (D) ACTIONS BY THIRD PARTIES (SUCH AS THE INTRODUCTION OF A VIRUS) THAT DELAY, ALTER OR CORRUPT THE TRANSMISSION OF CHECK IMAGES OR INFORMATION TO US; (E) THE FAILURE TO ACT OR DELAY BY ANY FINANCIAL INSTITUTION OTHER THAN US; OR (F) ANY CLAIM BY A RECIPIENT OF A SUBSTITUTE CHECK (OR A CHECK IN AN ELECTRONIC FORM) THAT THE RECIPIENT INCURRED A LOSS DUE TO (I) THE RECEIPT OF THE SUBSTITUTE CHECK (OR THE CHECK IN ELECTRONIC FORM) INSTEAD OF THE ORIGINAL CHECK, OR (II) MULTIPLE PAYMENTS WITH RESPECT TO THE SAME ORIGINAL CHECK, BASED ON ANY COMBINATION OF THE ORIGINAL CHECK, THE SUBSTITUTE CHECK, AND/OR A PAPER OR ELECTRONIC COPY OF EITHER. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

In addition to your obligations in your Deposit Account Agreement to review your statements and report errors in your Account, you hereby agree to carefully review your account statements (and to use any online banking service you have enrolled in) to monitor your Accounts and report to us any errors in our provision of the Service. Except to any extent prohibited by law, the FAILURE TO NOTIFY US OF ANY ERROR WITHIN FOURTY-FIVE (45) CALENDAR DAYS of the deposit Service being provided shall relieve us and our vendor of any and all liability to you for damages arising from errors that could have been detected by monitoring and reconciling your Accounts and shall be subject to the indemnification provisions of the preceding paragraph.

**17.10 Safekeeping and Destruction of Checks.** You bear sole responsibility for secure storage and destruction of original Checks and any copies of such Checks. You should retain the original paper Checks for only that amount of time (but no fewer than 7 days) that you deem necessary, based on: (a) the risk of fraudulent duplicate presentments of the original Check or any paper or electronic copy thereof, (b) the needs of your business, (c) any requirements of law or regulation affecting your business, and (d) potential claims by recipients of Substitute Checks (or Checks in electronic form) that they incurred a loss due to the receipt of a Substitute Check (or a Check in electronic form) instead of the original paper Check. We suggest that you keep the original paper Checks for no more than 45 days after you transmit them to us. After the end of your retention period, you will destroy (by shredding) the original Checks.

**17.11 License & Support Service.** The license terms for your RDC Service software are set forth in Appendix I of this Agreement. Appendix I also sets forth Support Services. (If you also enroll in Mobile Remote Deposit Capture, additional licensing terms appear in that service's User Agreement as described below).

**17.12 Mobile Remote Deposit Capture.** This Service allows you to make remote deposits of Checks to us via mobile software and software as we may permit (the "**mRDC Service**"). This Mobile Remote Deposit Capture Subsection shall only apply to the Treasury mRDC Service (and not to remote deposits made with desktop scanners). By requesting this Service, you agree to all of the other terms and conditions of the Remote Deposit Capture Service listed above. You also agree to the following terms and conditions:

(a) User Agreement and Users. You have received, reviewed, and understand and accept, the Corporate Mobile Remote Deposit Capture User Agreement ("**User Agreement**") that is presented to the mobile device User when installing the mRDC Banking Software to a mobile device. The provisions of the User Agreement are hereby incorporated and made a part of this Agreement.

- i. Under the User Agreement, you are a “**User**” of every mobile device registered with your mRDC Service, regardless of whether the mobile device is owned by you or a third party. In addition, each Authorized User that owns or is authorized to use a mobile device registered with your mRDC Service is also a “**User**.”
  - ii. You specifically acknowledge the User Agreement’s provisions for us to send disclosures and notices by electronic communication to Users, and your obligation to update us with any changes in User’s electronic addresses.
  - iii. Notices from us to other Users also constitute notices to you. Nevertheless, we agree to use reasonable efforts to also provide notice directly to you in matters that concern the mRDC Service or the User Agreement in general, as opposed to individual transactions involving the Service, individual Users’ use of the Service, or individual mobile devices.
- (b) Registration of Mobile Devices. To use the mRDC Service, both the User and the unique mobile device must be registered in the system. Mobile devices may be owned by you or by third parties such as your employees or agents. You shall be able to assign a company representative to be an administrative user in the system who can assign mRDC permissions to the Users you want to be registered. Users can download and install Bank-approved mRDC Banking Software (the designated mobile app). Completing registration requires a User to log into the mobile app on the device that User will be using to submit deposits. The system will then register that User and mobile device.

Company-Owned Device: Although non-company mobile devices may be registered, you acknowledge our strong recommendation to always maintain at least one (1) company-owned mobile device that an authorized officer or manager actively uses in the mRDC Service. If you forego such registration and active use, you agree that you shall nevertheless be deemed to have the same ongoing notice, knowledge and understanding of the operations, functionality, features, characteristics and disclosures regarding the mRDC Banking Software and the mRDC Service that you would have if you did so register and actively use a company-owned mobile device.

Devices Not Owned by Company: If you request registration of a mobile device or phone number you do not own, you hereby warrant that you shall have the express authorization of the owner to request that registration. You shall not require any employee or other third party to supply his or its own mobile device or phone number for use in the mRDC Service. You are responsible for agreeing with owners and Users of and phone numbers and mobile devices for any expenses (e.g., data charges) incurred in connection with the mRDC Service, and shall indemnify and hold us harmless from any claims by such owners and Users regarding such expenses or any other damage proximately resulting from having supplied devices for your benefit.

- (c) You Are Responsible for Users and mRDC Transactions. You must train and supervise all Users with respect to (i) the operation of the mRDC Service, (ii) the User’s obligations under the User Agreement, and (iii) your obligations under the User Agreement and this Agreement. You are responsible for all acts and omissions of other Users with respect to the mRDC Service and transactions thereunder, regardless of whether such acts and omissions of other Users were authorized or directed by you. You are also responsible for all transactions made through the mRDC Service by using Access Credentials that were issued to any User, even if the person making that transaction is not an Authorized User. You are solely responsible for maintaining the secrecy and security of all Access Credentials and registered mobile devices.

Without limiting the generality of the preceding paragraph, you must train each User with respect to what types of items are and are not permissible for remote deposit.

- (d) Unregistering Mobile Devices. You are required to un-register any User, mobile device and/or phone number that you no longer want to be able to access the mRDC Service (e.g., reassigned company-owned devices, lost devices, and devices owned by reassigned or terminated employees). You shall delete the mRDC Banking software from all unregistered mobile devices that you own or possess, and shall use commercially reasonable efforts to cause the owner or possessor of other unregistered mobile devices to delete the mRDC Banking software.



- (e) Wireless Networks. The mRDC Service involves electronic transmission of information across wireless networks that are not under our control. You acknowledge that we cannot be responsible for the privacy, security or accuracy of your wireless data transmissions. By choosing to use the mRDC Service, you assume all risk that an item may be intercepted, misdirected, corrupted or lost prior to receipt by us.
- (f) Online Privacy Statement and Geo-Location Tracking. The Company has received and reviewed, and understands and accepts, the Bank's mRDC Online Privacy Statement. That document is also made a part of and accessible within the mRDC Banking Software. The Company acknowledges that, as part of the mRDC Banking Software, the Bank monitors the geographic location of a User who is conducting an mRDC transaction.

**17.13 Remittance Data Feature.** In addition to transmitting Check images for remote deposit, the Service may activate a feature allowing you to upload certain types of optional remittance data to accompany those Check images ("**Remittance Data**"). For example, Remittance Data may include images of invoices, remittance slips, or receipt data that you choose to enter. The Service may also activate a feature to read or import certain Remittance Data information into data fields that you can review, edit and download into your own accounting or receivables software.

These Data Remittance Features, if activated, are for your account reconciliation convenience only. We may in our sole discretion and without prior notice activate or deactivate Remittance Data Features, or change the nature and type of Remittance Data supported by the Service's feature. The Remittance Data Feature is not a records storage or verification service. We shall have no liability to you, regardless of cause or fault, for any error or omission in the Service's receipt, reading, holding or reporting of Remittance Data, or your reliance on Remittance Data as reported by or imported from the Service. You are solely responsible for verifying, editing and correcting all Remittance Data. You are also solely responsible for the retention and safekeeping of your original Remittance Data in such manner and for such periods as you may require for your business needs.

The Service and its Remittance Data Feature do not include or support the deposit, collection or presentation of documentary drafts.

## 18 RETURNED ITEMS SERVICE

**18.1 The Service.** This Service allows you to provide us with special handling instructions for any checks/items that you deposit and are later returned to us unpaid. Special handling instructions may include but are not limited to the delivery method, delivery location, and/or any special notification methods for each check/item. Any returned checks/items may be delivered to you through either electronic or physical delivery, Electronic delivery typically allows you to receive information regarding each returned check/item sooner than you would receive it through physical delivery.

You acknowledge that any special instructions you provide may be ambiguous, incorrectly transcribed, or subject to interpretation. Accordingly, you agree to indemnify, defend, hold harmless and reimburse us for all expenses, losses, claims, actions, proceedings and damages that we may incur as a result of our failure to comply with any special instructions.

**18.2 Mobile Returned Item Service.** Select functionality of your web-based Returned Item Service can also be accessed with our mobile device application. The same mobile device application is used for both Mobile Returned Item Service and Mobile Positive Pay Service. Accordingly, the Mobile Returned Item Service is provided on the same terms and conditions as our Mobile Positive Pay Service. Those terms and conditions are set forth above in that section entitled "Mobile Positive Pay," provided, however, that references to "Web PP" shall also mean our web-based Returned Items Service, and references to "Mobile PP" shall also mean our Mobile Returned Item Service. The Mobile Returned Item Service consists of those features of our web-based Returned Items Service that are made available in the functionalities and menus of the Mobile PP App.

## 19 ZERO BALANCE ACCOUNTS

- 19.1 Description.** The Service uses a main Account (“**Concentration Account**”) and one or more related Accounts (“**Sub-Accounts**”). Daily, after all debits and credits have been processed for each Sub-Account, transfers between the Sub-Account(s) and the Concentration Account will be made based upon the amount necessary to maintain the Sub-Accounts at the target balances established in the Specifications.

You should maintain sufficient funds in the Concentration Account to ensure that there is a positive ending ledger balance in that Account after transfers between the Concentration and Sub-Account have been completed. If there are insufficient funds in the Concentration Account for this purpose, we may, at our option, return checks drawn on any of the Sub-Accounts in such order as we, in our sole discretion, may elect and the Accounts will be subject to our standard fees (including overdraft, insufficient funds, and uncollected funds usage fees). Any fees may be assessed through Account Analysis, directly to the Concentration Account or any Sub-Account, or any combination of the foregoing. You specifically waive any claims you may have against us as a result of the return of any check as provided herein, but you retain any liability for all overdrafts we may allow on your Accounts.

## GENERAL PROVISIONS

### 20. ACCOUNTS

You agree to maintain a minimum of at least one (1) Account with us with funds sufficient to cover the transactions initiated pursuant to the Agreement, and to cover fees required to pay for Services provided thereunder.

### 21. ADVERTISING

You will not use our name or logo in any advertisement or promotional materials without our prior written consent. You will not suggest or represent to others that we endorse you, your products or services.

### 22. AMENDMENTS

We may amend (add to, delete or change) the terms of this Agreement, the Service fees, the Acceptance, the Specifications, or other terms of any Service by providing you with prior notice. Any amendment will become effective upon either:

- (a) Ten calendar (10) days after we provide you notice of such amendment, or
- (b) Any later date that we may specify in such notice.

Notwithstanding the foregoing, we may amend any such terms at any time, without prior notice, if requested by you or we determine in our sole discretion that such amendment:

- 1. is necessary to protect the integrity, security, or operability of any Service, Accounts or systems used in performing the Services;
- 2. is required by law, regulations, or the rules of any network, association, or clearinghouse; or
- 3. will not have a material effect on your use of the Service(s).

Any changes by you to the terms of this Agreement must be through a separate addendum, a Specification or an Acceptance signed by you and specifically accepted by us. We will not be bound by attempts to amend this Agreement in any other manner (e.g., by crossing through the text or inserting additional words).

## 23. **ARBITRATION/JURY TRIAL WAIVER/DISPUTE RESOLUTION**

If your Deposit Account Agreement (as amended from time to time) contains one or more class action waiver, jury trial waiver, arbitration, judicial reference, and/or forum selection provisions, then those provisions shall govern the resolution of any dispute or claim that arises between you and us regarding this Agreement, any Service, your Accounts, any software, any transaction or entry in or regarding your Accounts, or any indemnity obligation. Reference shall be to the provisions of the Deposit Account Agreement in effect at the time such dispute or claim arises. In any event, to the maximum extent permitted by law, you hereby waive any right to trial by jury in any action between you and us.

## 24. **ASSIGNMENT**

We may assign our rights and delegate our duties under this Agreement to a company affiliated with us or to a third party. You may not assign any right or delegate any obligation under this Agreement without our prior written consent, and any attempted assignment without the necessary consent shall be void.

## 25. **COURIERS**

If arrangements are made to transfer items, funds or other property between you and us or our designated agent by means of a messenger, courier or armored carrier (collectively, "**Messenger**"), you agree that:

- (a) the Messenger is your agent, and not our agent;
- (b) you assume all risk of loss of, or damage to, the property while it is in transit;
- (c) property is not received by us until we provide a receipt for it at our office (or at such other location as we designate); and
- (d) the property is delivered to you when we give it to the Messenger.

We make no warranty or representation regarding any Messenger. Our confirmation of the receipt of any bag or container shall not be considered a confirmation of its contents. All contents are subject to later verification by us. You understand that local traffic conditions and other circumstances may affect the time of shipments and that the Messenger may abandon or delay any scheduled shipment if it observes suspicious circumstances at your location.

## 26. **CUTOFF TIME AND BUSINESS DAYS; TRANSACTIONS BETWEEN DIVISIONS**

Some of our Services are subject to processing Cutoff Times. Information on the Cutoff Time for each Service can be found in certain Specifications and is available from your treasury services representative. Instructions, information, shipments or deliveries received after the Cutoff Time or on a day other than a Business Day may be deemed received as of the next Business Day. Services may occasionally be unavailable due to needed maintenance or system/network interruptions.

Certain transactions between Accounts at our different Divisions of the Bank (including but not limited to Cutoff Times, settlement times and funds availability) may be deemed and processed by us as transactions between separate financial institutions.

## 27. **DEFINITIONS**

In addition to the other terms defined elsewhere in this Agreement, the following terms shall have the meanings indicated:

**Acceptance** means the Acceptance of Treasury Management Agreements signed by you, accepting and agreeing to the terms and conditions for your Services. Those terms and conditions are contained in: a) this Agreement, b) any Specifications, c) any Service addenda, d) any resolution you delivered in connection with your Acceptance, and e) your Deposit Account Agreement. The word "Acceptance" shall also mean any

document previously entitled “Summary of Services” or “Treasury Management Service Request” previously signed by you in conjunction with your Services. Without limiting any of the foregoing, the Acceptance is sometimes abbreviated as “TMA”.

**Access Credentials** means identification names and numbers, passwords, tokens, codes and/or other means of identification that are provided to or selected by you, your Administrator(s) and/or your Authorized User(s), for purposes of establishing identity and authorization to access and use a Service or a particular function therein.

**Account** means any of your deposit accounts with the Bank to which one or more of the Services shall apply.

**Account Analysis** means the record of a detailed reconciliation of your Account balances with applicable, itemized Service fees and the resulting charges or credits to your Account. The record shall be provided to you in a periodic statement. The statement will additionally display the volumes processed for each Service, and a summary of Account balances after all charges and credits are reconciled.

**Administrator** means an individual that you designate in Specifications as authorized to establish, accept or agree to other Administrators, Authorized Users, security procedures, and Specifications.

**Authorized User** means any of the individuals you designate, either in the Specifications or within the Service by your Administrator to access and/or use the Services or a function within a particular Service on your behalf. Authorized User includes any Administrator.

**Business Day** means any calendar day that we are open for conducting substantially all of our business, excluding Saturdays, Sundays and federal holidays except as may otherwise be defined or described in the Specifications for a particular Service.

**Cutoff Time** for any Service means the time we have established, in the Specifications or otherwise, for receipt of instructions, requests, transactions, orders, approvals or deliveries for that Service.

**Data Collection Agency** means a third party provider selected by us or by you (depending on the Service involved) for delivering or receiving information.

**Deposit Account Agreement** with respect to any of your Accounts with us means the agreement(s) and other associated Account disclosure(s) we provide you in connection with your Accounts, as hereafter amended from time to time, that contain the terms and conditions of your Accounts.

**Division** has the meaning given in this Agreement’s opening paragraph.

**Dual Control** is when your applicable Specifications and self-administered controls require at least two Authorized Users to separately initiate and approve a particular function or process within a Service before that function or process will be executed or effective. Dual Control is not satisfied by a single Authorized User acting with two separate Access Credentials.

**Internal Security Controls, Internal Security Breaches, and Internal Security Losses** have the meanings given in the Section below entitled “Security Procedure and User Guides”.

**Reserve Account** has the meaning given in the Section below entitled “Reserve Account”.

**Rules**, unless the context requires otherwise, means the NACHA Operating Rules and Guidelines as amended from time to time.

**Security Procedure** shall have the meaning provided in the Section below entitled “Security Procedure and User Guides”.

**Specifications** with respect to any Service means any and all specifications, set-up details, authorizations, procedures, protocols, applications, instructions, guidelines, manuals, fee schedules, or other documentation regarding the Service and any training materials we provide with respect to the Service. Specifications are primarily set forth in Service-specific disclosures commonly referred to as “Spec Sheets” but also include general terms stated in your Acceptance unless specifically varied by a Service-specific disclosure.

**Treasury Internet Banking** means our online Balance Reporting and Payments Service, including features such as Information Reporting, e-Statements, Stop Payment, Payments, and Mobile Treasury Internet Banking Services.

## 28. DUAL CONTROL

You bear sole responsibility for determining and implementing effective and sufficient internal security controls in connection with each of your Services. We strongly recommend that your internal controls include all Dual Control features that may be available with any Service. Without limiting the preceding sentence, you should implement Dual Control for the following functions of these Services:

<u>Service</u>	<u>Function or Process</u>
<ul style="list-style-type: none"><li>• ACH Positive Pay</li></ul>	<ul style="list-style-type: none"><li>• Permitting or returning a suspended entry for payment or authorizing us to act in accordance with your permit/default elections.</li></ul>
<ul style="list-style-type: none"><li>• Positive Pay</li></ul>	<ul style="list-style-type: none"><li>• Providing us check issuance data and approving exception items</li></ul>
<ul style="list-style-type: none"><li>• Any funds transfer services (other than via Treasury Internet Banking)</li></ul>	<ul style="list-style-type: none"><li>• Transmission and confirmation of orders.</li></ul>

Even when Dual Controls are not required by this Agreement, your failure to use available Dual Control features may constitute negligence, in which you shall be responsible for resulting losses which could have been prevented by having Dual Control features in place.

**Treasury Internet Banking.** In addition, WE REQUIRE that you implement Dual Controls available within your Treasury Internet Banking Service for the following functions: initiating and approving payment orders; initiating and approving payment templates; designating or changing Accounts associated with the Service; establishing or modifying Administrators and Authorized Users and their respective Access Credentials and functional entitlements. You hereby agree to establish those Dual Controls, and you hereby agree to indemnify and hold us harmless against all losses or liabilities that we may suffer or incur that could have otherwise been eliminated, avoided, prevented or mitigated had you implemented those Dual Controls. Without limiting the preceding sentence, we have the right to require you to execute a separate acknowledgement or indemnity to further evidence the foregoing requirements, and may in our discretion suspend your Service pending such execution. This Section is in addition to the other indemnifications set forth in this Agreement.

## **29. ELECTRONIC MAIL/INTERNET**

If you send us electronic mail (“**email**”), we may not receive or review it immediately. We will have a reasonable time to act upon any email request or notice, and reserve the right to reject any transaction or request received by email (e.g., a request to wire funds). You acknowledge that, even though email may be encrypted, we cannot ensure that it will not be intercepted or affected by the actions or omissions of others, such as third party networks or persons with access to the Internet. We and our service providers assume no responsibility for viruses created by third parties, or for any third party’s unauthorized access to, or use of, your computer system. You should not include any sensitive information about yourself or your Accounts in email that is not encrypted and sent through a secure email system, and you assume all risk of such email being intercepted.

## **30. ENTIRE AGREEMENT**

This Agreement incorporates, supplements, and supersedes any inconsistent terms of, your Deposit Account Agreement. Your Acceptance and the Specifications incorporate, supplement, supersede any inconsistent terms of this Agreement. Authorizations and Accounts in the Acceptance, any related company resolutions and other Specifications are cumulative, but Service specific disclosures prevail in the event of any conflict with Specifications in the Acceptance or resolutions. Unless agreed otherwise in writing, this Agreement, as supplemented herein, constitutes the entire agreement between you and us with respect to the Services.

## **31. FEES**

You agree to pay us (and authorize us to charge your Accounts as described below) for the fees we disclose for each of the Services. For each Service, enrollment in Account Analysis is either required, optional, or unavailable. If you are enrolled in Account Analysis, you may be able to use your available earnings credit to offset certain Service fees. Any available credit in excess of accrued Service fees during any particular analysis period is not paid to you and does not roll forward. If your analyzed Accounts contain funds belonging to third parties, you represent that your use of any related earnings credit is not limited by law, regulation or any agreement with such third parties, and that you have any required authorization from such third parties for its use.

For Services enrolled in Account Analysis, you authorize us to collect fees first by applying any credits you have earned through Account Analysis. Any remaining fees for Services that are enrolled in Account Analysis, and all fees for Services that are not enrolled in Account Analysis, may be invoiced to you or debited (at our election) from any Account that you have now or in the future. You acknowledge that any such debit may cause an overdraft balance if there are insufficient funds in the debited Account. You also agree to pay any invoice we may send to you that includes such an overdraft or other unpaid fees.

In addition to the Service fees, you agree to pay for all taxes, tariffs and assessments levied or imposed by any government agency in connection with the Services, this Agreement and/or the equipment or software made available to you (excluding any income tax payable by us). You also are responsible for the costs of any communication lines and any data processing charges payable to third parties engaged by or for you. Any such amounts incurred or paid by us on your behalf may be invoiced to you or debited from your Accounts as set forth above.

## **32. FINANCIAL STATEMENTS**

You agree to provide us with a current financial statement and other information regarding your financial condition upon our request.

### **33. FRAUD DETECTION AND PREVENTION – POSITIVE PAY/ACH POSITIVE PAY – INDEMNIFICATION**

We are very concerned about the risk of loss from counterfeit, fraudulent, altered, or forged checks and unauthorized ACH debits to which we and you may both be exposed if you do not use our Positive Pay Service and ACH Positive Pay Service. Therefore, we are unwilling to permit you to continue to operate your Accounts without our Positive Pay Service and ACH Positive Pay Service, unless you indemnify and hold us harmless against losses or liabilities we may suffer or incur as a result of counterfeit, fraudulent or forged checks and/or unauthorized ACH debits on your Accounts (Note: If you choose to operate your Accounts using the Positive Pay Service, you will not be required to adopt the Payee Match feature of that Service. Additionally, using the Check Block Service or Reverse Positive Pay with your Accounts shall constitute using the Positive Pay Service for purposes of this Fraud Detection and Prevention – Positive Pay/ACH Positive Pay – Indemnification Subsection).

Accordingly, if you continue to operate your Accounts without our Positive Pay Service and ACH Positive Pay Service, you agree that, to the greatest extent permitted by law, we will not be liable to you for, and you will defend and hold us harmless from and against any damages, losses, liabilities, actions, claims including third party claims, suits, judgments, obligations, penalties, costs or expenses of any kind including attorneys' fees and expenses (collectively "Losses") paid, suffered or incurred by you which arise directly or indirectly out of or in connection with:

- (a) the acceptance for deposit, payment, negotiation or other processing of any check drawn or purporting to be drawn on your Account if such check happens to be counterfeit or fraudulent or contains a forged signature or the amount of such check is altered or the payee has been altered; or
- (b) the acceptance of an ACH debit that is unauthorized or fraudulent, which could have been prevented with the use of the Positive Pay Service or ACH Positive Pay Service;

The indemnity provisions set forth in this Fraud Detection and Prevention – Positive Pay/ACH Positive Pay – Indemnification Subsection shall be in addition to the other indemnity provisions set forth in this Agreement.

### **34. GOVERNING LAW/COMPLIANCE**

This Agreement will be governed by and construed in accordance with the laws of the United States and the laws of the following state(s) based upon the Division(s) through which you receive your Service and hold your Account: Texas for Amegy Bank of Texas, California for California Bank & Trust, Oregon for The Commerce Bank of Oregon, Washington for The Commerce Bank of Washington, Arizona for National Bank of Arizona, Nevada for Nevada State Bank, Colorado for Vectra Bank, and Utah for Zions Bank. If your Account and the applicable Service are provided by different Divisions then, to the extent of any conflict, the law of the state for the Division providing the Service shall govern. You agree not to operate your Accounts, use your Services, or Conduct transactions in a manner that violates or supports violation of the laws of any state or the United States, including the economic sanctions administered by the U.S. Treasury's Office of Foreign Assets Control.

### **35. INDEMNIFICATION AND RELEASE**

IN ADDITION TO THE OTHER INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT, YOU AGREE TO RELEASE AND INDEMNIFY, DEFEND AND HOLD HARMLESS US, OUR PARENT COMPANY, AFFILIATES, AND SUBSIDIARIES, AND OUR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, FROM AND AGAINST EVERY CLAIM, DAMAGE, LOSS, LIABILITY AND COST (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES) OF ANY KIND WHICH RESULTS DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, FROM: (A) OUR ACTIONS OR OMISSIONS, IF THEY ARE IN ACCORDANCE WITH YOUR INSTRUCTIONS, THE TERMS OF THIS AGREEMENT, OR INSTRUCTIONS PURPORTING TO COME FROM YOU THAT ARE ACCOMPANIED BY YOUR ACCESS CREDENTIALS; (B) THE ACTIONS OR OMISSIONS OF YOU, YOUR AGENTS OR EMPLOYEES; (C)

ANY WARRANTY THAT WE ARE REQUIRED OR DEEMED TO MAKE TO A THIRD PARTY IN CONNECTION WITH YOUR TRANSACTIONS, PROVIDED WE ACT IN COMPLIANCE WITH THIS AGREEMENT; (D) YOUR USE OR DISTRIBUTION OF ANY EQUIPMENT OR SOFTWARE MADE AVAILABLE TO YOU THROUGH A SERVICE THAT IS INCONSISTENT WITH THE LICENSE OR SUBLICENSE THAT YOU RECEIVE; (E) YOUR FAILURE TO COMPLY WITH APPLICABLE LAW OR REGULATION, OR THE RULES OF ANY CLEARINGHOUSE, NETWORK OR OTHER PAYMENT SYSTEM ORGANIZATION THAT GOVERN YOUR TRANSACTIONS; OR (F) YOUR "INTERNAL SECURITY BREACHES" OR "INTERNAL SECURITY LOSSES" AS DEFINED IN THAT SECTION ENTITLED "SECURITY PROCEDURE AND USER GUIDES". THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

### **36. INFORMATION PROCESSING AND REPORTING**

We offer a number of Services that require us to receive, process and report information involving your Accounts and transactions. We will not be responsible for determining the accuracy, timeliness or completeness of any information that you, your agents or others provide to us. We will not have a duty to interpret the content of any data transmitted to us, except to the limited extent specifically set forth in this Agreement. Unless otherwise agreed in writing, we will not be required (by means of any security procedure or otherwise) to detect errors in the transmission or content of any information we receive from you or third parties. Our sole responsibility for any reporting errors caused by us will be to reprocess the information for the period in question and to provide corrected reports at our own expense. You agree to maintain adequate backup files of the data you submit for a reasonable period of time in order to facilitate any needed reconstruction of your transactions (e.g., due to a telecommunications failure). If we are unable to provide a Service for any reason, we will inform you of the problem and will take reasonable steps to resume processing.

### **37. LIMITATION OF LIABILITY – GENERAL**

Except as otherwise stated in this Agreement, we will only be liable to you for damages arising directly from our intentional misconduct or gross negligence in the performance of the Services. We will not be responsible for any loss, delay, cost or liability to the extent that it arises, directly or indirectly, in whole or in part, from:

- (a) your actions or omissions, or those of third parties that are not within our immediate and reasonable control (including, but not limited to, your Internal Security Breaches (defined in the Section entitled "Security Procedure and User Guides") or the interception, corruption and/or modification of instructions that you send to us);
- (b) your negligence, misconduct or breach of any agreement with us;
- (c) any ambiguity, inaccuracy or omission in any instruction or information provided to us;
- (d) any error, failure or delay in the transmission or delivery of data, records or items due to a breakdown or transmission error in any third party computer or communications facility;
- (e) accidents, strikes, labor disputes, civil unrest, fire, flood, water damage (e.g., from fire suppression systems), or acts of God;
- (f) causes beyond our reasonable control;
- (g) the application of any government or funds-transfer system rule, guideline, policy or regulation;
- (h) the lack of available funds in your Account to complete a transaction;
- (i) our inability to confirm to our satisfaction the authority of any person to act on your behalf;
- (j) losses for which we are not liable by law, Rules or other clearinghouse or network rules, or for which you have agreed to indemnify or release us:



- (k) losses for which you fail to give us timely notice by law or agreement (see, e.g. the Section entitled "Notices - Duty to Notify Us", and your Deposit Account Agreement); or
- (l) your failure to follow any applicable equipment or software manufacturer's recommendations or our Service instructions.

There may be other exceptions to our liability stated in your Deposit Account Agreement.

We will not be responsible under any circumstances for special, indirect, consequential, or punitive damages which you incur as a result of our actions or omissions, even if we have been informed or are aware of the likelihood of such damages. Our liability and your remedy for actual costs and losses resulting from our failure to transmit funds in the correct amount or to the correct beneficiary listed in your funds transfer Orders (defined in the Section entitled "Funds Transfer Services") shall not exceed the direct money damages that you incur as a result of the failure (e.g., the amount of a wire transfer that is sent to the wrong party, or the amount by which a transfer exceeds the amount you authorized, plus interest as permitted by law). In all other cases, our liability and your remedy for actual costs and losses resulting from our actions and/or omissions, whether the claim is in contract or tort, will not exceed the lesser of (i) six (6) times the average monthly charge for the Service(s) in question for the three (3) months immediately preceding the cost or loss, or (ii) \$20,000.

Any claim, action or proceeding by you to enforce the terms of this Agreement or to recover for any Service-related loss must be commenced within one (1) year from the date that the event giving rise to the claim, action or proceeding first occurs. You agree to cooperate with us in any loss recovery efforts we undertake to reduce any loss or liability that arises in connection with your Services. You acknowledge that our Service fees have been established in contemplation of all the terms of this Agreement, including: (i) these limitations on our liability; (ii) your agreement to review statements, confirmations, and notices promptly and to notify us immediately of any discrepancies or problems; and (iii) your agreement to assist us in any loss recovery effort.

Force Majeure. We shall not be liable to you for any failure, in whole or in part, to provide any Service or perform any of our obligations under this Agreement, the Acceptance or under any Specifications directly or indirectly resulting from causes beyond our reasonable control including without limitation: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States of America or any state thereunder, or any political subdivision thereof or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within our control.

### **38. NOTICES - DUTY TO NOTIFY US**

You agree to notify us immediately if you discover: (a) any error or discrepancy between your records and the information we provide to you about your Accounts or transactions (e.g., in a statement, confirmation, online balance or electronic report); (b) unauthorized transactions involving any Account; (c) a breach in the confidentiality of any Access Credential; or other problems related to the Services. You must deliver us a written notice of any discrepancy or other problem, including a statement of the relevant facts, within a reasonable time (not to exceed 15 days from the date you first discover the problem or receive information reflecting the problem, whichever occurs first). If you fail to notify us within such reasonable time, you agree that, in addition to all other limitations on our liability: (1) in the case of an erroneous funds transfer, you will be liable for all losses up to the amount thereof (including any loss of interest), which result from your failure to give us such notice or which might have been prevented by your giving us such notice; and (2) in the case of an unauthorized funds transfer, we will not be liable for any loss of interest which results from your failure to give us such notice or which might have been prevented by your giving us such notice. If we have received payment from you with respect to a funds transfer requested in your name, and if you believe that the funds transfer was unauthorized or erroneous, then to the maximum extent permitted by law, and in addition to all

other limits on our liability, you are precluded from asserting any objection to us retaining that payment unless you have notified us of your objection within 90 days of our (i) notifying you of that transfer, or (ii) providing you a statement reflecting that transfer, whichever is earlier. In addition, with respect to ACH payments from your Account, to the maximum extent permitted by law, and in addition to all other limits on our liability, we are not liable for an erroneous or unauthorized ACH entry that we did not cause unless (A) you notify us (which may be oral with prompt written confirmation of the relevant facts) before that entry actually settles (generally 1 or 2 Business Days after the entry was posted to your Account), or (B) we are otherwise able without bringing suit to effect a reversal of that settlement under the applicable ACH system Rules.

You agree to provide us with at least 30 days' advance notice of: (i) any material (20% or greater) change in your ownership; (ii) any material change in the type, scope or nature of your business; or any anticipated (20% or greater) increase in the amount or volume of your ACH transactions (if applicable) over the preceding calendar quarter.

### **39. NOTICES UNDER THIS AGREEMENT**

Unless otherwise agreed, notices required by this Agreement must be in writing. Notices to you may be mailed or sent to you at the statement, email or mailing address shown for you in our deposit or Service records, or (for online Services) by posting the notice at our website. Notice of a transaction to an online Account is also given if posted to and viewable by you on that Account. Notices may also be given to you by message on any paper or electronic statement that we issue in connection with affected Service(s) or with any Account(s) that use the affected Service(s) (e.g., statements or reports that reflect transactions in, fees for, or Account Analysis).

Notices sent to you by email, if properly addressed, will be deemed given to you when sent, even if they are blocked or rejected by your computer. You agree to provide us with written advance notice of any change in your address or email address. Notices to us must be delivered to the Division address listed below:

Amegy Bank of Texas	Attn: Treasury Management P.O. Box 27459 Houston, TX 77227-7459
California Bank & Trust	Attn: Treasury Management 550 S. Hope St. Ste 300 Los Angeles, CA 90071
Nevada State Bank	Attn: Treasury Management 600 White Drive Las Vegas, NV 89119
National Bank of Arizona	Attn: Treasury Management 5500 W. Chandler Blvd, Suite 1 Chandler, AZ 85226
Vectra Bank Colorado	Attn: Treasury Management 2000 S. Colorado Boulevard Suite 2-1100 Denver, CO 80222
Zions Bank	Attn: Treasury Management 310 South Main Street, Ste 1400 Salt Lake City, UT 84101

The Commerce Bank of Washington

Attn: Treasury Management  
601 Union Street, Suite 3600  
Seattle, WA 98101

The Commerce Bank of Oregon

Attn: Treasury Management  
1211 SW 5<sup>th</sup> Ave; Suite 1250  
Portland, OR 97204

#### **40. RECORDS**

Unless a different period is provided in this Agreement, you will retain and provide to us, upon request, all information necessary to remake or reconstruct any transaction, transmission, file or entry until ten (10) Business Days following receipt by us of the transaction document, tape, file, entry, transmission, or other Order affecting an Account.

#### **41. RELIANCE ON THIRD PARTIES**

Our ability to provide certain Services is dependent upon our ability to obtain or provide access to third party vendors and networks. In the event any third party is unavailable or we determine, in our discretion, that we cannot continue providing any third party network access, we may discontinue the related Service or may provide the Service through a different party. In such situations, we will have no liability for the delay or unavailability of access. We are not responsible or liable for (i) any Services or products that you purchase or obtain directly from third parties (e.g. by referral) rather than directly from us under this Agreement, or (ii) any promises, warranties or representations made directly to you by third parties rather than by us regarding our Services or products.

#### **42. REQUESTS FOR INFORMATION/BENEFICIAL OWNERSHIP**

We are required by law to adequately document the identity of direct owners and certain beneficial owners of Accounts, and of companies receiving certain Services. We must also be aware of the business and transactions that will be associated with the Accounts and Services. We will require documentary identification as part of this process. We will require you to provide adequate documentation to establish good standing, ownership, and entity authorization for the individuals who will be authorized signers, principals, and beneficial owners (as defined by FinCEN regulation or requested by us in our discretion). Failure to provide requested information to our satisfaction may mean we will not open your Account or provide you Services. Requesting a Service or opening an Account is no guarantee that the Account will remain open, that we will continue providing any of the Services, or that the information requests are completed or satisfactory. We reserve the right at any time to request updated information. Failure to supply satisfactory responses may cause us to terminate your Account(s) and Service(s).

#### **43. RESERVE ACCOUNT**

We may require that you establish and maintain one or more Reserve Accounts (each a "Reserve Account") with us as a condition to us providing one or more Services. You grant us a security interest in each Reserve Account, including any current and future deposits to and renewals of each Reserve Account, for all obligations owing to us under this Agreement. Each Reserve Account will bear interest only if it is opened by you and us as an interest-bearing Account. You will deposit the amount that we designate into each Reserve Account within five days from our request.

If we determine that your reserves may not be sufficient to cover our risk for potential claims (e.g., based on factors such as the volume and amount of past or current returns/claims, your financial condition, the risk of new product offerings by you, fraud losses, substantial increases in the average number or amount of transactions, and other relevant circumstances), we may increase the amount of the required reserve by providing notice to you. If you fail or refuse to deposit sufficient reserves promptly upon our request, we may transfer funds to a Reserve Account from your other Accounts with us. Your obligation to us under this Agreement will not be limited by the balance or existence of any Reserve Account.

Upon the termination of this Agreement or any Service, we may require, and you shall promptly deposit, funds in any Reserve Account that we estimate may be needed to cover potential returns and claims that may arise after such termination. This provision shall survive the termination of this Agreement.

#### **44. RESTRICTED TRANSACTIONS; INTERNET GAMBLING**

You may not use any Service to process transactions restricted by Federal Reserve Regulation GG (12 C.F.R. Part 233). Restricted transactions generally include, but are not limited to, those in which credit, electronic fund transfers, checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by themselves or others in unlawful Internet gambling. We have elected to not offer Accounts to organizations that offer, sponsor or facilitate Internet gambling. As such, you agree not to use any Account or Service to process Internet gambling transactions, whether or not permitted by law.

#### **45. SECURITY INTEREST**

You grant us a security interest in your Accounts with us (other than fiduciary Accounts maintained for the benefit of others) to secure the repayment of any overdraft or other obligation or liability that you incur under this Agreement.

#### **46. TAXES**

You will be responsible for, and shall pay all sales, use, VAT and other taxes, interest, penalties or assessments that are imposed by any governmental authority in connection with any of your Services, except taxes based on our net income, and you agree to indemnify us for your failure or refusal to do so. We may charge to any of your Accounts all fees and taxes imposed on us that are your responsibility.

#### **47. TERMINATION; SURVIVAL**

Either party may terminate this Agreement as to some or all of the Services, with or without cause, by giving 30 days prior notice to the other party. We may suspend or terminate any Service or this Agreement immediately and without prior notice if: (a) you breach any agreement or warranty under any agreement with us or if any representation under any such agreement becomes untrue; (b) the confidentiality of any Access Credential is compromised or we have reason to believe that there has been any other breach in the security of the Service; (c) we have reason to believe that there is an unauthorized or fraudulent transaction involving any of your Accounts or any of the Services; (d) you become insolvent or the subject of a bankruptcy, receivership, or dissolution proceeding; (e) we are uncertain as to any person's authority to give us instructions regarding your Accounts or the Services; (f) if we identify possible fraudulent, suspected illegal, or inappropriate activity or use of any Service by you or any third person; (g) we detect excessive returns to your Accounts, including without limit, returns in excess of the Rules; or (h) we determine that continued provision of a Service will or may violate applicable law. The termination of this Agreement will not affect the rights or obligations of the parties that arise prior to termination (e.g., the indemnification and record retention requirements).

Survival. All provisions of this Agreement, the Acceptance, or any Specifications, including the General Provisions, or relating to any Service, that by the nature of those terms logically ought to survive the termination of this Agreement or any of your Services shall survive the termination of any such Service or this Agreement.

#### **48. THIRD PARTIES**

This Agreement is made for the exclusive benefit of you and us. No third party has any rights under this Agreement. Unless you have our prior written consent, you may not use the Services to process transactions for third parties or permit others to initiate Service transactions on your behalf.

#### **49. TRANSACTION LIMITS/SAFEGUARDS**

You agree not to exceed the transaction limits we establish from time to time for your Account or any Service. You will not allow anyone to initiate transactions on your behalf without proper supervision and adequate safeguards. You agree to review pending instructions prior to their submission to ensure that they are complete, accurate and properly authorized.

#### **50. VALIDITY/WAIVERS/OVERDRAFTS**

If any provision of this Agreement is found to be void or invalid, the remainder of this Agreement will remain in full force and effect, and the invalid provision shall be modified in a way that most closely effectuates its intent in a valid and enforceable manner. Any waiver by us must be in writing to be effective. Our waiver of any right will not be deemed a waiver of other rights or of the same right at another time. Our allowing overdrafts against your Accounts, at any time or from time to time, will not obligate us to continue allowing overdrafts at a later date. We may discontinue permitting overdrafts at any time and without prior notice.

### **GETTING STARTED – SETUP**

#### **51. AVAILABILITY OF SERVICES**

We will let you know when the Services you request become available for use.

#### **52. EQUIPMENT AND SOFTWARE**

You are responsible for providing and maintaining any equipment that is necessary for the Services, such as telephones, terminals, modems and computers. You agree to use equipment that is compatible with our programs, systems and equipment, which we may change from time to time. We assume no responsibility for the defects or incompatibility of any equipment or software that you use in connection with the Services, even if we have previously approved their use. You bear sole responsibility for establishing, maintaining and updating procedures, equipment and software and other Internal Security Controls that will effectively safeguard the security and integrity of your computer systems from unauthorized use, intrusion, takeover or theft, and will prevent your Access Credentials from unauthorized use, disclosure or discovery.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER WE NOR OUR SUPPLIERS OR VENDORS MAKE ANY WARRANTY, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY OR OF NON-INFRINGEMENT, WITH RESPECT TO THE SERVICES, EQUIPMENT OR SOFTWARE MADE AVAILABLE TO YOU.

Services, equipment, and software are provided "as is". You agree to notify us promptly if any equipment or software we provide to you becomes defective. Our sole responsibility (if any) in such instances will be to replace or repair the defective equipment or software. We do not warrant that the equipment or software provided to you will be error free or that the Services will be uninterrupted.

You agree to comply with the terms of any software license provided to you in connection with the Services. You may not transfer, distribute, copy, reverse compile, modify or alter any software provided. Unless otherwise agreed by us in writing, the equipment, Service guides, security procedures, and systems provided to you in connection with a Service represent our proprietary property and must be returned to us upon request. We and/or our suppliers retain all right, title and interest in and to the intellectual property rights associated with the Services, the equipment, and software. Your license to use equipment and/or software will end with the termination of this Agreement or upon our earlier notice to you. You may only use the equipment and software in connection with your use of the Services. You may not use or move the equipment or software outside the United States without our written consent.

### 53. YOUR ADMINISTRATOR

For many Services, your Administrator can establish separate Access Credentials for you and each Authorized User, perform various administrative tasks, and/or set limits on each Authorized User's authority to access information and conduct transactions. You assume sole responsibility for the actions of your Administrator (or other person using your Administrator's Access Credentials), the Access Credentials and authority he or she gives others to act on your behalf, and the actions of Authorized Users (or other person using an Authorized User's Access Credentials).

You or your Administrator will need to designate which Accounts will be utilized for Services. If your Administrator designates an Account with respect to which we have agreed, by separate agreement, to honor a requirement for more than one signature for the withdrawal or transfer of funds, you agree that we may act upon any Service instruction that is accompanied by the Access Credential designated by you or your Administrator for that Account and the Service in question. As long as an instruction is accompanied by the designated Access Credential, the transaction will be deemed authorized by you. NOTE: Subject only to Dual Control settings, this means that a Service may act upon the instruction of only ONE person, even though a separate agreement between you and us requires two or more signatures on checks or other withdrawals or transfers of funds.

### 54. YOUR ACCOUNTS

You will need to designate which of your Accounts will be used in conjunction with each Service in the Specifications. If you fail to do so, we may make the designation for you. The Specifications may list certain Accounts that you wish to access with the Services. If it includes the Accounts of your parent company, subsidiaries or affiliates, you warrant that they have authorized you, by resolution or otherwise, to access their Accounts through the Services in the same manner as your own Accounts. You agree to provide us, upon request, with their written authorization (in addition to any resolution), in form and substance acceptable to us, evidencing that authority, and to notify us immediately in writing of any change to that authorization. This Agreement does not authorize you to use the Services for accounts of separate entities or individuals without our written consent.

### 55. SECURITY PROCEDURE AND USER GUIDES

As used in this Agreement and in Specifications, a "**security procedure**" is a procedure by which we verify that an instruction or other communication issued in your name, or your authorized signers or users names, or with respect to your accounts, was made and authorized by you. Different Services have different security procedures, as disclosed to you herein or in one or more Specifications for the specific Services. By receiving a Service's Specifications and then using that Service, you are representing that you have determined that the Service's security procedure is commercially reasonable for your needs as expressed to us (including the size, type and frequency of your typical transactions with that Service), and you are agreeing that the security procedure is commercially reasonable, and agreeing that we may accept, rely, act upon, and enforce against you any instruction (including payment instructions) or other communication (e.g., designation of accounts or authorized signers or users for the Service, or establishing or modifying payment templates) received by us in compliance with that security procedure, even if that instruction or communication was not actually made, sent or authorized by you. If a Service's disclosed security procedure is not commercially reasonable for your needs, or if you are unwilling to be bound by all instructions and communications received by us in accordance with that security procedure, then you must not use that Service. Contact your treasury services representative who can discuss alternative products, and in some instances alternative or additional security procedures.

We may provide you with (or allow your Administrator(s) or Authorized User(s) to select) one or more Access Credentials to access our Services. We also may provide you with operating procedures, and user guides in the Specifications in connection with certain Services. You agree to: (a) comply with the Specifications and procedures that we provide to you; (b) take all necessary steps to safeguard the security and confidentiality of your Access Credential, Specifications, and any other proprietary property or

information we provide to you in connection with the Services; (c) limit access to the Access Credential to persons who have a need to know such information; (d) closely and regularly monitor the activities of employees who access the Services; (e) notify us immediately if you have any reason to believe the security or confidentiality required by this provision has been or may be breached; and (f) immediately change or exchange your Access Credential if you know or suspect that the confidentiality of the Access Credential has been compromised in any way. Our security procedures are not designed for the detection of errors (e.g., duplicate payments, or errors in your funds transfer instructions such as beneficiary or amount). We are not obligated to detect errors by you or others, even if we take certain actions from time to time to do so.

You agree to change any temporary Access Credential we give you promptly after you are given access to the Services for the first time. You must disable access to the Services and to all Access Credentials for anyone that is no longer employed or authorized by you to use the Services. You also agree to change on a regular basis any self-selected Access Credential, but no less frequently than every 60 days. We may require you to change your Access Credentials at anytime.

As an alternative to verifying transactions by means of Access Credentials, we may elect to verify the authenticity or content of any order or instruction by placing a call to any Administrator or Authorized User on your Account or any other person designated by you for that purpose. We may deny access to the Services without prior notice if we are unable to confirm to our satisfaction any person's authority to access the Services or use a feature, or if we believe such action is necessary for security reasons.

Each time you make a transfer, payment, or other instruction with a Service, you warrant that our security procedures are commercially reasonable for your needs as expressed to us (based on the normal size, type, and frequency of your transactions). Some of our Services allow you or your Administrator to set transaction limitations and establish internal controls. Your failure to set such limitations and implement such controls increases your exposure to, and responsibility for, unauthorized transactions. You agree to be bound by any transfer, payment order, or other instruction we receive through the Services, even if it is not authorized by you, if it is authenticated by your Access Credential or is otherwise processed by us in accordance with our security procedures.

Your Internal Security. You bear sole responsibility for establishing, maintaining, implementing and updating policies, procedures, equipment and software ("**Internal Security Controls**") that ensure the security and integrity of your processes, equipment (including telecommunications and computer systems) and information, protect them from any unauthorized use, intrusion, takeover or theft, and prevent your Access Credentials from any unauthorized discovery or use (collectively "**Internal Security Breaches**"). You bear all risk of fraudulent transfers and other losses or disclosures arising from your Internal Security Breaches or from the interception of your communications prior to their receipt by us (collectively "**Internal Security Losses**"). We will not reimburse your Internal Security Losses. You agree that we are authorized to execute, and it is commercially reasonable for us to execute, any instruction received by us and authenticated by your Access Credentials. You are encouraged to consider purchasing insurance to cover your Internal Security Losses.

To protect your system from Internal Security Breaches, your Internal Security Controls should consider including:

- i. Limiting and controlling who has access to your computer systems;
- ii. Protecting and frequently changing your internal passcodes and Service Access Credentials;
- iii. Adopting dual authorization and/or transaction-based authentication procedures for financial transfers where available;
- iv. Employing up-to-date security software such as anti-virus, anti-malware and anti-spyware programs, as well as up-to-date software patches for all your software programs, internet browsers, email programs, and the like;

- v. Using effective, up-to-date firewalls;
- vi. Procedures to avoid infection by malicious software, such as: controlling what websites are visited by your computers; controlling the connection of other devices (e.g., flash drives) to your computers; controlling what documents, email attachments, programs and other files are opened or installed on your computers; and limiting which of your computers are used for online banking;
- vii. Reconciling all Accounts (including online monitoring) on a daily basis, and immediately reporting any discrepancies;
- viii. Prohibiting your Authorized Users from leaving computers unattended or from communicating or accessing sensitive information from insecure locations (e.g., terminals or networks at Internet cafes or airports);
- ix. Allowing Services to be accessed only from secure locations such as your premises;
- x. Establishing internal procedures (such as callbacks) for employees to verify that instructions or requests they may receive (especially by email or fax) to transfer funds (especially to new transferees, new addresses or new Accounts) are authentic, even if received in the name of your officers, vendors, or other known third parties; and
- xi. Adopting such other recommendations that we may make from time to time to help ensure your safe use of our Services.

This is not a complete listing of the Internal Security Controls that you may need. You are solely responsible for determining and implementing all of the Internal Security Controls necessary to prevent Internal Security Breaches and Internal Security Losses. We have no duty to review your Internal Security Controls, identify deficiencies or make recommendations. We do not represent or warrant that any or all of the above recommendations or any future recommendations are adequate for your needs or will prevent Internal Security Losses.

We may at any time limit access to any Service function to only those customers who have adopted specific Internal Security Controls. Our specification of any required Internal Security Controls shall not constitute a representation or warranty by us that they will (i) prevent any Internal Security Breach or Internal Security Losses, or (ii) be compatible with any computer system or other Internal Security Controls.

You remain at all times solely responsible for your Internal Security Controls, Internal Security Breaches and Internal Security Losses. Although we may employ various systems and procedures from time to time to prevent losses to us, we assume no obligation for your Internal Security Losses.



## APPENDIX I

### **LICENSE AND SUPPORT SERVICES AGREEMENT FOR REMOTE DEPOSIT SERVICE SOFTWARE ("SS AGREEMENT")**

(ver. May 1, 2019)

**Effective Date & Scope.** This SS Agreement is effective as of May 1, 2019 (the "**Effective Date**"). This SS Agreement governs support services for the remote deposit capture software (the "**Software**") licensed to you herein for the remote deposit capture service (the "**RDC Service**"). It supersedes any prior support services agreement for the Software. On or after the Effective Date, Bank shall not be deemed to sell, lease, supply, lend or otherwise furnish Customer ("**you**") with any hardware or other goods to use with the Software or RDC Service ("**Equipment**"). On and after the Effective Date, you must obtain Equipment, compatible with the Software, from entities other than Bank. Bank may inform you of one or more recommended suppliers, but (a) Bank makes no representation, warranty or guaranty regarding any Equipment or suppliers thereof, and (b) Bank provides no support services regarding any Equipment. For any Equipment that Bank did furnish to you prior to the Effective Date, that Equipment shall continue to be subject to the version of the support services agreement that was in place immediately prior to that date.

#### **1 Software License**

Subject to the terms and conditions of this SS Agreement, Bank hereby grants you a non-exclusive, non-transferable, non-assignable license to: (a) use the Software solely for processing Checks (as hereinafter defined) in connection with your own business operations in accordance with the Software installation documentation and operation manuals ("Documentation") and solely on compatible Equipment; (b) copy and use the Documentation solely to support your authorized use of the Software; and copy any Software actually delivered to you solely for archival or backup purposes. As used herein, "Check" means a draft, whether negotiable or not, that is (i) payable on demand, (ii) drawn on or payable through or at an office of a United States bank payable in United States money, (iii) payable or endorsed to you, and (iv) capable of being converted to a digitized form for processing. Such term does not include traveler's checks, money orders or non-cash items.

#### **2 Fees**

You shall pay Bank the RDC Service fees and Software license fees as separately disclosed.

#### **3 Customer Responsibilities**

- 3.1** You shall maintain a fully qualified and properly trained staff sufficient to perform your obligations under your agreements regarding the RDC Service, the Software, this SS Agreement and the Documentation.
- 3.2** You shall implement any change or upgrade to the Software within 30 days of your receipt of such change or upgrade. You shall use commercially reasonable efforts to implement any change or upgrade in such shorter time frame as Bank may reasonably require in the event such change or upgrade is necessary to comply with statutory or regulatory changes or developments, or to protect the integrity and security of the Software or RDC Service.
- 3.3** You shall (a) install and use the Software in accordance with the Documentation; (b) use the Software only for processing Checks electronically through the Bank; (c) use the Software only on Equipment that is compatible with the Software; (d) use only the current releases to the Software, subject to the timeframes for implementation to new releases set forth in this SS Agreement; (e) comply with the security procedures described in the Documentation; and (f) not bypass or disable any security mechanisms in the Software or your Equipment.

**3.4** You may not export, re-export or otherwise transfer the Software without our prior written consent. You acknowledge that certain Software is cryptographic software subject to U.S. export controls under the Export Administration Regulations, and that the Software, and technical data to be provided under this SS Agreement and certain transactions under this SS Agreement, may otherwise be subject to export controls and import and use restrictions of the U.S. and of other countries. You agree to comply with all such laws and regulations, including all export control laws, rules and regulations administered by: (a) the U.S. Department of Commerce (including the Bureau of Industry and Security); (b) the U.S. Department of Defense; (c) the U.S. Department of Treasury (including the Office of Foreign Assets Control); (d) the U.S. Department of State (including the Directorate of Defense Trade Controls); and (e) any other applicable government agency. You warrant that you are not located in, or are a national of, Cuba, Iran, North Korea, Sudan or Syria. You warrant that you are not on the U.S. Department of Commerce Denied Persons List, Entities List or Unverified List; the U.S. Department of State Debarred List; or any of the lists administered by the U.S. Department of Treasury, including lists of Specially Designated Nationals, Specially Designated Terrorists or Specially Designated Narcotics Traffickers. You agree that you will not use the software with chemical, biological or nuclear weapons or applications, or with missiles. You warrant that you otherwise understand and will comply with these conditions.

#### **4 Ownership of Intellectual Property**

- 4.1** You acknowledge and agree that (a) the Software, the Documentation, and all intellectual property rights (such as copyrights, patents and trade secrets) pertaining to the Software and the Documentation are owned exclusively by Bank and its Licensors, represent or contain valuable rights of Bank and its Licensors, and are protected under U.S. patent, copyright, trademark and trade secret laws of general applicability; and (b) all right, title and interest in and to the Software and the Documentation, together with all modifications, enhancements and derivative works, and all intellectual property rights such as copyrights, patents and trade secrets, pertaining to the Software and Documentation are and shall remain owned exclusively throughout the universe by Bank and its Licensors.
- 4.2** You agree that you shall not at any time, either directly or indirectly, challenge the scope, validity or ownership of Bank's or its Licensors' intellectual property rights in the Software and Documentation; shall not do any act, either directly or indirectly, which could reasonably be expected to impair the scope, validity or ownership of such intellectual property rights; and shall at no time assert any ownership rights to the Software or Documentation.
- 4.3** You acknowledge and agree that any license to you does not create in you any rights in or to any of the Software or Documentation, or copyrights, trademarks, trade secrets, patents or other intellectual property rights of the Bank or its Licensors, other than a limited, non-exclusive, non-transferable right, revocable in accordance with the terms of this SS Agreement, to use the Software and Documentation as set forth herein. You shall have no other license, right or interest in the Software or Documentation, either express or implied.
- 4.4** This SS Agreement does not grant to you any right, title, interest or license in or to any trademark of the Licensors.
- 4.5** You agree to promptly execute and deliver such further documents and take any and all other actions reasonably requested by Bank from time to time, in order to fully meet the intent and purposes of this Section 4.

## **5 Protection of Intellectual Property**

- 5.1** You shall establish reasonable precautions and use commercially reasonable efforts, no less rigorous than those you use to protect your own confidential information, to protect and maintain the confidentiality and security of the Software and Documentation in your possession or control. Without limiting the generality of the foregoing, you shall use reasonable measures to protect the Software and Documentation from unauthorized copying, dissemination or disclosure and from other unauthorized use.
- 5.2** You will not permit any third party to: (a) copy or use the Software or Documentation except as expressly authorized herein; (b) sublicense, rent, distribute, transfer, publish, disclose, display or otherwise make available the Software to others, except as specifically authorized herein; (c) use the Software for third party training, commercial time-sharing or service bureau use; (d) alter, change, modify or otherwise create derivative works of the Software or Documentation; (e) remove or alter any intellectual property or proprietary notices, markings, legends, symbols or labels appearing on or in the Software or Documentation; or (f) reverse engineer, disassemble or decompile any Software, except to the extent any law allows such activities, in which event you must notify Bank of your intent to perform such activities and Bank may terminate your license to the Software. You shall include on any copy of the Software or Documentation any copyright, trademark or other proprietary rights notices contained in the original.
- 5.3** You shall (a) reasonably cooperate with Bank and its Licensors to protect the Software, including in connection with any lawsuits or disputes involving the Software; and (b) promptly notify Bank and provide to it relevant background and other facts upon becoming aware of any actual or potential claim made by a third party regarding infringement, misappropriation, imitation, illegal use or misuse, or reasonable likelihood thereof, of the Software.
- 5.4** In the event of any infringement of Bank's or its Licensors' intellectual property rights with respect to the Software, you (a) grant to Bank and its Licensors the sole right to determine the course of action with respect to such claim and to bring any infringement proceeding and to settle and collect any settlement amount or judgment for any infringement proceeding, and (b) agree that Bank and its Licensors shall be solely entitled to any proceeds of any infringement proceeding, including, without limitation, any settlement proceeds, insurance proceeds, arbitration award, judgment or other consideration in any form.
- 5.5** You shall maintain an accurate list of all locations where you have loaded and maintain the Software and make such list available to Bank upon request.

## **6 Termination of License**

- 6.1** Pursuant to the termination of services provision in the parties' Treasury Management Master Services Agreement, Bank may terminate your RDC Service, this SS Agreement, and/or your license to the Software and the Documentation. In addition, any termination of this SS Agreement or your RDC Service shall automatically terminate your license to the Software and Documentation. Further, any termination of Bank's license to the Software and/or Documentation shall also terminate your corresponding sublicense.
- 6.2** Within 30 days after termination of your license to the Software and Documentation, you must, at your expense, deliver to Bank, or destroy, all copies of the Software and Documentation that are in your possession or under your control.

## 7 Mutual Indemnification

7.1 YOU SHALL INDEMNIFY AND HOLD HARMLESS BANK, ITS SERVICE PROVIDERS AND LICENSORS, PROVIDERS OF SOFTWARE AND DOCUMENTATION, AND THEIR RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS (EACH A “BANK INDEMNIFIED PARTY”) FROM AND AGAINST ANY AND ALL THIRD PARTY SUITS OR PROCEEDINGS, CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, EXPENSES (INCLUDING REASONABLE ATTORNEYS’ FEES AND OTHER LEGAL EXPENSES), LIABILITIES AND OTHER LOSSES (“CLAIMS”) RESULTING FROM OR ARISING OUT OF (A) THE WRONGFUL ACTS OR OMISSIONS OF YOU OR ANY PERSON ACTING ON YOUR BEHALF IN CONNECTION WITH YOUR USE OF THE SOFTWARE OR ANY ASSOCIATED EQUIPMENT, INCLUDING, WITHOUT LIMITATION, (I) A BREACH BY YOU OF ANY PROVISION, REPRESENTATION OR WARRANTY OF THIS SS AGREEMENT; (II) THE NEGLIGENCE OR WILLFUL MISCONDUCT (WHETHER BY ACT OR OMISSION) OF YOU OR ANY PERSON UNDER YOUR CONTROL OR ACTING ON YOUR BEHALF; (III) ANY MODIFICATIONS OR CHANGES TO THE SOFTWARE MADE BY YOU OR ANY THIRD PARTY WITHIN YOUR CONTROL OR ON YOUR BEHALF; (IV) ANY USE OF THE SOFTWARE OR ANY ASSOCIATED HARDWARE BY YOU OR A THIRD PARTY WITHIN YOUR CONTROL OR ON YOUR BEHALF, THAT IS NOT IN ACCORDANCE WITH THE DOCUMENTATION; OR (V) YOUR FAILURE TO COMPLY WITH APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS; OR (B) ANY ACTION OR OMISSION OF BANK THAT IS IN ACCORDANCE WITH THIS SS AGREEMENT OR INSTRUCTIONS FROM YOU. THIS PROVISION SHALL NOT REQUIRE YOU TO INDEMNIFY OR HOLD A BANK INDEMNIFIED PARTY HARMLESS IN CONNECTION WITH A BANK INDEMNIFIED PARTY’S OWN BREACH OF CONTRACT, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

7.2 Bank shall indemnify and hold harmless you and your shareholders, directors, officers, employees, and agents (each a “**Customer Indemnified Party**”) from and against any Claims that the Software directly infringes any valid United States copyright or that the use of the Software by you to (a) capture electronic images of Checks (as hereinafter defined); (b) electronically transmit the resulting Electronic Images to Bank or its service providers, as applicable for processing, in accordance with the Documentation; and/or (c) store electronic copies of such Electronic Images (hereinafter defined) within the Software, directly infringes any valid United States patent of such third party. As used herein, “**Electronic Image**” means information in electronic form, together with other electronic images and other information related thereto and transmitted therewith.

Bank shall have no liability under this Section to the extent a Claim is attributable to (a) modification of the Software by anyone other than Bank, its service providers or its Licensors, without the express prior written consent of Bank; (b) combination or use of the Software with any software or hardware that is not provided by Bank; (c) use of the Software in any way not authorized by this SS Agreement; (d) transmission of Electronic Images to any other computer, system or media, other than transmission to Bank or its designees, as applicable, for the purpose of the RDC Service; (e) use of other than the most current release of the Software provided to you; or (f) any breach by you of this SS Agreement.

If use of any portion of the Software by you is, or in Bank’s opinion is likely to be, enjoined due to any Claim, Bank shall, at its sole option and expense, do one or more of the following: (a) provide you the right to continue using such Software at no additional expense, (b) replace or modify such Software with non-infringing software, (c) resolve any Claim to allow use of such Software at no additional expense, or (d) if the remedies set forth in (a), (b) and (c) are not obtainable on commercially reasonable terms, terminate the license and accept return of such Software.

You agree and acknowledge that the remedy provided in this Section is your sole and exclusive remedy, and consequently the sole and exclusive liability of Bank with respect to any Claim or any related action, and Bank shall not be otherwise liable to you for providing non-infringing software.

- 7.3** A Bank or Customer Indemnified Party shall (a) give the indemnifying party prompt written notice of any Claim for which the Bank or Customer Indemnified Party intends to claim indemnification; (b) give the indemnifying party (and/or the Licensors, in the case that Bank is the indemnifying party) the right to control and direct the investigation, defense and settlement of the Claim; and (c) cooperate fully with the indemnifying party (and/or the Licensors, in the case that Bank is the indemnifying party) in the investigation, defense and settlement of such Claim. A Bank or Customer Indemnified Party shall not settle or compromise any Claim, and any settlement or compromise by a Bank or Customer Indemnified Party of a Claim shall be void as against the indemnifying party and shall terminate the indemnifying party's obligation to indemnify such Bank or Customer Indemnified Party. The indemnifying party (and/or the Licensors, in the case that Bank is the indemnifying party) may settle or compromise any Claim, provided that such settlement or compromise does not involve any admission of wrongdoing on the part of the Bank or Customer Indemnified Party or require any payment or other performance by the Indemnified Party.

## **8 Warranty Disclaimer**

- 8.1 BANK WARRANTS THAT THE SERVICES PERFORMED UNDER THIS SS AGREEMENT SHALL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER CONSISTENT WITH STANDARDS IN THE SOFTWARE SERVICES INDUSTRY, AS APPLICABLE, BUT MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY NATURE WITH RESPECT TO THE SUBJECT MATTER OF THIS SS AGREEMENT. BANK'S OBLIGATIONS AND LIABILITIES AND YOUR RIGHTS AND REMEDIES SET FORTH IN THIS SS AGREEMENT ARE EXCLUSIVE. BANK AND ITS LICENSORS HEREBY DISCLAIM, AND YOU WAIVE AND RELEASE BANK, ITS LICENSORS, AND THEIR RESPECTIVE OWNERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM ANY OTHER REPRESENTATIONS, WARRANTIES OF ANY NATURE, OBLIGATIONS AND LIABILITIES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY AND ALL DOCUMENTS, SERVICES, INFORMATION, ASSISTANCE, SOFTWARE, OR OTHER MATTERS PROVIDED UNDER THIS SS AGREEMENT, INCLUDING, WITHOUT LIMITATION, (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION OR OTHER IMPLIED CONTRACTUAL WARRANTY; (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (C) ANY WARRANTIES OF TIMELINESS OR NON-INFRINGEMENT; AND (D) ANY OTHER WARRANTY WITH RESPECT TO QUALITY, ACCURACY OR FREEDOM FROM ERROR. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER BANK, ITS SERVICE PROVIDERS NOR ITS LICENSORS WARRANT THAT OPERATION OF THE SOFTWARE OR RDC SERVICE WILL BE ERROR-FREE, THAT ITS OPERATION WILL BE UNINTERRUPTED OR THAT ALL DEFICIENCIES OR ERRORS WILL BE CORRECTED.**
- 8.2 THE SOFTWARE AND THE SUPPORT SERVICES HEREUNDER ARE PROVIDED TO YOU "AS IS".**

## **9 Additional Limitation on Liability**

- 9.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SS AGREEMENT, BANK'S AGGREGATE LIABILITY UNDER THIS SS AGREEMENT FOR ANY CLAIMS RELATING TO THIS SS AGREEMENT WHETHER FOR BREACH, NEGLIGENCE OR INFRINGEMENT, IN TORT OR OTHERWISE, AND ARISING IN ANY TWELVE MONTH PERIOD SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL FEES PAID TO BANK BY YOU FOR THE RDC SERVICE OR UNDER THIS SS AGREEMENT FOR SUCH TWELVE MONTH PERIOD. IN NO EVENT SHALL EITHER PARTY, ANY LICENSOR OR SERVICE PROVIDER BE LIABLE FOR ANY ERROR IN THE SOFTWARE, FOR ANY INJURY, DAMAGE OR LOSS RESULTING FROM SUCH ERROR OR FROM SUCH USE OF THE SOFTWARE, CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, BUSINESS, SAVINGS, DATA, OR USE, OR LOSS OF ANY OPPORTUNITY OR GOOD WILL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL BANK, ANY LICENSOR OR SERVICE PROVIDER BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN FURNISHING SOFTWARE OR SUPPORT SERVICES HEREUNDER. NO ACTION ARISING OUT OF THIS SS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN ONE (1) YEAR AFTER A CAUSE OF ACTION HAS ACCRUED.**
- 9.2** Bank will not be responsible or liable to you or any other person for (a) any damages, costs or other consequences caused by or related to its mistakes that are caused by information or instructions that you provide to it; (b) any unauthorized actions initiated or caused by you or your employees or agents; (c) any party's lack of access to the Internet or inability to transmit or receive data; (d) failures or errors on the part of Internet service providers, telecommunications providers, portions of the Internet, or any other party's own internal systems (including intranets and other wide and/or local area networks); or (e) the failure of third persons or vendors to perform satisfactorily, other than such parties to whom Bank has delegated the performance of specific obligations provided in this SS Agreement.
- 9.3 THE PARTIES HERETO ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION ARE A BARGAINED FOR ALLOCATION OF RISK AND LIABILITY AND AGREE TO RESPECT SUCH ALLOCATION OF RISK AND LIABILITY. YOU AGREE AND ACKNOWLEDGE THAT BANK WOULD NOT ENTER INTO THIS SS AGREEMENT WITHOUT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION. THE PROVISIONS IN THIS SS AGREEMENT FOR LIMITATIONS OF LIABILITY, DISCLAIMERS OF WARRANTY, AND INDEMNITIES IN FAVOR OF BANK ARE IN ADDITION TO, NOT DEROGATION OF, THE PROVISIONS IN THE PARTIES' TREASURY MANAGEMENT MASTER SERVICES AGREEMENT.**

## **10 Master Services Agreement**

The provisions of this SS Agreement are supplemented by the terms of the parties' Treasury Management Master Services Agreement (MSA), including but not limited to the provisions on assignment, choice of law, venue, jurisdiction, dispute resolution, force majeure, the manner of providing notices, integration of terms, and termination and survival of terms. The terms of this SS Agreement and the MSA are intended to be cumulative, but the terms of this SS Agreement shall prevail over any directly conflicting terms in the MSA with respect to the subject matter of this SS Agreement.