

CIT Bank, a division of First-Citizens Bank & Trust Company

TREASURY SERVICES TERMS AND CONDITIONS
(for Middle Market and Community Association Banking)

Effective Date: January 4, 2022
Version 11.1

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TREASURY SERVICES TERMS AND CONDITIONS

(for Middle Market and Community Association Banking)

CIT Bank, a division of First-Citizens Bank & Trust Company, (“Bank”) offers a variety of treasury management services (“Services”) to its business customers. This Agreement sets forth the terms and conditions applicable to all of the Services offered by Bank to its Middle Market and Community Association Banking customers (“Customer”). By executing one or more Enrollment Forms requesting one or more Services or by using one or more Services, Customer accepts the terms of these terms and conditions (“Agreement”) and acknowledges that this Agreement, each Enrollment Form executed by Customer or its Agent and any Supplemental Documentation govern the Services.

In the event that Customer has designated an Agent to act on Customer’s behalf with respect to this Agreement, Bank will accept all Instructions from such Agent upon receipt of evidence satisfactory to Bank, in its sole discretion, of Agent’s ability to act on behalf of Customer. Bank may continue to accept such Instructions until Bank has received written notice of revocation or termination of such authority from a representative demonstrating authority to act on behalf of Customer, in a form and manner reasonably satisfactory to Bank.

All Services involving any Accounts remain subject to other agreements concerning such Accounts, including without limitation, any deposit agreement and any Account Disclosures and availability schedules in effect from time to time.

Sections 1 and 14 of this Agreement apply to all Services. Each of **Sections 2-13** is applicable only to the specific Service described therein. Capitalized terms not defined elsewhere in this Agreement will have the meanings described in **Section 14**.

SECTION 1 - GENERAL TERMS

1.1 Enrollment

A. Enrollment: Customer shall execute an Enrollment Form(s) requesting each Service elected by Customer. An Agent may execute an Enrollment Form requesting Services on behalf of Customer upon furnishing evidence of authorization satisfactory to Bank in Bank’s sole discretion. Customer may add or delete Services by requesting such additions or deletions through execution of additional Enrollment Forms or other authorization method accepted by Bank. Subject to Bank’s approval, Customer may change the processing instructions for a Service by providing notice to Bank in accordance with **Section 1.4.A**. Bank may accept any Instruction which purports to be from Customer’s Agent or an officer or principal of Customer and will not be obligated to verify the authenticity of the requests purporting to be from Customer. Bank may require that certain Instructions be in writing and in a certain form. Bank may also require Customer to execute a new Enrollment Form, if applicable, reflecting any modifications.

B. Modifications to this Agreement: Bank may modify the terms and conditions contained in this Agreement, as applicable to all Services, or may modify the terms and conditions for any particular Service, from time to time by doing any of the following **(i)** posting the revisions on Bank's website, **(ii)** by Electronic Communication, or **(iii)** delivering notice of the modification to Customer in accordance with **Section 1.4.A. ALL modifications to this Agreement will be deemed to be accepted and agreed to by Customer when it uses the Services after Bank has provided notice of the modification pursuant to this Section.**

C. Termination: Bank may suspend or terminate any Service provided to Customer for cause without notice if Customer or Customer's Agent **(i)** does not comply with this Agreement or any other agreement contained in the Account Disclosures or Supplemental Documentation, **(ii)** becomes insolvent or files, or has filed against it, any bankruptcy or other insolvency, reorganization, liquidation or dissolution proceeding of any kind, **(iii)** has a material adverse change occur in its business or financial condition, or **(iv)** fails to provide financial information reasonably requested by Bank; additionally, Bank may suspend or terminate this Agreement or any Service if Bank has reason to believe that Customer or Customer's Agent has engaged in fraudulent or illegal activity. Bank may suspend or terminate a particular Service for cause without notice as more fully set forth in the section of this Agreement applicable to such Service. In addition, Bank may terminate this Agreement for convenience and cease providing any Services at any time, in Bank's discretion, by providing Customer with thirty (30) days' prior written notice. Customer may terminate any Service for convenience by providing at least thirty (30) days prior written notice to Bank. The parties agree that, after any termination, this Agreement and the relevant Enrollment Form(s) will continue to apply to all transactions which were initiated prior to termination and that Sections 1.2, 1.3, 1.6, 2.1E, 2.1F, 2.1G, 2.1H, 2.1K 2.1V, 2.3D, 2.3E, 3.3, 5.2, 5.3, 5.8, and 5.9 and any other terms which, by their nature should survive termination (including but not limited to indemnification and limitation of liability), will survive termination, as applicable.

1.2 Payment Terms

Customer will pay Bank the Service Fees established by Bank from time to time and disclosed to Customer. Service Fees may be modified by Bank from time to time by providing notice to Customer. Service Fees provided pursuant to this Agreement are in addition to fees for banking services as provided in the Account Disclosures. For Customers on Account Analysis, fees shall be offset in whole or in part by applying earnings credit obtained through Account Analysis. Earnings credit is calculated by Bank for Customer's Account(s), based on applying a rate established by Bank from time to time to the total of Customer's collected balances. Customer will receive an Account Analysis statement that will disclose the analyzed fees for the applicable period and the earnings credit rate. Any Service Fees and other costs payable by Customer that exceed the earnings credit for the applicable period will be deducted from the Payment Account on a monthly basis. Similarly, if Customer does not qualify for Account Analysis, Service Fees shall be deducted from the Payment Account on a monthly basis and Customer agrees to maintain sufficient funds in the Payment Account to pay the Service Fees as such fees become due. In addition to Service Fees, Customer will be responsible for:

- A. all reasonable attorneys' fees and other costs and expenses Bank may incur in collecting amounts Customer owes Bank in connection with any Service;
- B. the amount of any taxes levied or based on the Service Fees, if any, including without limitation, federal, state or local privilege, excise or sales taxes; and
- C. any third-party expenses incurred on behalf of Customer.

No Service Fees will be refunded or prorated if a Service is terminated prior to the end of a month including any credits related to Account Analysis, which shall be forfeited.

1.3 Confidentiality

A. General Confidentiality: Bank will maintain the confidentiality of information obtained from Customer in accordance with Applicable Law and Bank's policies and procedures for safeguarding commercial Customer information. Customer will use any confidential information obtained from Bank, including without limitation, security information, user identification codes, passwords, access codes, security devices and Bank's business processes, only as Bank specifies and in the ordinary course of using the Services. All specifications, programs, concepts and techniques developed or utilized by Bank for Customer or provided by Bank to Customer in connection with the provision of Services are and will remain the sole property of Bank. Customer agrees to keep such information confidential and to limit access to such confidential information to its Agents, officers, employees and other representatives who require access in the normal course of their duties on a need to know basis. Customer shall notify Bank immediately if any of Bank's confidential information is lost or its confidentiality is reasonably believed to be compromised. Customer will return to Bank all manuals, software or other documents or materials provided to Customer upon termination of any Service or this Agreement.

B. Exceptions: This **Section 1.3** does not limit either party's ability to disclose information **(i)** with prior approval in writing or Electronic Communication from the other party; **(ii)** to its attorneys, accountants, auditors or other professional advisors, or to Customer's Agents who are under a similar contractual or professional duty of confidentiality; **(iii)** that becomes public prior to such disclosure through legal means (other than a breach of this Agreement or a breach of obligations of a third party); **(iv)** that was in its possession or available to it prior to its receipt in connection with a Service hereunder; or **(v)** that is required or requested by a regulatory body to which either party is subject, or otherwise by Applicable Law, provided that the disclosing party shall provide notice to the other party prior to its disclosure.

1.4 Communication Terms

A. Notices: All communication and notices provided pursuant to this Agreement will be provided in writing to the other party at the postal, e-mail, facsimile or other address on the relevant Enrollment Form and as updated from time to time by other authorization method accepted by Bank. If Electronic Communication is accepted pursuant to Section 1.4(B) below, the Bank will assume all communication shall be

electronic except for legal notices which shall be in writing and mailed pursuant to this paragraph. Each party will provide notice to the other if any relevant contact information changes. Notices will be deemed to have been given or made **(i)** when received, if delivered by hand or courier; or **(ii)** three (3) Business Days after such notice is deposited in the United States mail; or **(iii)** if sent by e-mail, express mail or facsimile, the earliest to occur of its actual receipt by the intended recipient or the Business Day following the day in which it was sent; provided, however, that Bank shall not be deemed to have received an e-mail or facsimile until Bank confirms such receipt by returning a facsimile or e-mail to Customer.

B. Electronic Communication: If Customer provides an e-mail address for itself or its Agent(s) listed on any Enrollment Form, Customer consents and agrees to receive information and notices from Bank via Electronic Communication. Customer understands that Electronic Communications are inherently insecure due to the possibility of error, delay or observation or receipt by an unauthorized person. Bank may rely in good faith on Customer's Instructions received via e-mail or facsimile that Bank reasonably believes to have been initiated by Customer.

1.5 Information Exchange Services

A. Information Exchange: In the event that Customer obtains electronic access to certain Bank products, services or information, whether through the Bank or an approved Third Party Provider, or Bank receives Instructions from Customer via an electronic portal, as authorized by Bank from time to time in a manner other than through the Commercial Online Banking Service described in **Section 4**, this Section governs such access.

B. Establishment and Acceptance of Security Procedures: Customer agrees that the Security Information provided by Bank are commercially reasonable for Customer. Customer shall be bound by any Instruction at the time it is given, whether or not actually authorized, if issued in its name or by its Agent or its designated representative(s) and accepted by Bank in accordance with the Security Procedures.

C. Information Exchange Security Administration: The Customer or its Agent is responsible for authorizing the Bank to establish access to the Information Exchange Service for additional Users. Customer is responsible for maintaining access to the Information Exchange Service in a secure manner, including without limitation, removing access to the Information Exchange Service upon the termination of employment of any User or termination of authority of any Agent. Customer must notify Bank immediately upon termination of any Company Administrator. Once a Customer or its Agent has granted access to the Information Exchange Service, Bank is authorized to accept Instruction from any User, subject to the Security Procedures outlined below.

D. Service Enrollment: By signing the Enrollment Form, Customer accepts and assumes sole responsibility for ensuring that: **(i)** the information contained in the Enrollment Form is accurate and shall provide written update to such information if it becomes inaccurate; **(ii)** the Enrollment Form accurately reflects any desired limitation of

access for the Security Administrator; and **(iii)** no unauthorized person has or will have access to the Information Exchange Service. Further, as with respect to Third Party Providers, Customer consents and agrees to the Bank providing information through an accounting software application for the delivery and receipt of Confidential Information pursuant to this Agreement. Customer or its Agent represents and warrants that Customer's Third-Party Provider is compliant with all Applicable Law.

E. Receipt of Files/Delivery Options: Bank in its sole discretion may offer alternative secure delivery methods of files and Instructions to or from Customer or any Third-party Providers. By selecting any alternate option in the Enrollment Form, Customer accepts the terms and conditions of the Information Exchange Service as defined herein. Further, Bank at its sole option may reject any files, Instructions, or imaged Checks which originate as remotely created checks (as defined in Applicable Law) if the Check does not meet any requirements under industry standards or Federal Reserve guidelines. All files and any other information received by Bank may be rejected by Bank if it fails to meet any requirements of Applicable Law or is otherwise unable to be processed in accordance with Bank policy and procedures. Further, the form or type of information made available to Customer or its Agent or Third-Party Provider through any accounting software shall be determined by Bank; including but not limited to bank statements or notices, account balance information, imaged Checks, stop Check entries or daily reconciliation information.

1.6 General Terms

A. Security Procedures: Bank and Customer shall agree to one or more Security Procedures to be used in connection with certain Services. At the Bank's discretion and based on the requirements of the Service, our Security Procedures may be provided to the Customer in a written or verbal format. Customer agrees to use the Security Procedures provided for each Service, which may be amended from time to time. Customer agrees that such Security Procedures are commercially reasonable for Customer, and Customer shall be bound by any Instructions, Entries, Wire Transfer Request, fund transfer, transaction, service change order or any other communication that is acted upon by Bank in accordance with the Security Procedures. Customer acknowledges and agrees that the Security Procedures are not for the purpose of detecting errors in the transmission or content of any information, Wire Transfer Request, service change order or Instruction transmitted by Customer. If Customer selects certain Security Procedures to use in connection with a Service and the selected Security Procedures provide less protection than other Security Procedures offered by Bank, the Security Procedures chosen by Customer shall be deemed commercially reasonable. Bank reserves the right to audit Customer's compliance with the Security Procedures and to mandate controls or suspend Services until Customer complies with such Security Procedures. Bank may, in its sole discretion, require additional or new Security Procedures and/or change any Security Procedures from time to time, which shall also be deemed commercially reasonable. Customer's continued use of a Service after Bank has required new or additional Security Procedures or changed the Security Procedures shall constitute Customer's agreement that such Security Procedures are commercially reasonable for Customer.

B. Bank's Reliance; No Review: Bank is entitled to rely on any Electronic Communication, notice, document or Instruction believed by it in good faith to be genuine and correct and to have been given, signed and/or sent by Customer or on behalf of Customer by its Agent or its designated representative(s), and shall not be obligated to verify the authenticity of the information, and Bank will not be liable to Customer for the consequences of any such reliance. Bank has no obligation of any kind to review any data or to correct any error in any data provided to Customer through any Service or any data or Instruction provided by Customer to Bank through any Service received in good faith and believed to be genuine.

C. Status of Parties: The relationship of Bank and Customer and its Agent is solely that of independent contractors. Neither party will be considered to be an employee or agent of the other. Nothing contained in this Agreement will be construed to create any partnership or joint venture between the parties.

D. Intercompany Services: Bank may, in its discretion and subject to receipt of documentation satisfactory to Bank, permit Customer to use Services on behalf of a parent company, subsidiary, affiliate or other commonly owned company (a "Related Entity"). If Bank permits Customer to use Services on behalf of Related Entities, Customer shall be jointly and severally liable for the Related Entities' obligations under this Agreement. Additionally, Customer represents and warrants that any and all transfers of a Related Entity's funds or commingling of funds of one or more Related Entities with another Related Entity's or Customer's funds and Customer's use of the Services on behalf of the Related Entities have been duly authorized by all necessary parties and that Customer will make such documentation available to Bank immediately upon request. Customer represents and warrants that with respect to any Services used by Customer on behalf of Related Entities, such action is not in violation of any agreement, bylaw or board resolution of Customer or the Related Entities and is not in violation of any Applicable Law.

E. Standard of Care: Bank's duties and responsibilities are limited to those specifically described in this Agreement and the Enrollment Form(s). Bank will exercise commercially reasonable and ordinary care in performing its obligations, unless otherwise expressly provided herein or required by Applicable Law. Bank makes no warranty, either express or implied, to Customer with respect to any service or product provided or to be provided hereunder, as further described in **Section 1.6.K**.

F. Customer Responsibilities: Customer is solely responsible for **(i)** use of the Services in accordance with the terms of this Agreement, and implementing internal policies and procedures to safeguard confidential information, security codes and User access to the Services; **(ii)** any activity of any kind generated by Customer's computer systems or networks, including fraudulent activity or corruption of Customer's system or corruption or infection of Bank's computer systems or networks; and **(iii)** the provision, repair and maintenance of any equipment used by Customer to access the Services; **(iv)** the protection of any equipment and software used by Customer to access any Service from intrusion or attack through use of commercially reasonable anti-virus and anti-spy programs and/or software; and **(v)** the actions or inaction of Customer, its designated

Agent(s) or its designated representative(s) to facilitate fraud or any security related events. Customer shall immediately notify Bank if it believes that the security of any password, identification number or any other means of access to any Service has been compromised or any fraudulent activity described in this **Section 1.6.F (ii)** has occurred. In addition, Bank shall from time to time make information available via Supplemental Documentation or its website, regarding fraud awareness and education to assist Customer in the prevention and mitigation of any fraudulent or suspicious activity.

G. Hacking and Malware Risks: Customer understands that there is a risk that criminals may use various schemes (such as offers of free software or e-mail messages with attachments) to plant a computer virus, spyware or other malicious software (collectively “malware”) in Customer’s computers to gain access to Customer’s internet banking applications and their access IDs, security keys, one-time passcodes, passwords and other security protocols. This malware then uses the information to initiate payments to third parties by means of wire transfers, ACH entries, or other means of electronically transferring funds. Customer acknowledges that there is a substantial risk of this occurring and therefore agrees to take all commercially reasonable steps to prevent the installation of such malware on its computers. These steps include, but are not limited to, installing, and maintaining state-of-the-art anti-virus and malware detection software on Customer’s computers. Customer agrees that the Bank has no duty or obligation whatsoever to protect it from such criminal activities and that the Bank has no duty or obligation to ascertain whether or not any wire transfer, ACH entry, payment order or other electronic transfer of funds from Customer’s accounts is made in connection with a legitimate transaction when the instruction to transfer funds or make a payment is initiated from its computers and/or is accompanied by the correct security procedure. Customer also agrees that the Bank has no obligation to ascertain whether Customer has initiated any wire transfer or other payment order, ACH credit entry or other electronic or paper payment to the same or similar beneficiary on any prior occasion or whether the geographic location of the beneficiary or the geographic location of the beneficiary’s bank is consistent with Customer’s normal payment activities. The Bank has no obligation to ascertain whether any wire transfer, payment order, ACH credit entry or other payment is consistent with Customer’s present or past payment activities, the size of its business, the number, location or compensation of any of its employees or agents or whether the transfer of funds is for the benefit of Customer’s business. **Customer further agrees that the Bank has no obligation to determine whether or not the security of Customer’s computers or computer systems have been compromised at any time by the actions of a third party. The Bank is not responsible for any losses, damages, errors, failures, fraudulent transactions, or malfunctions arising out of or in connection with any unauthorized intrusion into Customer’s computers, whether by computer virus, spyware or other malware or other wrongdoing.**

H. No Extension of Credit: Neither this Agreement nor the provision of any Service, nor the terms of any Enrollment Form or Supplemental Documentation will be construed to obligate Bank to create an overdraft, pay any amount in excess of Customer’s collected and available funds in any applicable Account, lend money or otherwise advance funds to or on behalf of Customer unless expressly set forth in a written agreement between Customer and Bank.

I. Release; Force Majeure: Unless otherwise required by expressly Applicable Law, Bank will not be liable for, and Customer hereby releases Bank from, any loss arising directly or indirectly, in whole or in part, from any of the following causes: **(i)** any act, failure to act or delay in acting on the part of any person not within Bank's reasonable control, including Customer or its Agent or designee; **(ii)** the negligence or misconduct of Customer, any Agent or any other officer, employee or agent (apparent or otherwise) of Customer; **(iii)** any inaccuracy or ambiguity in any information given to Bank (including, without limitation, any incorrect, incomplete or untimely information) by Customer; **(iv)** any error, failure or delay in the provision of any Service, execution of any Instruction, performance under any Enrollment Form or other instruction that is caused by any natural disaster, an act of governmental or military authority, legal constraint, fire, flood, earthquake, windstorm, other natural calamity, war, riot, civil unrest, act of terrorism, labor disturbance, strike, lockout, inability of Bank to obtain labor, materials or transportation in a timely manner, electrical, communication, telecommunication, word processing or computer failure or interruption of service (whether hardware, software or both) and which failure or delay in performance is not within the direct and reasonable control of Bank; or **(v)** any other cause or circumstance beyond the reasonable control of Bank.

J. Indemnification of Bank; Right of Setoff; Security Interest in Accounts: Customer, including without limitation a Customer acting in its capacity as an Agent, shall indemnify, reimburse or otherwise hold harmless Bank, its affiliated companies and its officers, employees and agents for any and all costs, losses, claims, taxes, expenses, liabilities and damages incurred or sustained by Bank in the performance of Services for Customer (including without limitation Services provided for a principal of a Customer acting in its capacity as an Agent), except to the extent caused solely by the gross negligence or intentional misconduct of Bank. Any claim for indemnification will be promptly submitted by Bank to Customer in writing along with a summary of the facts constituting the basis of such claim. Upon notice to Customer specifying in reasonable detail the basis for such claim, Bank may set off any amount to which it may be entitled under this **Section 1.6.I.** or otherwise relating to any of the Services or other terms or conditions of this Agreement against any amounts or obligations owed to Customer, whether under this Agreement or otherwise relating to the Services or pursuant to another agreement between Customer and Bank. The exercise of this right by Bank, whether or not ultimately determined to be justified, will not constitute a breach, event of default under this Agreement or under any other agreement between Bank and Customer. Neither the exercise of nor the failure to exercise any of this right will constitute an election of remedies or limit Bank or any of its affiliated companies and/or officers, employees and agents in any manner in the enforcement of any other remedies that may be available to them hereunder. Customer grants Bank a security interest in all its Accounts at the Bank, and in all funds in such Accounts, to secure Customer's obligations to the Bank under this Agreement to the maximum extent permitted by Applicable Law. Bank may take any action necessary to secure its security interest in the Accounts. Bank's security interest will survive termination of this Agreement.

K. Customer Representations and Warranties: Customer represents that it is duly organized in accordance with the laws of the jurisdiction of its organization, and

that each person executing any Agreement or Enrollment Form is properly authorized. Bank is entitled to rely on such signatures as conclusive authority to enter into this Agreement and obtain the applicable Service. Customer also covenants to Bank each time Customer uses a Service, that: **(i)** Customer is validly existing and in good standing under the laws of the jurisdiction of its organization; **(ii)** Customer's assent to this Agreement is authorized and that its obligations hereunder are Customer's legal, valid and binding obligation; **(iii)** each person signing documents on behalf of Customer, including its Agent, has the requisite power and authority and has taken all necessary action to execute and deliver the Instructions, and to perform Customer's obligations under this Agreement and each Service used by Customer; **(iv)** any consent or authorization of any governmental authority or third party required to be obtained by Customer in connection with this Agreement or any Service used or performed pursuant to this Agreement has been obtained; **(v)** the Services are not intended to and will not be used by Customer for purposes in violation of Applicable Law; **(vi)** Customer is not acting on behalf of or transmitting funds to or from any party subject to sanctions enforced by OFAC; **(vii)** Customer is utilizing the Service solely for commercial use and not for any personal, family or household purposes; and **(viii)** if Customer is acting in its capacity as an Agent, Customer is a duly authorized Agent for the principal Customer and has the power and authority to use the Services on behalf of the principal Customer.

L. Disclaimer of Bank Warranties, Limitations on Liability: BANK HEREBY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, RELATED TO THE SERVICES, INCLUDING ALL WARRANTIES AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR SUITABILITY OF ANY SERVICES FOR CUSTOMER, OR AS TO ANY EQUIPMENT OR SOFTWARE PROVIDED BY BANK OR THE COMPATIBILITY OF BANK'S SOFTWARE, EQUIPMENT OR COMMUNICATION INTERFACES WITH CUSTOMER. Customer acknowledges that the Services are provided by Bank without representation or any of the warranties discussed above and that Bank is not responsible for determining the accuracy, timeliness or completeness of information provided to Bank by Customer or any third party. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL BANK BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS OR THIRD-PARTY CLAIMS OR ANY CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS) FROM ANY CAUSE WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATING TO, CONNECTED WITH OR PERTAINING TO EITHER THIS AGREEMENT OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY SERVICES HEREUNDER.** These limitations will apply whether or not the likelihood of such losses or damages was known or should have been known by Bank, regardless of the legal or equitable theory of liability advanced by Customer. Customer's exclusive remedy for any cause whatsoever and regardless of the form of action (whether in contract or in tort, including negligence) will be limited to the actual, proven damages of Customer that are the immediate and direct result of an action or failure to act by Bank constituting gross negligence or willful misconduct. To the extent permitted by Applicable Law, in no event shall the Bank or any Vendors be liable to Customer for any claim or cause of action, whether based in contract, tort, strict liability or any other legal theory: **(i)** in the case of an Entry, Wire Transfer, Instruction or other payment that is misdirected, lost or otherwise paid to the wrong Account as a result of

Bank's failure to comply with the terms of this Agreement or Applicable Laws, for an amount in excess of the face amount of such Entry, Wire Transfer, Instruction or item or other payment; and **(ii)** in all other cases, for an amount in excess of three (3) times the Services Fees for the Services to which the claim or cause of action relates during the month immediately prior to the month in which the act or omission giving rise to the claim occurred.

M. Compliance with Law: Customer will (and will ensure its Agents will) comply with all Applicable Laws and regulations in connection with the Services, including without limitation, the Rules and OFAC-enforced prohibitions. Customer shall indemnify and hold Bank harmless for any and all fines and assessments imposed on Bank as a result of any alleged violations of Applicable Law. Bank shall have the right to request information from Customer, its Agents and employees, to ensure compliance with United States legal requirements including, but not limited to, the following: OFAC, FinCEN, foreign payment systems rules, Uniform Commercial Code, Check rules and regulations, and any foreign laws or payment system rules regarding authorization or other transactional information. Customer shall promptly provide such information or shall cause such information to be promptly provided to Bank upon request.

N. Customer's Records and Review: Without limiting any obligations of Customer to retain records as specifically set forth in this Agreement with respect to a Service, Customer will retain and provide to Bank, upon request, all information necessary to remake or reconstruct any deposit, transmission, file or entry for thirty (30) days following such transaction. Customer will regularly and promptly review and verify all information provided to it concerning the Services, including without limitation account statements, reports, Check payment records, adjustments, charges, and/or other billing statements, and other transactions and, within a reasonable time (which in no event will be greater than thirty (30) days) will notify Bank of any error or discrepancy between Customer records and any Bank notice or statement, or any transaction or transfer which Customer believes was not authorized. Customer's failure to notify Bank of such error or unauthorized transaction within the requirements of Applicable Law and the Account Disclosures shall relieve Bank of any liability.

O. Bank Records: Bank has no obligation to retain any records, including records relating to Instructions delivered by Customer, for longer than the period required of Bank by Applicable Law. In the event Customer fails to report any alleged error to Bank during the period of time Bank is required to retain such records, any good faith attempt by Bank to reconstruct the contents of the Instructions will be conclusively presumed correct.

P. Bank Cutoff Times; Timeliness of Action: Bank establishes cutoff times for various purposes. Information, Instructions, data or requests received after an applicable cutoff time will not be effective until the following Business Day. Bank shall have a reasonable time to act on any Instruction, or request of any kind. If it is unable to act on such Instruction or request prior to an applicable cutoff time, the action requested of Bank shall be effective the following Business Day.

Q. Binding Effect: This Agreement binds and benefits the parties and their permitted successors and assigns. Bank will not be bound by any agreement or representation made by any Bank employee or Agent that is in conflict with this Agreement, unless that agreement or representation is contained in a validly executed agreement or amendment. Bank will not be deemed to waive any right or power under this Agreement as a result of any delay in exercising such right, nor will any single or partial waiver or exercise of any right or power limit Bank's ability to subsequently fully exercise the right or power or to exercise any other right or power under this Agreement. The rights and remedies set forth in this Agreement are cumulative and not exclusive of any other rights or remedies available to Bank.

R. Entire Agreement: This Agreement, the terms and conditions contained in the Account Disclosures, the executed Enrollment Form(s), and any Supplemental Documentation provided by Bank represent the complete statement of the agreement between Bank and Customer for the Services. In the event of any conflict between this Agreement, the Account Disclosures and any Supplemental Documentation, the terms of this Agreement will control. In the event of any inconsistency between the terms of this Agreement and the Enrollment Form, the terms of the Enrollment Form shall control.

S. Assignment: Customer may not assign its right to receive Bank's Services hereunder without the prior written consent of Bank. Bank will have the right to delegate its obligation to perform Services hereunder to an appropriate third party as determined by Bank in its sole discretion. Bank may provide certain Services through third-party service providers. While Bank will have the right to delegate its duty to perform under this Agreement; it will be under no duty to do so.

T. Governing Law: This Agreement and the rights and obligations of the parties hereunder will be governed by, and construed, interpreted and enforced in all respects in accordance with the federal law of the United States, and to the extent that federal law does not apply, the law of the State of New York without regard to conflict of laws principles.

U. Venue; Jurisdiction; Service of Process; Jury Trial Waiver: Any legal action or proceeding arising out of or relating to this Agreement must be instituted in the courts of the state where the main office of Bank is located or of the United States of America for the district where the main office of Bank is located, and Customer hereby irrevocably submits to the jurisdiction of each such court in any such action or proceeding. By executing any Enrollment Form or utilizing any of the Services, Customer irrevocably consents to the service of any and all legal process, summons, notices and documents out of any of the aforesaid courts in any such action, suit or proceeding by mailing copies thereof by overnight or certified mail, postage prepaid, to Customer at its address provided for notices in accordance with **Section 1.4.A. CUSTOMER AND BANK EACH WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM RELATING TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR ANY SERVICE OR TRANSACTION HEREUNDER.**

V. No Waiver: No failure or delay on the part of Bank or Customer to exercise any right hereunder will operate as a waiver of such right, nor will any single or partial exercise by Bank or Customer of any right hereunder preclude any other or further exercise thereof, or exercise of any other rights.

W. Severability: Any provision of this Agreement, the Enrollment Form or any Supplemental Documentation which is unenforceable will only be ineffective to the extent of such unenforceable provision, without invalidating the remaining provisions of the document.

SECTION 2 - AUTOMATED CLEARING HOUSE (ACH) SERVICE

2.1 ACH Origination Service

This **Section 2.1** sets forth the terms and conditions relating to Automated Clearing House Service (the "ACH Service") and is applicable only to Customers who execute an Enrollment Form requesting ACH Service. By using the ACH Service, Customer may transfer funds by means of Entries which may be sent through the ACH network or processed directly by Bank. Capitalized terms used in this **Section 2.1** that are not otherwise defined in this Agreement will have the meanings provided in the Rules.

A. Transmittal of Entries: All Entries initiated by Customer and all transactions provided pursuant to the ACH Service are subject to, and Customer agrees to comply with, the terms of this Agreement, the Rules, any additional rules adopted by local or state ACH association, all Applicable Law. Customer will transmit Entries to Bank to the locations and in compliance with the formatting and other requirements provided by Bank to Customer. Customer shall be bound by and comply with the Rules for all Entries, whether or not an Entry is sent through the ACH network. Customer agrees that it shall only originate the type of Entries designated on Customer's Enrollment Form. However, Bank may, in its sole discretion, limit the type of Entries Customer is authorized to originate.

B. Security: All ACH Entries will be transmitted by Customer via a secure file delivery channel in accordance with the Bank's posted Security Information. Customer agrees that the Security Information applies to the ACH Service and are commercially reasonable procedures for Customer. Customer is strictly responsible for establishing and maintaining security measures and complying with the Security Procedures. Customer agrees to take reasonable steps to maintain the confidentiality of the Security Information and any passwords, unique identifiers, codes, security devices, and any related information provided by Bank or established by Customer in connection with the Security Procedures. Customer will immediately notify Bank if it suspects or knows that any passwords, unique identifiers, codes, security devices, or any related information have been accessed by or provided to an unauthorized person. Customer will be responsible

for unauthorized transfers made in good faith by Bank until Bank has been notified of the unauthorized access and has had a reasonable opportunity to act upon such notice.

(i) Customer will comply with and maintain the minimum security requirements on their computer systems as may be required and communicated to Customer from time to time by Bank. Customer releases Bank from liability and agrees to indemnify and hold Bank harmless from any and all claims or liability resulting from Customer's failure to comply with this **Section 2.1.B.** and for allowing any malicious software to be loaded onto its computer systems.

(ii) If any Entry (or request with respect to an Entry) received by Bank was transmitted or authorized by Customer or its Agent, Customer shall pay Bank the amount of the Entry, regardless of whether Bank complied with the Security Information with respect to that Entry and regardless of whether such Entry was erroneous or contained an error that would have been detected if Bank had complied with the Security Information.

(iii) If any Entry (or request with respect to an Entry) received by Bank purports to have been transmitted or authorized by Customer or its Agent, it will be deemed effective and Customer shall be obligated to pay Bank for the amount of such Entry even if the Entry was not authorized by Customer, provided Bank accepted the Entry in good faith and acted on it in compliance with the Security Information.

C. Processing, Transmittal and Settlement: Customer authorizes Bank to: **(i)** process Entries received from Customer or its Agent; **(ii)** transmit such Entries as an Originating Depository Financial Institution to the ACH network; and **(iii)** settle for such Entries. Subject to the terms and conditions of this Agreement, Bank will transmit such Entries by the applicable deposit deadline of the ACH network, provided **(iv)** such Entries are completely received by the cut-off time established by Bank and the Rules from time to time; **(v)** the Entry Date on the file satisfies the criteria established by Bank from time to time; **(vi)** the Federal Reserve is open for business on such Business Day; and **(vii)** such Entry otherwise complies with the terms of this Agreement. Customer shall have no right to cancel, reverse or amend any Entry after its receipt by Bank; however, Bank will use commercially reasonable efforts to act on a request by Customer to cancel an Entry before transmitting it to the ACH. Any such request shall comply with the Security Information and Bank shall have no liability if it fails to effect the cancellation. Customer acknowledges that in the case of a Same Day Entry, any request by Customer to cancel an Entry must be made immediately in order for the Bank to have an opportunity to effect cancellation. Despite Bank's commercially reasonable efforts to act on such a request, cancellation of a Same Day Entry may nevertheless be impossible, and Customer understands and accepts the risk of this occurrence.

D. Rejected Entries: Bank will have the right to reject any Entry that does not comply with the requirements of this Agreement or for any reason permitted under the Rules. Bank will also have the right to reject any Entry if Customer has failed to comply with the Account balance maintenance obligations under **Section 2.1.E.**, has exceeded the Exposure Limits (described in **Section 2.1.H.**), has failed to maintain reserve

balances as provided in **Section 2.1.H.**, of this Agreement, has failed to comply with the Security Procedures, and/or failed to notify the Bank of any new Company ID at least five (5) Business Days prior to receipt of a file containing the Company ID; or has failed to meet any obligation to Bank, including payment obligations, pursuant to this Agreement or any other obligation of Customer to Bank. Bank in its discretion may reject any credit Entry which contains an effective Entry date more than two (2) Business Days after the Business Day such Entry is processed by the ACH Operator; or the effective Entry date for a debit Entry is more than one (1) Business Day after the processing date, or longer in Bank's discretion. Bank will notify Customer of such rejection no later than the Business Day such Entry otherwise would have been processed by Bank or in the case of an "on-us" Entry, its effective date, unless the effective date is the Business Day the file was received, in which case Bank will notify Customer of rejection the following Business Day. Notices of rejection are effective when given. Bank shall have no liability to Customer for a rejection of any Entry or the fact that notice is not given at an earlier time than provided in this section. Bank will have no liability to Customer for any rejection of an Entry or the fact that notice is not given at an earlier time than that provided for in the Rules.

E. Payment With Respect To Entries:

I. Payment Timing: Bank will generally debit Customer's Account for credit Entries (including debit Reversals) on the settlement date, unless Customer is prefunding its Entries. Prefunding means that Customer would pay for all credit Entries by such time before the settlement date, as Bank may specify. At its sole discretion, Bank may at any time without notice require payment before processing Customer's Entries. Even if Bank has done so in the past, Bank is not obligated to process any Entries without having first been paid by Customer, but, if it does, the amount is immediately due and payable without notice or demand. Bank will generally credit Customer's Account for debit Entries (including credit Reversals) on the settlement date. All such credits are provisional and Bank may charge Customer's Account, as well as any other account of Customer with Bank, for the amount of a returned or rejected electronic debit Entry.

II. Returned Entries: Customer will pay Bank for the amount of any returned debit Entries (including rejected debit Entries) or any adjustment Entries, which Bank previously credited to the Account. Customer agrees that Bank does not need to send a separate notice of debit Entries that are returned unpaid. Reports containing information regarding returned debit Entries are available. Customer authorizes Bank to debit Customer's Account on the day the returned or rejected electronic debit Entry is received by Bank or thereafter. Customer agrees to maintain a sufficient balance in Customer's Account to cover returned or rejected electronic debit Entries. If a returned or rejected electronic debit Entry cannot be debited against Customer's Account, Customer will pay Bank the amount of the returned or rejected debit Entry.

F. On-Us Entries; Notice of Returned Entries; Notification of Change; Reversals:

I. Except as otherwise provided in this section, if an Entry is received for a credit to an account maintained by Bank (an “on-us Entry”), Bank shall credit the Receiver’s account in the amount of such Entry on the effective Entry date contained in such Entry if **(a)** the Entry is received by the Bank’s cutoff time on a Business Day, and either **(b) (i)** the effective Entry date is at least two (2) days after such Business Day, or **(b)(ii)** the effective Entry date is the date of such Business Day and the Entry specifies Same Day Entry for settlement. If either of those requirements is not met, Bank shall use reasonable efforts to credit the Receiver’s account in the amount of such Entry no later than the next Business Day following such effective Entry date.

II. As long as the effective date is after the Business Day the file was received, Bank shall notify Customer of the receipt of a returned Entry from the ACH no later than one (1) Business Day after the Business Day of such receipt if by Electronic Communication; and no later than five (5) Business Days if by US Mail or other postal service, and in a format specified by Customer. Bank shall have no obligation to re-transmit a returned Entry if Bank complied with the terms of this Agreement with respect to the original Entry; provided, however, Bank may reinitiate the returned Entry no more than two times in accordance with the Rules.

III. Bank will inform Customer via Electronic Communication or other communication acceptable to Bank of all notifications of change (“NOC”) received no later than two (2) Business Days after the receipt of the Entries. Customer agrees to make the changes submitted within six (6) Business Days of the settlement date of the original Entry or before the next “live” Entry, whichever is later; *provided that*, Customer may choose, in its discretion, to make the changes specified in any NOC or corrected NOC received with respect to any ARC, BOC, POP, RCK, Single-Entry TEL, Single-Entry WEB, and XCK Entry. If a NOC is incorrect, Customer will generate a refused notification of change and deliver it to Bank.

IV. Customer may initiate a reversing Entry or file of Entries for erroneous or duplicate transactions, as permitted by the Rules. In doing so, Customer warrants it has initiated the Entries or files within five (5) days of the original Entry or Entries and within twenty-four (24) hours of the discovery of the error. Reversals must be initiated within five (5) Business Days of the original Entry and the account holder for the reversing Entry must have been notified of the reversal and the reasons for the reversal no later than the settlement day of the reversal. For both reversing Entries and files, Customer indemnifies all parties to the transaction(s) from and against any claim, demand, loss, liability or expense.

G. Liability; Limitations of Liability; Indemnity: In addition to the limitations of liability and indemnification obligations of Customer set forth elsewhere in this Agreement, with respect to the ACH Service, Bank will be liable only for its gross negligence or willful misconduct in performing the ACH Service. Customer will indemnify and hold Bank harmless against any loss, liability or expense (including attorneys' fees and expenses) resulting from any breach of any warranties contained in the Rules.

H. Credit Risk: (i) Bank may from time to time in its sole discretion impose limits ("Exposure Limits") on the aggregate amount of Credit or Debit Entries that Customer may initiate, taking into account the total dollar amount of Entries transmitted, frequency of origination, and payment application originated by Customer as set forth in the ACH Service Enrollment Form. Bank will establish an initial Exposure Limit for Customer, which will be disclosed to Customer and Customer agrees it will not transmit Entries that would cause it to exceed its Exposure Limits. Bank may also in its sole discretion and upon notice to Customer require it to maintain reserve balances in one or more Accounts in an amount equal to a percentage of all Entries Customer initiated within a certain preceding period, or, at Bank's option projected by Bank to be initiated by Customer in a certain period. Bank will have the right to require Customer to provide, at any time in Bank's sole discretion, appropriate information to enable Bank to assess the credit risk associated with providing services to Customer through the ACH Service. Customer hereby authorizes Bank to gather credit information regarding Customer from other sources, including one or more credit bureaus. Bank reserves the right to designate or terminate Entry classes Bank will process for Customer. (ii) Bank also maintains the right to hold back a percentage of reserves after termination of ACH Service to cover any remaining transaction obligations and charge backs of Customer as determined in the Bank's sole discretion. In addition, Bank may require general liability, D & O, E & O or other types of insurance coverage as a requirement to provide the ACH Services.

I. Customer Representations, Warranties and Agreements:

I. Customer warrants to the Bank all warranties that Bank is deemed by the Rules to make with respect to Entries originated by Customer. Further, Bank has the right to audit Entries at any time to ensure compliance with this paragraph.

II. Customer further warrants as of the date hereof and in connection with each Entry transmitted to Bank that:

(A) Customer is bound by and has complied with the Rules, including that payment of an Entry by the Receiving Depository Bank to the Receiver is provisional until receipt by the Receiving Depository Financial Institution of final settlement for such Entry; if such settlement is not received, the Receiving Depository Financial Institution shall be entitled

to a refund from the Receiver of the amount credited and Customer shall not be deemed to have paid the Receiver.

- (B) Each Entry is accurate, timely, has been authorized by the party whose account will be credited or debited, and otherwise complies with the Rules, and such authorization is operative at the time of transmittal of credit or debiting by the Bank.
- (C) Customer will comply with all pre-notification requirements in the Rules.
- (D) Each debit Entry is for the sum which, on the settlement date with respect to it will be owing to Customer from the party whose account is debited, is for a sum specified by such party to be paid Customer, or is a correction of a previously transmitted erroneous credit Entry.
- (E) Customer is in compliance with all Applicable Law in generating Entries and, without limiting the foregoing, shall obtain information regarding the OFAC enforced sanctions with respect to each Entry.
- (F) Customer agrees to:
 - 1. obtain all authorizations as required under the Rules and Applicable Law and retain such authorizations for the greater of the period required under the Rules or two (2) years after they expire; and
 - 2. provide requested authorizations to Bank promptly within two (2) Business Days of receipt of Bank's written request.

III. Customer warrants all Entries transmitted to Bank are retained on file and in a format adequate to permit remaking of Entries for seven (7) Business Days following the date of their transmittal, and shall provide such data to Bank upon its request.

IV. Customer shall indemnify and hold Bank harmless against any claim, demand, loss, liability or expense (including but not limited to reasonable attorneys' fees and costs) and damages, including consequential, special and punitive damages Bank may incur as a result of Customer's breach of this Agreement, the Rules and any other agreement between Customer and any of its customers whose accounts are affected by Entries.

v. Bank, acting on its own behalf or through third parties, shall have the right to audit Customer's compliance with this Section 2 and the Rules

during regular business hours and upon reasonable notice to Customer. Customer shall cooperate with Bank in performing such audit.

J. Discrepancies: Information regarding Entries is made available to Customer on its Account summaries and/or statements provided to Customer by Bank in accordance with Customer's Account Disclosures. Customer agrees to notify Bank promptly of any discrepancy between Customer's records and the information shown on its Account summary. If Customer fails to notify Bank of a discrepancy within thirty (30) days after information concerning an Entry first became available to Customer, Bank will not be liable for any losses or costs resulting from Customer's failure to give notice and Customer will be precluded from asserting such discrepancy against Bank.

K. Notice of Error: If Bank receives a notice of error or unauthorized transaction as ODFI concerning an Entry processed or authorized to be processed to an account with Bank, Customer will, within two (2) Business Days after written or oral notice, provide Bank with a copy of the authorization to debit or credit the Receiver's account and, if applicable, proof of sending notice to the Receiver of the varying amount, or other proof satisfactory to Bank that the error alleged did not occur or resolve the error. If the referenced documents or proof are not delivered timely, or the documents or proof do not give Bank a reasonable basis for determining that no error occurred, or if the error alleged did occur, Bank may charge Customer for the amount of the alleged error and for any penalty imposed upon Bank.

L. Inconsistency of Name and Account Number: Customer acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by Bank to the Receiving Depository Bank may be made by the Receiving Depository Bank (or by Bank in the case of an on-us Entry) on the basis of the account number supplied by the Customer, even if it identifies a person different from the named Receiver, and that Customer's obligation to pay the amount of the Entry to Bank is not excused in such circumstances.

M. Special Suspension and Termination Right: In addition to the termination rights set forth in **Section 1** of this Agreement, Bank may immediately suspend or terminate the ACH Service without advance notice to Customer if **(a)** Bank has reason to believe Customer has breached the Rules, **(b)** Bank determines it is illegal or impractical to provide the ACH Services, or **(c)** Bank believes that an unauthorized Entry has been or may be made or otherwise, in Bank's sole discretion, believes that unacceptable risk to Bank or Customer exists.

N. Ownership of Tapes and Records: All magnetic tapes, Entries, Security Procedures and related records used by Bank for transactions using the ACH Service shall be and remain Bank's property. Bank may, in its sole discretion, make available such information upon Customer's request. Any expenses incurred by Bank in making such information available to Customer shall be paid by Customer.

O. Third Party Service Providers: If Customer initiates Entries through the use of a Third Party Service Provider, the Third Party Service Provider shall not be deemed to be the agent or service provider to Bank, but shall serve in such capacity for Customer. Any third party providing ACH services to Customer which is not a Third Party Sender shall be a Third Party Service Provider. Customer shall be deemed to have authorized Bank to follow Instructions provided by the Third Party Service Provider to the same extent and pursuant to the same terms that would apply if the Instructions were provided directly by Customer. Customer shall be solely liable and responsible for compliance by the Third Party Service Provider with this Agreement and the Rules. Bank shall have no responsibility or liability for the acts or omissions of the Third Party Service Provider, and Customer shall indemnify and hold Bank harmless from any losses caused by the acts or omissions of the Third Party Service Provider. Customer shall require its Third Party Service Providers to permit the Bank to perform, at its option, on-site inspections of such Third Party Service Provider, upon reasonable notice to Third Party Service Providers, such inspection to be conducted during normal business hours. Customer acknowledges that Bank reserves the right to refuse to permit the use of any Third Party Service Provider. Customer or any Agent acting on behalf of Customer is solely responsible for the content of any Instructions or Electronic Communication received by Bank from the Third Party Service Provider and any errors or omissions of the Third Party Service Provider in the performance of its duties.

P. Entry Class Codes: When Customer originates an Entry, Customer makes each of the representations, warranties and covenants of an Originator for the applicable Entry class code as set forth in the Rules, including, without limitation, the following representations, warranties and covenants for the Entry class codes set forth in this Section.

I. TEL Entries: If Customer elects to initiate TEL Entries on its Enrollment Form, and Bank agrees to permit Customer to originate TEL Entries on applicable Accounts, such TEL Entries are subject to the provisions of this Section. With respect to all TEL Entries, Customer hereby makes each of the representations, warranties and covenants of an Originator of TEL Entries as set forth in the Rules regarding TEL Entries as of the date of this Agreement and each time it initiates a TEL Entry, including, without limitation, all warranties and covenants concerning consumer authorizations and disclosures. Customer specifically represents and warrants it has used commercially reasonable procedures to verify the identity of the consumer, including the consumer's name, address and telephone number and has used commercially reasonable procedures to verify that routing numbers are valid. Bank may, at its option and in its sole discretion, establish exposure limits limiting the number and/or dollar amount of TEL Entries which Customer may have outstanding at any one time. Bank may terminate Customer's right to originate TEL Entries at any time.

II. RCK Entries: If Customer elects to initiate RCK Entries on its Enrollment Form, and Bank agrees to permit Customer to originate RCK Entries on applicable Accounts, such RCK Entries are subject to the provisions of this Section. With respect to all RCK Entries, Customer hereby makes each of the representations, warranties and covenants of an Originator of RCK Entries as set forth in the Rules regarding RCK Entries as of the date of this Agreement and each time it initiates a RCK Entry. Immediately upon request of Bank, Customer will provide Bank with a copy of a returned Check.

III. IAT Entries: If Customer elects to initiate IAT Entries on its Enrollment Form, and Bank agrees to permit Customer to originate IAT Entries on applicable Accounts, such IAT Entries are subject to the provisions of this Section:

(A) **Compliance with Law:** Each IAT Entry will comply with all provisions of this Agreement and applicable Rules. **Pursuant to the Rules, IAT Entries are ineligible for Same Day Entry for settlement.**

(B) **Additional Representations and Warranties:** Without limiting Customer's representations and warranties set forth elsewhere in this Agreement, for each IAT Entry, Customer makes the following additional representations and warranties:

1. Customer is in compliance with U.S. law, including, but not limited to, Customer's obligations under programs administered by OFAC and FinCEN.
2. The origination of the IAT Entry complies with the laws and payment system rules of the receiving country.
3. In the case of an IAT Entry to a non-consumer account, Customer has an agreement with the Receiver whereby the Receiver has agreed to be bound by the Rules.
4. If the laws or payment system rules of the receiving country require authorization with respect to an IAT Entry, the Customer warrants that the authorization of the IAT Entry complies with the laws and payment system rules of the receiving country.

(C) **Correspondent Banks:** IAT Entries may be processed by Bank through a correspondent bank. Bank assumes no liability for the actions or inaction of such correspondent banks, including but not limited to delays, non-delivery, late

returns or other events resulting from processing delays, or for other causes beyond Bank's control. Cancellation or amendment of an IAT Entry involving non-US dollar currency is subject to any rate exchange loss as determined by Bank.

- (D) **Exposure Limits.** Bank may, at its option and in its sole discretion, establish exposure limits limiting the number and/or dollar amount of IAT Entries which Customer may have outstanding at any one time. Bank may terminate Customer's right to originate IAT Entries at any time.

IV. **WEB Entries:** If Customer elects to initiate WEB Entries on its Enrollment Form, and Bank agrees to permit Customer to originate WEB Entries on applicable Accounts, such WEB Entries are subject to the provisions of this Section:

- (A) **Capability:** Bank shall only process WEB Entries from accounts drawn on United States financial institutions that participate in the ACH Network. Bank may, in its sole discretion, terminate Customer's ability to originate WEB Entries at any time without prior notice to Customer.
- (B) **Additional Representations, Warranties and Covenants:** With respect to all WEB Entries, Customer hereby makes each of the representations, warranties and covenants of an Originator of WEB Entries as set forth in the Rules regarding WEB Entries as of the date of this Agreement and each time it initiates a WEB Entry, including, without limitation, that Customer has employed a commercially reasonable fraudulent transaction detection system to screen each WEB Entry, employed commercially reasonable methods of authentication to verify the identity of the Receiver, taken commercially reasonable steps to verify that routing numbers are valid, and will conduct an annual audit to ensure that the financial information obtained from Receivers is protected by adequate securities practices in accordance with the Rules.
- (C) **Chargebacks and Fees:** Bank shall have the right to charge back to Customer's Account(s) the full amount of any WEB Entry as set forth in the Rules. Bank will assess a fee to the Customer's Account, or, at Bank's discretion, to the account holder(s) for each return related to an eCheck.
- (D) **Special Termination Provision Regarding Charge Backs:** Upon the termination of Customer's Account, Bank may set off or otherwise hold Customer's funds in an amount sufficient

to cover any possible returns of WEB Entries for such period that is reasonably determined by Bank.

- (E) **Exposure Limits.** Bank may, at its option and in its sole discretion, establish exposure limits limiting the number and/or dollar amount of WEB Entries which Customer may have outstanding at any one time. Bank may terminate Customer's right to originate WEB Entries at any time.

v. **POP Entries:** If Customer elects to initiate POP Entries on its Enrollment Form, and Bank agrees to permit Customer to originate POP Entries on applicable Accounts, such POP Entries are subject to the provisions of this Section. With respect to all POP Entries, Customer hereby makes each of the representations, warranties and covenants of an Originator of POP Entries as set forth in the Rules regarding POP Entries as of the date of this Agreement and each time it initiates a POP Entry, including, without limitation, that Customer has posted the required notices, has obtained Receiver's authorization and provided a copy of same to Receiver in accordance with the Rules. Bank may, at its option and in its sole discretion, establish exposure limits limiting the number and/or dollar amount of POP Entries which Customer may have outstanding at any one time. Bank may terminate Customer's right to originate POP Entries at any time.

vi. **ARC and BOC Entries:** If Customer elects to initiate ARC and BOC Entries on its Enrollment Form, and Bank agrees to permit Customer to originate ARC and BOC Entries on applicable Accounts, such ARC and BOC Entries are subject to this Section. Without limiting Customer's representations and warranties set forth elsewhere in this Agreement, with respect to all ARC and BOC Entries, Customer hereby makes each of the representations, warranties and covenants set forth in the Rules for an Originator of ARC and BOC Entries as of the date of this Agreement and each time it initiates an ARC or BOC Entry, including, without limitation, that prior to the receipt of each Check converted into an ARC or BOC Entry, Customer has provided a clear and conspicuous notice to the consumer in accordance with the Rules, and for BOC Entries, Customer has employed commercially reasonable procedures to verify the identity of each consumer receiving BOC Entries, and maintains a working telephone number, answered during Customer's normal business hours, for consumers to make inquiries regarding BOC transactions.

vii. **SD Entries.** If Customer elects to initiate Same Day Entries on its Enrollment Form, and Bank agrees to permit Customer to originate Same Day Entries on applicable Accounts, such Same Day Entries are subject to the provisions of this Section:

- (A) **Designating Same Day Settlement:** Bank shall have the right to require Customer to designate Entries as Same Day Entries by including the entry code SD in the Customer's Entry, using the correct effective Entry date in the file and it is timely received prior to Bank's designated cut-off time. Bank is not liable for failing to process an Entry as a Same Day Entry if this code is not included in the Entry in a manner that satisfies the criteria established by the Bank to readily identify an Entry as a Same Day Entry. Customer agrees and understands it is Customer's responsibility to ensure the correct Entry date to be designated as SD.
- (B) **Entries Omitting SD Designation:** An Entry including an effective date of the same Business Day a file was received, but omitting the SD designation may be processed as a Same Day Entry or may be held for next-day settlement at Bank's discretion or if further instruction is received by Customer to clarify settlement.
- (C) **Stale or Invalid Entry Date:** An Entry containing an effective date prior to the Business Day the file was received may be submitted to the ACH Network and processed as a Same Day Entry in the discretion of the Bank. Any fees for Same Day Entry shall apply.
- (D) **Same Day Entry Fees:** Bank will assess a fee to the Customer's Account, or to the account holder(s) for each Same Day Entry and for each Entry omitting the SD designation but processed as a Same Day Entry as provided above.
- (E) **Entry Limits:** Any single Same Day Entry over \$100,000 is ineligible for Same Day settlement, pursuant to the Rules.
- (F) **Limitations and Eligibility:** Bank shall in its sole discretion establish exposure limits and credit review requirements limiting the number of entries or dollar limits of Same Day Entries that Customer may have outstanding at any time. Further, Bank may terminate Customer's right to originate Same Day Entries at any time in accordance with this Agreement.

Q. Loss Recovery Efforts: If either party becomes liable for damages suffered by the other party or a third party in connection with the ACH Service, the parties will undertake reasonable efforts to cooperate with each other, as permitted by Applicable Law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.

2.2 ACH Block and Filter Service

A. This **Section 2.2** sets forth the terms and conditions relating to the Bank's ACH Block and Filter Service (the "ACH Block and Filter Service"), and is applicable only to Customers who execute an Enrollment Form requesting the ACH Block and Filter Service (the "ACH Block and Filter Service Enrollment Form"). The ACH Block and Filter Service as directed by Customer shall allow Customer to give Bank Instructions to restrict or block the posting of all Debits, all Credits, or all ACH Entries to the Customer's Account as designated by Customer. Further, upon Customer Instruction to Bank, a Customer may authorize certain ACH debit and/or credits to post over the block and Bank will accept such Instruction. The "Filter" service is contingent upon Customer providing Bank the correct ACH Origination ID of those Originators the Customer desires to allow to post to Customer's Account. In addition, Bank will return, unprocessed, ACH transactions presented against the Customer's Account as instructed on the Enrollment Form.

B. No Liability: The Bank will not be responsible for any claims of third parties as a result of returning or paying items based upon Customer Instructions. Customer is solely responsible for the amount and accuracy of each item and the timeliness of delivery of Customer authorization of any item or instruction given by Customer. Bank is not responsible for any act or omission of any other person, including without limitation any transmission or communications facility and data processor of Customer. Bank is only liable for any error or omission for which Bank is legally responsible, but only to the amount of the actual item.

C. Stop Payment: Customer may request a stop payment on an ACH transaction through the ACH Block and Filter Service. To do so, the stop payment request must be sent through the service so the Bank receives it before the ACH entry has been paid. The stop payment request must be received prior to the Bank's cutoff time on a Business Day. Otherwise, it will be processed on the next Business Day. To be effective, a stop payment must be placed in a timely manner and must include sufficient identifying information for the Bank to enforce the stop payment. Bank is not responsible for any errors or omissions by Customer in identifying the ACH entry to be held from payment.

2.3 Additional Provisions Regarding Third-Party Senders

A. In the event that Customer is transmitting Entries as a third party vendor or processor on behalf of Originators or is otherwise a Third Party Sender as defined in the Rules (a "Third-Party Sender"), the Third-Party Sender agrees to be bound by this **Section 2.3** and the Rules applicable to Third Party Senders. Bank hereby agrees to act as an Originating Depository Financial Institution on behalf of Third-Party Sender, and Third-Party Sender hereby agrees to abide by all the duties, responsibilities, representations and warranties of this Agreement and the Rules in all respects as if it was a Customer or Agent as defined in this Agreement. Further, Third-Party Sender shall assume all of the liabilities to Bank under this Agreement as an Originator, including indemnification for failure to perform obligations as an Originator in accordance with the Rules. Customer shall notify Bank on its Enrollment Form that it is a Third-Party Sender or Provider.

B. Customer acknowledges that Bank is required under the Rules to register its Third-Party Sender customer(s) with NACHA and provide certain information in connection with the registration. In order to facilitate Bank's registration obligations, a Customer that is a Third-Party Sender (as defined in the Rules), must **(i)** immediately update or execute a new Enrollment Form to indicate that it is or has become a Third-Party Sender, **(ii)** provide all initial and supplemental registration information requested by Bank within five (5) Business Days of receiving such a request, **(iii)** provide updated registration information within ten (10) Business Days following any change to the registration information Bank previously provided to NACHA pursuant to the Rules, and **(iv)** immediately disclose to Bank any other Third-Party Senders for which it transmits ACH entries.

C. If Customer is a Third-Party Sender, Customer makes each of the representations, warranties and covenants of a Third-Party Sender as set forth in the Rules. In addition, Third-Party Sender warrants to Bank that **(i)** each Originator has agreed to assume the responsibilities of an Originator under the Rules, and **(ii)** Third-Party Sender has executed an ACH agreement with each Originator, and the agreement requires the Originator to comply with the Rules.

D. Third-Party Sender shall conduct due diligence reviews and have in place a customer identification program with respect to Originators acceptable to Bank. Third-Party Sender will promptly provide the Bank on demand with any information Bank reasonably deems necessary regarding each Originator for which the Third-Party Sender transmits Entries, including, without limitation, the identification of each Originator in accordance with the Rules, and copies of the agreements between Third-Party Sender and the Originators. Third-Party Sender shall provide an initial list of Originators for which the Third-Party Sender transmits Entries upon commencement of this Agreement. Third-Party Sender shall have the ongoing obligation to notify Bank of any new Originators and obtain approval from Bank prior to initiating any Entries on behalf of such Originator. **Further, Third-Party Sender shall be responsible for conducting an annual audit of its ACH operations as required by the Rules and shall provide a copy of any audit report upon request of the Bank and/or NACHA.**

E. In the event there are not sufficient funds available in the Account to cover the Third-Party Sender's obligations under this Agreement, the Third-Party Sender agrees that the Bank may debit an account maintained by the Third-Party Sender with Bank or any Affiliate of Bank or set-off against any amount owed to the Third-Party Sender, in order to obtain payment under this Agreement. Third-Party Sender, on behalf of itself and its Originators, shall reasonably cooperate with Bank in any loss recovery efforts it may elect to defend or pursue against a third party.

F. Bank, acting on its own behalf or through third parties, shall have the right to audit each Originator for which the Third-Party Sender transmits Entries for compliance with the Rules and the requirements of Third-Party Sender's agreement with the Originators. Third-party Sender shall annually conduct or have conducted by a third party acceptable to Bank, an audit of its compliance with the Rules.

G. Third-party Sender shall indemnify, defend and hold Bank harmless from and against any and all costs, losses, claims, taxes, expenses, liabilities and damages incurred or sustained by Bank that arise directly or indirectly from the failure of the Originator or Third Party Sender to perform its obligations under the Rules.

H. In addition to Bank's right to terminate the ACH Service as to Customer, Bank may terminate or suspend the ACH Service for any Originator for breaches of the Rules or actions that causes Bank to breach the Rules.

2.4 ACH Payments Reporter Service

A Customer may request ACH Payments Reporter Service as set forth on the Enrollment Form, subject to the applicable Supplemental Documentation relating to the Service. By enrolling in this Service, Bank shall provide Customer the ability to search ACH files for information and reporting, such as return items, DNE Entries, and IAT transactions. In addition, the Service may identify, convert, and distribute ACH information for Electronic Data Interchange (EDI) transactions. Customer may also convert this information into readable reports then distribute this information as needed. Customer shall be subject to all applicable Service Fees for this Service and all other Bank general terms and conditions in **Section 1** of this Agreement shall apply.

SECTION 3 - WIRE TRANSFER SERVICE

This **Section 3** sets forth the terms and conditions of Bank's Wire Transfer Service.

3.1 Access

A Customer may request Wire Transfers via Commercial Online Banking (as defined in **Section 4**) or through other methods (**on an exception only basis if approved by the Bank**) as set forth on the Enrollment Form, subject to any applicable Supplemental Documentation relating to the Service. Bank may accept and process any and all Wire Transfer Requests that have been initiated in compliance with the applicable Security Procedures. All Wire Transfers are governed by this Agreement, Regulation J of the Federal Reserve Board, OFAC regulations and all other Applicable Laws.

3.2 Security Procedures for Wire Transfers

Customer agrees to use the Wire Transfer Service in accordance with one or more security procedures (as set forth herein and in any applicable User Guide or Enrollment Form, which may be amended from time to time). The purpose of the Wire Transfer Security Procedures is to verify the authenticity of transfer instructions delivered to Bank in Customer's name and not to detect errors in the transmission or content of instructions. Customer represents and warrants each time it uses the Wire Transfer Service that, in view of Customer requirements, the Wire Transfer Security Procedures are a satisfactory method of verifying the authenticity of instructions. Customer agrees to be bound by instructions, whether or not they were in fact authorized, or if Bank followed the agreed upon Wire Transfer Security Procedures. Customer agrees to preserve the confidentiality of the Wire Transfer Security Procedures and promptly notify Bank of any compromise of

the integrity of the Wire Transfer Security Procedures. Customer agrees that the Wire Transfer Security Procedures are commercially reasonable in light of the anticipated size, type and frequency of Customer's wire transfer requests. Bank's Wire Transfer Security Procedures will not detect any errors Customer makes, and Bank will rely on information Customer gives it when making transfers. Bank will not be responsible for any failure on Customer's part to comply with the Wire Transfer Security Procedures.

3.3 Wire Transfer Escalation / Holds

In addition to the Wire Transfer Security Procedures described above, the Bank may also verify that a wire transfer was initiated by Customer by calling the telephone number listed on Bank's account records or account agreement, or the last telephone number on file for Customer's account (if no number is listed or is working) to confirm with Customer or a person representing himself or herself to be Customer's authorized representative that the wire transfer was requested by Customer. The wire transfer will be deemed verified if Customer or that authorized representative confirms that the payment order was initiated by Customer. When more than one authorized representative is listed, the Bank will attempt to contact an individual other than the authorized representative who initiated the wire transfer. However, the Bank's inability to contact a different authorized representative shall not be evidence of any failure on the part of the Bank to act in good faith or to act in a commercially reasonable manner as long as an authorized representative verifies that the wire transfer was requested by Customer. The Bank shall not be liable for its refusal to honor any wire transfer or related request (or be liable for its delay in executing Customer's payment order or related request) if the Bank, in good faith, is unable to satisfy itself that the instruction was given by Customer and/or that all of the Bank's security requirements have been met.

3.4 Customer Internal Approval Process

Bank encourages Customer to establish an internal approval process for Wire Transfers requiring the approval of two persons to protect against improperly initiated Wire Transfers. Customer acknowledges that Bank has no responsibility to establish or monitor such a process or to determine whether Customer has established such a process. Bank shall have no liability for the processing of appropriate Wire Transfer Requests whether or not Customer has established or complied with its own appropriate internal approval processes.

3.5 Execution of Wire Transfer Requests

Bank will execute Wire Transfer Requests within a reasonable time upon receipt and may process Wire Transfer Requests in any order, as determined solely in the discretion of Bank. Customer will be unable to recall, alter, or otherwise make changes to its Wire Transfer Request once submitted. Customer shall defend and indemnify Bank against any loss, liability, or expense resulting directly or indirectly from transmittal of any Wire Transfer, without regard to whether Customer actually authorized such Wire Transfer.

Bank is entitled to rely on information Customer provides for any Wire Transfer Request, and Bank will be responsible for neither the beneficiary's receipt of proper credit for the transfer, nor rejection or return of the Wire Transfer by the beneficiary's financial institution. Bank will process Wire Transfers in accordance with any routing or account number submitted to Bank in Customer's Wire Transfer Request, regardless of any names accompanying such numbers. Customer shall examine and verify such numbers for accuracy, and pay any amount transferred in accordance with such numbers. Customer will provide to Bank any information Bank may request regarding any Wire Transfer Request, including without limitation, affected accounts, transfer dates, the beneficiary's name and account number, and the name and routing number of the beneficiary's financial institution.

3.6 Rejection of Wire Transfer Requests

Bank may reject a Wire Transfer Request if the Wire Transfer Request has not been initiated in compliance with the applicable Security Procedure, if Bank is unable to obtain confirmation satisfactory to Bank, if there is any inconsistency between the Wire Transfer Request and other information provided to Bank, if there are insufficient collected funds in the applicable Account or if Bank has any other reasonable grounds to refuse to honor the Wire Transfer Request.

3.7 Limits

Bank may, in its discretion, establish a Wire Transfer limit for Customer from time to time, and shall have no obligation to process any Wire Transfer Request that exceeds such limit; provided, however, that Bank may, in its sole discretion, allow and process such Wire Transfers despite the limit. Any such discretionary decision by Bank will not be construed as an obligation to so perform by Bank in the future. All Wire Transfers are subject to limits imposed by Applicable Law, and agreements or operating rules applicable to Bank in executing Wire Transfers.

3.8 Routing/Time Deadlines

Bank may route outgoing Wire Transfers in the manner that Bank determines in its discretion to be suitable for outgoing wire transfers. Bank will establish a specific time of day after which Bank will not accept an incoming Wire Transfer Request to be processed on the day of receipt. Wire Transfer Requests received after Bank's established deadline or on a day which is not a Business Day will be considered received on the next Business Day.

3.9 Incoming Wire Transfers

Credit for incoming Wire Transfers is provisional until Bank receives final settlement. Bank may, in its discretion, reject an incoming Wire Transfer.

3.10 Standing Wire Transfer Requests

If permitted by Bank, Customer may establish a standing wire transfer request pursuant to which Customer may establish a specific beneficiary and related information for the purpose of automatically sending repetitive Wire Transfers (each a "Standing Wire Transfer Request"). Customer shall provide Bank with all information required by Bank to establish the Standing Wire Transfer Request, including without limitation, the beneficiary, beneficiary's financial institution, the accounts to be debited and credited, the dollar amount to be transferred, the frequency of the order and the date or time period in which the Wire Transfers are to be executed. Customer may terminate a Standing Wire Transfer Request by providing Bank with written notice, or through Commercial Online Banking, provided that Bank shall have a reasonable time to act upon such notice.

3.11 International Wire Transfers

Bank does not directly execute Wire Transfers across country borders, but typically executes such Wire Transfers through a correspondent bank. If Customer submits an international Wire Transfer Request in U.S. Dollars, the correspondent bank or Bank may exchange the funds for the appropriate currency at a current rate of exchange. Customer will be responsible for any applicable currency conversion costs incurred by the correspondent bank or Bank, if any, and for any fees, commissions or charges imposed by the correspondent bank or any intermediary bank. Bank makes no representations or warranties regarding any conversion rate and will not be liable for any currency risk such as sudden change in value. Bank shall have no responsibility for any country risk. Payment to a foreign country is subject to the laws of such country and any international Wire Transfers shall be done at Customer's sole risk, therefore, there may be delays out of the control of Bank and Bank shall have no liability therefor.

3.12 Consumer Transactions Prohibited

The Wire Transfer Service is provided for commercial accounts and commercial transactions only. Under no circumstances shall Wire Transfers be used for a personal, family or household purpose. Accounts may be subject to suspension or closure for violation of this Bank policy.

3.13 Hacking and Malware Risks

Customer agrees that the use of the Wire Transfer Service will be subject to the Hacking and Malware Risks described above in Section 1.6 of the Agreement titled "General Terms."

3.14 Indemnification

Customer agrees to indemnify, defend and hold Bank, its parent company, affiliates, and subsidiaries, and their respective directors, shareholders, officers, employees and agents, harmless from and against any and all loss, liability, expense (to include court costs and reasonable attorney's fees), including consequential, special and punitive damages, directly or indirectly resulting from: (i) the processing of any payment order, wire transfer, or funds transfer instruction received by Bank through the Wire Transfer

Service, (ii) any breach of any provision of the Agreement by Customer and (iii) any dispute between Customer and any third party in connection with Customer's use of the Wire Transfer Service. The terms of this Section will survive termination of the Agreement.

SECTION 4 - COMMERCIAL ONLINE BANKING SERVICE

This **Section 4** sets forth the terms and conditions of Bank's Commercial Online Banking Service. **Sections 4.1** through **4.3** are general terms that apply to all Commercial Online Banking Services. Customer may include certain additional specified Services in the Commercial Online Banking Service by requesting such ability on the related Enrollment Form. **Sections 4.4** through **4.8** apply to Customer only if, and to the extent that, Customer requests and Bank approves Customer for participation in the Service described in the relevant Section.

4.1 Commercial Online Banking Access

A. Commercial Online Banking Service: By using the Commercial Online Banking Service, Customer, through its Company Administrator, Agent, or Users, may request that Bank accept and act upon Instructions. Bank will carry out such Instructions in accordance with and subject to this Agreement. All terms and conditions of the Enrollment Forms and Account Disclosures governing those Services will apply to such Services as delivered through the Commercial Online Banking Service, except to the extent such terms and conditions are inconsistent with this **Section 4**, in which event this **Section 4** will control.

B. Access and Equipment: Bank will provide Customer with access to the Commercial Online Banking Service for the Accounts as authorized by Customer or its Agent. Bank assumes no liability and makes no warranty as to the hours of access and/or the performance of the Commercial Online Banking Service. To utilize the Commercial Online Banking Service, Customer will provide, at its own expense, connection via an Internet service provider, computer hardware, operating systems and software that meet the minimum requirements set by Bank. **Customer acknowledges that it may have multiple Accounts for which it authorizes access to the Commercial Online Banking Service, which may or may not have the same tax identification number or social security number. Customer further acknowledges that Customer alone is responsible for monitoring access to such Accounts by its officers, employees, and Agents and that Bank shall have no liability for any Customer employee, Company Administrator, Agent, Agent employee or User gaining unauthorized access to any Accounts or performing unauthorized transfers between any Accounts, or any unfair, intentional, deceptive or fraudulent misconduct.**

C. Security; Company Administrator:

I. Establishment and Acceptance of Security Procedures:

Customer acknowledges receipt of the Security Procedures and agrees that the Security Procedures apply to the Commercial Online Banking Service and are commercially reasonable procedures for Customer. By signing the Enrollment Form, Customer agrees that it will be bound by any Instruction, whether or not actually authorized, if issued in its name and accepted by Bank in accordance with the Security Procedures. Customer understands and agrees that Security Procedures are not for the purposes of detecting errors in the transmission or content of any Entry, Instruction or Wire Transfer Request.

II. Company Administrator; User Identification: The Company Administrator shall be designated by Customer and shall be responsible for Customer compliance with Bank's Security Procedures. The Bank shall rely on the Company Administrator for establishing access to Commercial Online Banking Service for additional Users as well as defining passwords, maintenance of access, and termination of User privileges. Once the Commercial Online Banking Administrator has granted access to a User, the Bank is authorized to accept any Instruction purported to be from the User, whether by Electronic Communication or otherwise, subject to Bank's Security Procedures. Company Administrator shall terminate Commercial Online Banking access immediately upon termination of any Agent, officer, or employee of Customer that has User privileges. Company Administrator shall also **at its option** instruct Bank to require dual control for any changes in privileges regarding its Users; including, but not limited to, addition of new Users, deletion of terminated Users, and other User permissions. ***Removal of the dual control provision after implementation shall only be made in writing by an authorized officer of Customer and is subject to authentication by Bank in accordance with its Security Procedures.***

III. Commercial Online Banking Service Enrollment: By signing the Commercial Online Banking Service Enrollment Form, Customer accepts and assumes sole responsibility for ensuring that: **(i)** the information contained in the Commercial Online Banking Service Enrollment Form is accurate and shall provide written update to such information if it becomes inaccurate; **(ii)** the Enrollment Form accurately reflects any desired limitation of access for the Company Administrator; and **(iii)** no unauthorized person has or will have access to the Commercial Online Banking Service.

D. Stop Payment: Customer authorizes Bank to accept stop payment orders from Customer through the Commercial Online Banking Service, and the transmitted stop payment order will be deemed the equivalent of a written stop payment order in accordance with the Account Disclosures. Bank shall have a reasonable opportunity to act upon the stop payment order. As applicable, any stop payment order subject

to the Rules or the Uniform Commercial Code shall be in effect for the time periods proscribed in the Rules, unless renewed or terminated in writing.

4.2 Rejections and Refusals to Execute Instructions

Bank may reject or refuse to accept, process or act upon (or may delay accepting, processing, transmitting, executing or acting upon) any Instruction that Bank in good faith believes for any reason to be **(i)** unauthorized, incomplete, ambiguous, erroneous or redundant; **(ii)** not in accordance with the Security Procedures; **(iii)** otherwise not in accordance with the provisions of this Agreement, the Enrollment Form, the User Manual or any other agreement governing Customer's relationship with Bank; **(iv)** in violation of any then applicable statute, rule, regulation, order or government policy to which Bank or the Account(s) is (or, in Bank's sole opinion, may be) subject; **(v)** in excess of Customer's collected and available funds on deposit in the applicable Accounts or the amount available to Customer under any credit facility immediately available to Bank; **(vi)** in excess of any limitation on Bank upon its intra-day net funds position established pursuant to then-applicable Federal Reserve guidelines, or **(vii)** in violation of any provision of any then applicable risk control program of the Federal Reserve. For these purposes, funds are not considered to be available if such funds are (or Bank reasonably believes such funds may be) subject to a hold, dispute, encumbrance or legal process preventing their immediate withdrawal or if Bank otherwise believes that a transfer of such funds would not be final and irrevocable. Notwithstanding the foregoing, Bank will have no obligation hereunder to detect any unauthorized, erroneous or otherwise impermissible requested Instruction. Bank may, in its sole discretion, notify Customer of its rejection or refusal to accept process or otherwise act upon an Instruction.

4.3 Balance and Transaction Reporting

Balance and Transaction Reporting Service described in this **Section 4.3** will be available for all Designated Accounts. With this Service, Customer may review online the Account balances, transactions on the Accounts and images of paid Checks. Customer has responsibility for verifying information available to Customer through the Balance and Transaction Reporting Service and must notify Bank of any discrepancy no later than the Business Day following the Business Day in which such information becomes available.

At Customer's request through the Commercial Online Banking Service, Bank will transfer funds from a designated Account to another Account on Customer's profile. **Transfers via Secure File Transfer Protocol ("SFTP"):** At Customer's request and subject to the approval of Bank, Bank shall enable Customer to execute information transfers and have access to certain files via a secure document portal in SFTP format.

4.4 Positive Pay and Reverse Positive Pay

A. The Service: The Positive Pay Service, described in this **Section 4.4**, permits Customer to identify exception items and transactions and instruct Bank whether to pay or return the items and transactions, primarily Checks. Bank strongly advises Customer to use such services as the Positive Pay Service to prevent fraud or

unauthorized transactions on Customer's account. If Customer fails to use the Positive Pay Service, it may be liable on certain charges and losses that would have otherwise been prevented by proper use of Positive Pay Service. Customer must provide information to Bank on a timely basis via Bank's Commercial Online Banking Service, to optimize the effectiveness of the Positive Pay Service, as described in Supplemental Documentation. Each Business Day, Bank will provide Customer a report concerning the Checks presented for payment on the prior Business Day that have been identified as exceptions. Customer must notify Bank prior to a disclosed cutoff time established by Bank whether Bank should pay or return the exceptions. If Customer does not notify Bank prior to the cutoff time, Bank will pay or return the exception items according to the default decision selected by Customer. In the event of any system problems or delays affecting the Bank's ability to send the report for Customer to have sufficient time to review by the deadline, the deadline may be extended accordingly and communicated to Customer via email.

B. No Liability: Bank has no liability for payment of any Check, even if it is unauthorized or fraudulent, if Customer is provided a report of exception items by Bank and Customer has neither selected a return default for exception items nor given Bank timely Instructions to return the Check. Standard Check processing procedures of Bank will continue to apply to all Checks and other items presented at Bank, and Checks may be dishonored even if the Check would not be dishonored through the Positive Pay Service. In the event of any fraud or unauthorized activity on a Customer account, Bank may require mandatory implementation of the Positive Pay Service or the Customer account may be closed or suspended.

C. Stop Payment: Customer may request a stop payment on a Check through the Positive Pay Service. To do so, the stop payment request must be sent through the Positive Pay service so the Bank receives it before the Check has been paid. The stop payment request must be received prior to the Bank's cutoff time on a Business Day. Otherwise, it will be processed on the next Business Day. To be effective, a stop payment must be placed in a timely manner and must include sufficient identifying information for the Bank to enforce the stop payment. Bank is not responsible for any errors or omissions by Customer in identifying the Check to be held from payment.

D. Reverse Positive Pay: Customer may select the Reverse Positive Pay Service on the applicable Enrollment Form. Through the Reverse Positive Pay Service, Customer shall be solely responsible for monitoring Check items issued from Customer's account and presented for payment on any Business Day. Each Business Day, Customer may view or download all Checks that will post to its Account. Customer shall submit return Instructions as applicable within Commercial Online Banking regarding any suspect items by the applicable cutoff time. Bank will pay all items unless notified within the applicable cutoff time of any return Instructions. Bank shall have no liability for payment of any item unless Customers has provided sufficient notice to Bank of its refusal to pay an item.

4.5 Business Bill Pay

A. The Service: The Business Bill Pay Service, described in this **Section 4.6**, permits Customer to designate payees, schedule payments, and view and manage payments. By using the Business Bill Pay Service, Customer authorizes Bank to follow payment instructions submitted to Bank. Bank or its Vendor may make payments to payees by ACH, Check or other method. Customer authorizes Bank or its Vendor to access Customer's Account via ACH in order to debit funds to make payments pursuant to the Business Bill Pay Service. In scheduling a payment, Customer should allow sufficient time for the payment to be processed. Customer is liable for any payment scheduling through the Business Bill Pay Service, whether or not authorized by Customer. Bank is entitled to rely on the information Customer provides with respect to any payment made pursuant to the Business Bill Pay Service and Bank will not be responsible for the Payee's receipt of the transfer, or the proper application of the payment on behalf of Customer. Customer is solely responsible for complying with any payee's requirements for the proper crediting of payments. Customer may not schedule any payment if there are insufficient collected funds in the Account for such payment at the time scheduled, and a fee may be imposed if Customer does so. No payment may be stopped after it has been scheduled; however, upon request of Customer, Bank will attempt to stop a scheduled payment but will have no liability if it is unable to do so. Any attempt to stop a scheduled payment will be subject to applicable fees.

B. Termination: Bank may suspend or terminate Customer's access to the Business Bill Pay Service without notice at any time, in its discretion, including but not limited to as a result of Customer's scheduling of or attempt to schedule one or more payments when the Account does not contain sufficient collected funds.

C. Authorization: For initial access to the Business Bill Pay Service, the Company Administrator or other User provided access rights by the Company Administrator must enter into an online authorization. By including the Business Bill Pay Service as a function requested by Customer on the Commercial Online Banking Enrollment Form, Customer agrees that the Company Administrator or User who indicated agreement with the online authorization is authorized to act on behalf of Customer for that purpose.

4.6 Image Retrieval

Customer may conduct a search and review images online for Checks written and deposits received, including where applicable deposited items such as payment or remittance coupons related to the Accounts. The Image Retrieval Service may be limited to certain Accounts and Customers.

SECTION 5 - REMOTE DEPOSIT CAPTURE SERVICE

This **Section 5** sets forth the terms and conditions relating to Remote Deposit Capture Service (the "RDCS") and is applicable only to Customers who execute an Enrollment Form requesting RDCS.

5.1 Description of the Service

Customer may process original Checks which are eligible for truncation as determined by Bank from time to time, by capturing a digital image of:

- A. All information on the front and back of each Check,
- B. All required data related to the MICR line of the original Check, and
- C. The amount of the Check (such digital image referred to herein as the "Truncated Check") and transmitting the electronic file containing the Truncated Check to Bank in accordance with this **Section 5**. Using the Truncated Check, Bank will then process and provisionally deposit into Customer's Designated Account the amount of the Truncated Check, provided such Truncated Check is otherwise acceptable to Bank for deposit. Bank will collect each Truncated Check by transmitting the Truncated Check for collection or by creating a Substitute Check (using the Truncated Check). Customer acknowledges that the RDCS is merely a method of deposit and Check collection and shall not alter or limit any of Customer's obligations under the Account Disclosures with respect to Customer's Account or under Applicable Law.

5.2 Capture and Transmission of Data

A. Information to be Captured: For each Truncated Check that Customer transmits to Bank, Customer shall accurately capture and transmit all data contained on the Check necessary to create a Substitute Check, including without limitation **(i)** an accurate and readable image of the front and back of the original Check; **(ii)** all necessary information from the MICR line of the original Check that would permit a Substitute Check to be processed in accordance with applicable industry standards; and **(iii)** all endorsements applied by parties that previously handled the Check in any forward collection or return. Bank may accept remotely created checks in its sole discretion, but it must include satisfactory MICR line information or it will not be processed.

B. Transmission and Security: Customer shall transmit the Truncated Checks to Bank using the Equipment and the Licensed Software, subject to Bank's Security Procedures. Bank will assign passwords and identifications to users identified by Customer. Customer recognizes and agrees that the passwords and identifications, together with certain security protocols built into the Equipment Software, are the Security Procedures for the RDCS and that the Security Procedures are commercially reasonable. Customer shall transmit Truncated Checks only in accordance with the Security Procedures. Customer will be bound by any transmission (whether or not actually authorized) which is transmitted through use of the Equipment and Licensed Software. Bank may accept for deposit any Truncated Checks transmitted to Bank through use of the approved software and Bank shall have no liability to the extent that the transmission of the Truncated Checks was not authorized. If Customer exports data from the Licensed Software to another system or software, Customer recognizes that the data retained in the copy will not be encrypted or stored in an encrypted form and Customer shall be responsible for the security of such data.

5.3 Acceptable Equipment and Licensed Software

5.4 A. As applicable, Equipment obtained through the Bank is the property of the Bank and at all times shall remain the property of the Bank, unless purchased by Customer. Bank's approval of any software or Equipment not obtained through Bank is provided on the basis of Bank's assessment of its ability to recover accurate data transmitted via such Equipment and software, but nevertheless entirely within the Bank's discretion. Bank makes no representations or warranties concerning any Bank provided software or any Vendor of Equipment or software, including but not limited whether the software or services will be sufficient to satisfy Customer's obligations pursuant to this Section 5 or any Applicable Law. Bank shall have no liability for any indirect or consequential damages to Customer or any other person including but not limited to any damages for computer malfunction, loss of information, lost profits or business interruption related to any failure of any Equipment or any Licensed Software or other software. With respect to Bank provided Equipment, Bank's sole obligation is to provide Customer with properly functioning Equipment during the term of this Agreement, Eligible Items and Security Interest.

Customer will scan and deposit only checks as the term "check" is defined in Federal Reserve Regulation CC ("Reg. CC"). Customer acknowledges that the Image of the check that is transmitted to the Bank shall be deemed an "item" within the meaning of Articles 3 and 4 of the Uniform Commercial Code in the state where the Account is located.

Customer will not use the Remote Deposit Capture Service to scan and deposit any of the following checks (each a "Prohibited Check") which shall be considered prohibited notwithstanding that such checks may constitute a "check" under Reg. CC:

- Checks payable to any person or entity other than the Customer.
- Checks containing an alteration to any of the fields on the front of the check, or which Customer knows or suspects, or should know or suspect, is fraudulent or otherwise not authorized by the owner of the account on which the check is drawn.
- Checks payable to two or more persons jointly, not alternatively.
- Checks previously converted to a substitute check, as defined in the Account Disclosures, or "image replacement documents" that purport to be substitute checks.
- Checks drawn on a financial institution located outside the United States.
- Checks that are remotely created checks, as defined in the Account Disclosures.
- Checks not payable in United States currency.
- Checks dated more than six (6) months prior to the date of deposit.

- Checks prohibited by the Bank's current procedures related to the Remote Deposit Capture Service or which are otherwise not acceptable under the Account Disclosures governing the Account(s).
- Checks payable on sight or payable through drafts.
- Checks with any endorsement on the back other than that specified in this Agreement.
- Checks that have previously been negotiated, submitted through the Remote Deposit Capture Service, or through a remote deposit capture service offered at any other financial institution.
- Cashier's Checks, Money Orders or Postal Money Orders.
- Travelers Checks.

Bank may, in its sole discretion, amend the list of Prohibited Checks from time to time. If Customer deposits a Prohibited Check, Customer will indemnify and reimburse the Bank for, and hold the Bank harmless from and against, any and all losses, costs and expenses (including reasonable attorneys' fees) the Bank may incur associated with any warranty, indemnity or other claim related thereto.

5.5 Provisional Settlement

Truncated Checks are not deposited until accepted for deposit by Bank. Deposits of Truncated Checks are provisional and may be returned for insufficient funds or other reasons, including, without limitation, claims that the Substitute Check created from the transmitted data does not meet legal equivalence requirements under Applicable Law or that the transmitted data is incomplete or inaccurate. Bank shall have no responsibility for the delayed return of a Substitute Check that includes any message text or other information added by Customer in the depository bank endorsement area on the Truncated Check. Truncated Checks transmitted to Bank for deposit and received by Bank on a day other than a Business Day or after established cutoff deadlines shall be treated by Bank as received on the next Business Day.

5.6 Representations and Warranties

Each time a Truncated Check is transmitted to Bank on Customer's behalf, Customer is deemed to make any representation or warranty that would have applied had Customer deposited the original paper check including all encoding, transfer, presentment and other warranties made under Applicable Law and the Account Disclosures between Bank and Customer, and is further deemed to represent and warrant that: **(i)** the preparation and presentment of the Truncated Check complies with this Section 5; **(ii)** the Truncated Check contains all information required to be accurately captured pursuant to **Section 5.2.A.**; **(iii)** the original Check has not been altered, forged or destroyed in any manner by Customer; and **(iv)** neither the original Check nor any paper or electronic

representation of the Check has been previously deposited with Bank or any other financial institution in violation of this Agreement.

5.7 Compliance with Applicable Law

Customer shall comply with all Applicable Laws, including, at Customer's own cost and expense, all Applicable Laws of, or relating to, any foreign location in which Customer uses the Licensed Software or Equipment, or processes Items, including but not limited to any accepted industry standards or Federal Reserve guidelines for Checks. .

5.8 Customer's Covenants

A. Handling of Original Checks: Customer agrees to retain all imaged Checks in a secure manner, with access only by persons with a reasonable need to access the original Checks and shall retain such Checks for a reasonable period of time as determined by Customer. All physical Checks deposited through the Image Deposit Service shall be marked in a manner to indicate that the Check has been deposited, including any restrictions such as "FOR MOBILE DEPOSIT ONLY". In the event Customer receives notice from Bank or any third party of any dispute with respect to a Truncated Check or the underlying original Check prior to the time the original Check is destroyed, Customer will retain the original Check until such dispute is fully resolved. Customer shall destroy the original Checks that no longer need to be retained pursuant to this **Section 5.7.A.** by shredding such original Checks or by another commercially reasonable method of destruction within a maximum of sixty (60) calendar days of imaging.

B. Multiple Submissions: Customer shall not submit a Truncated Check that has been previously deposited with Bank or any other financial institution and will not deposit with Bank or any financial institution a Check for which Customer has previously transmitted a Truncated Check to Bank.

C. Risk Exposure Limits: Bank, in its sole discretion, may limit the maximum amount of deposits Customer may transmit daily to Bank through use of the Service. Customer covenants to abide by any exposure limit ("Risk Exposure Limit") imposed by Bank and shall not knowingly exceed such limit. Bank will establish an initial Risk Exposure Limit for Customer based upon Bank's risk assessment of Customer. Bank may also in its sole discretion and upon notice to Customer require it to maintain reserve balances in one or more Accounts in an amount equal to a percentage of all deposits made with this Service that Customer initiated within a certain preceding period, or, at Bank's option projected by Bank to be initiated by Customer in a certain period. Bank also maintains the right to hold back a percentage of reserves after termination of the Service to cover any remaining transaction obligations and charge backs of Customer as determined in the Bank's sole discretion.

D. Risk Assessment. Customer will promptly provide the Bank on demand with any information Bank reasonably deems necessary regarding Customer's deposit activities such that Bank may make an adequate risk assessment as provided by

Applicable Law. Customer hereby authorizes Bank to gather credit information regarding Customer from other sources, including one or more credit bureaus. Bank retains the right to perform an annual on-site inspection, upon reasonable notice to Customer, such inspection to be conducted during normal business hours.

E. Prohibition on Equipment in Foreign Locations. Customer hereby covenants and agrees that any Equipment and Licensed Software provided to Customer in connection with the Service shall not be utilized in any foreign location), and Customer shall not process any Items in any foreign location, without the express written consent of the Bank. For purposes of this paragraph, "foreign location" shall mean any country, state, province or territory outside of the United States and its territories. In the event Customer breaches this provision, the Bank shall have the right to suspend the Service or terminate the Service to Customer in accordance with this Agreement.

5.9 Indemnification

In addition to any indemnification obligations of Customer set forth elsewhere in this Agreement, Customer shall indemnify, reimburse or otherwise hold harmless Bank, its affiliated companies and its employees and agents for any and all costs, losses, claims, taxes, expenses, liabilities and damages (including reasonable attorneys' fees) incurred or sustained by Bank in good faith and without negligence:

A. in connection with or related to this **Section 5**, including, but not limited to all costs, losses, claims, taxes, expenses, liabilities, or damages (including reasonable attorneys' fees) resulting directly or indirectly from **(i)** transmittal or payment of any Truncated Check, without regard to whether Customer actually authorized such transmittal; **(ii)** payment of a fraudulent Check by Bank that would have been detected on the original Check through the Check's security features but otherwise could not be detected because the original Check was transmitted to Bank via a Truncated Check; and **(iii)** a breach by Bank of its representations and warranties under Applicable Law that is caused, directly or indirectly, by a Truncated Check that would not have otherwise been breached had Customer transmitted the original Check to Bank; and

B. any breach by Customer of the representations, warranties and covenants contained in this **Section 5**.

5.10 Equipment and Licensed Software Obtained From Bank

The provisions of this **Section 5.10** apply to Equipment and Licensed Software obtained from Bank.

A. Customer's Responsibility for Costs and Risk: Customer shall be responsible for costs incurred in connection with the use, operation or possession of any Equipment (including but not limited to operating supplies, accessories, or other consumables like ribbon, ink, and other supplies) except as otherwise set forth in this **Section 5**. After delivery, all risk of loss associated with the Product, including damage, theft or destruction, and including any claim of injury caused by the Equipment, will be borne by Customer except for normal wear and tear in the ordinary course of use of the

Equipment. Bank may, at its option, provide Product Support Services through a third party. Any Product Support Services are described in the Supplemental Documentation and are identified in the Remote Deposit Capture Service Enrollment Form. In its discretion, Bank may **(i)** make changes to the Product; **(ii)** provide service options, attachments or other Equipment or software not part of the Product; or **(iii)** provide emergency or other services not specifically provided for in this Agreement or in Product Support Services.

B. Customer's Use of the Product: Customer shall use commercially reasonable efforts to: **(i)** use the Product for its intended purpose and in accordance with the Supplemental Documentation, if any; **(ii)** implement and install Product updates in a timely manner after such updates are provided to Customer; **(iii)** keep confidential and use commercially reasonable efforts to maintain the security of the Equipment, software and Supplemental Documentation, **(iv)** not bypass or disable any security mechanisms in the Production; **(v)** comply with any Security Procedures described in the Supplemental Documentation; and **(vi)** at termination of this Agreement, return all Bank provided Equipment to the Bank in good working condition.

C. Access to Licensed Software: Bank or its Vendor will make Licensed Software available for a reasonable fee to Customer; and in Bank's or Vendor's sole discretion either through the Internet for download or by CD-ROM, or by other electronic means in Bank's or Vendor's sole discretion. If Licensed Software is made available to Customer through the Internet, Bank or its Vendor agrees to use commercially reasonable efforts to maintain the availability of access to the Licensed Software through the Internet, however, Customer acknowledges that access to the Licensed Software or the ability to access the RDCS may from time-to-time be unavailable to Customer, whether because of technical failures or interruptions, intentional downtime for service or changes to the Licensed Software, or otherwise. Customer agrees that any modification of the means of access to the Licensed Software, and any reasonable interruption or unavailability of access to the Licensed Software shall not constitute a default by Bank under this Agreement or give rise to any liability on the part of Bank or its Vendor.

D. Sublicense of the Licensed Software:

I. Customer acknowledges and agrees that all right, title and interest in and to the Licensed Software and Supplemental Documentation, together with all Product updates thereto, and all intellectual property rights such as copyrights, patents, and trade secrets pertaining to the Product, are and shall remain owned exclusively by the owner thereof, and represent or contain valuable rights, and are protected under United States patent, copyright, trademark and trade secret laws of general applicability.

II. Pursuant to the Master License, Bank grants to Customer a non-exclusive, non-transferable limited right and sublicense to **(a)** use the Licensed Software solely for Item processing in accordance with the Documentation and solely on Equipment provided by Bank or its Vendor; **(b)** make a reasonable number of copies of and use the Documentation in

support of Customer's authorized use of the Licensed Software; and **(c)** copy the Licensed Software for archival or backup purposes, provided that all titles and trademark, copyright and restricted rights notices reproduced on such copies.

III. Customer may not: **(a)** copy or use the Licensed Software or Documentation, except as expressly authorized by this Agreement; **(b)** sublicense, rent, distribute or otherwise transfer the Licensed Software; **(c)** use the Licensed Software for third party training, commercial time-sharing or service bureau use; **(d)** alter, change, modify or otherwise create derivative works of the Licensed Software, Documentation, or any packaging; or **(e)** unless otherwise expressly permitted by Bank pursuant to the Supplemental Documentation, use the Licensed Software to store images of Items for a period of more than seven (7) calendar days, or, for recovery of captured Items only, a period of more than fourteen (14) calendar days; **(f)** remove or alter any intellectual property or proprietary notices, markings, legends, symbols, or labels appearing on or in the Licensed Software, or Documentation and to reproduce any such notices in their exact form on all permitted copies; or **(g)** bypass or disable any security mechanisms in the Licensed Software or attempt to reverse engineer, disassemble or recompile any Licensed Software

IV. The sublicense granted herein does not include the right to sublicense, or otherwise sell or assign the Licensed Software. Customer acknowledges and agrees that the Sublicense granted herein is subject to the terms and conditions of the Master License, and that the sublicense may not run longer than or grant rights greater than those provided in the Master License.

V. In the event of an Infringement Claim, Bank or its Vendor may, but without obligation, at any time in connection with such Infringement Claim, do any of the following: **(a)** provide Customer the right to continue using the Licensed Software; **(b)** replace or modify the Licensed Software with non-infringing software, without a material reduction in functionality or performance; **(c)** resolve such Infringement Claim so that Customer may continue to use the Licensed Software; or **(d)** immediately terminate this Agreement. Customer agrees and acknowledges that the remedy provided in this section of this Agreement is the sole and exclusive remedy of Customer, and consequently the sole and exclusive liability of Bank or its Vendor with respect to any Infringement Claim or any related action, and Bank and its Vendor shall not be otherwise liable to Customer for providing non-infringing software or for any indirect or other damages resulting from such Infringement Claim.

VI. WARRANTY DISCLAIMER: CUSTOMER ACKNOWLEDGES THAT BANK IS NEITHER A MANUFACTURER OF THE EQUIPMENT, NOR AUTHOR OF THE SOFTWARE AND THAT NEITHER BANK NOR

ANY VENDOR TO BANK HAS MADE REPRESENTATIONS OF ANY NATURE WHATSOEVER PERTAINING TO THE EQUIPMENT, THE LICENSED SOFTWARE OR THEIR PERFORMANCE, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTIES RELATING TO THE DESIGN, CONDITION, QUALITY, CAPACITY, MATERIAL OR WORKMANSHIP OF THE EQUIPMENT, THE LICENSED SOFTWARE OR THEIR PERFORMANCE, OR ANY WARRANTY AGAINST INTERFERENCE OR INFRINGEMENT, OR ANY WARRANTY WITH RESPECT TO PATENT RIGHTS, IF ANY, PERTAINING TO THE EQUIPMENT OR THE LICENSED SOFTWARE. NEITHER BANK NOR ANY VENDOR SHALL BE RESPONSIBLE FOR ANY LOSS OF PROFITS, ANY DIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES, OR DAMAGES OF ANY NATURE WHATSOEVER, RESULTING FROM THE DELIVERY, INSTALLATION, MAINTENANCE, OPERATION, SERVICE OR USE OF ANY EQUIPMENT, SOFTWARE OR OTHERWISE.

SECTION 6 - LOCKBOX SERVICE

This **Section 6** sets forth the terms and conditions relating to Lockbox Service and is applicable only to Customers who execute an Enrollment Form requesting Lockbox Service in order to request Bank to process payments made to Customer by its customers.

6.1 Lockbox Service

Customer or its Agent shall instruct its customers to mail payments to the lockbox address, which shall be a post office box established at a U.S. mail delivery location determined by Bank, and may be utilized by multiple customers of Bank. Customer may request a separate post office box, subject to Bank's approval to provide this service, at a location agreeable to Bank provided that all fees for such separate post office box may be borne by Customer. For purposes of this **Section 6.1**, all Checks submitted to the lockbox must be in a form acceptable to Bank. At Bank's discretion, Bank may process any payment that includes cash, stock certificates or other items other than Checks. Bank will process the Checks in accordance with this Agreement and applicable Supplemental Documentation, subject to Applicable Law requirements. Only Bank and its agents will have exclusive and unlimited access to the mail sent to the lockbox address.

6.2 Acceptable Payees

The names of Acceptable Payees will be specified to Bank by Customer; provided, however, Bank will not validate an Acceptable Payee through the Lockbox Service. Bank will only process Checks that may be processed in accordance with Bank's standard practices. Customer warrants that each Acceptable Payee is Customer, its Agent or one of its affiliates. If Acceptable Payee is an Affiliate, Customer also warrants that such Acceptable Payee has authorized Checks payable to it to be credited to the Designated

Account. Bank may require written authorization from any such Affiliate. Bank may treat as an Acceptable Payee any variation of any Acceptable Payee's name that Bank deems to be reasonable. Customer shall be responsible for updating Acceptable Payees and notifying Bank of any discrepancies, and Bank shall have no liability for validating any Acceptable Payee.

6.3 Processing Checks

A. General: Customer authorizes Bank to endorse Checks and other payment instruments on Customer's behalf, as deemed necessary by Bank. Bank may convert all eligible Checks to ACH ARC Entries as determined by Bank and subject to availability. Bank will credit the Designated Account as if the Checks were delivered by Customer to Bank in accordance with the Account Disclosures, except as modified by this Agreement. Bank will return or forward to Customer Checks or other items that Bank will not process in accordance with Customer's Instructions. At Bank's option Bank may make available an image retrieval option to Customer ("Image Exception") pursuant to which Bank will provide Customer access to images of items which cannot be processed so that Customer may identify for the Bank a Designated Account to deposit Lockbox exception items not posted by Bank. Image Exception may be limited to certain Accounts and Customers.

B. Unsigned Checks: At the discretion of the Bank or requested by Customer, the Bank may process all unsigned Checks on behalf of Customer. If an unsigned Check is deposited into the Designated Account, but the Check is subsequently returned, Customer shall defend, indemnify and hold Bank and any collecting bank with respect to such Check harmless for any liability or expense incurred as a result of processing, paying or collecting such Check.

C. Restrictive Notation: Bank will not be liable to Customer for any losses Customer may suffer if Bank fails to detect Checks bearing the handwritten or typed notation "Payment in Full" or "Do not convert to ACH" or other words of similar import or restrictive endorsements on the face or back of the Check.

D. "Do Not Pay" File Processing: Upon Customer request, Bank will use its commercially reasonable efforts to not process any Check received from payors on Customer's active stop list, as provided to Bank from time to time. In such cases, Customer acknowledges that Bank has adopted procedures designed to detect Checks drawn by such makers; however, Bank will not be liable to Customer for any losses Customer may suffer if Bank fails to detect such Checks.

E. Envelope Requirements: Where applicable, Bank may refuse to process any Checks not delivered to Bank in envelopes containing a "window" or other transparency where data characters can be read by Bank's optical scanners. Upon request, Bank may process non-standard envelopes and charge any additional handling fees for this service.

F. Imaging of Records: Bank will electronically image each Check processed pursuant to this Agreement and retain the image electronically based on standard Bank retention schedules. Upon the request of Customer, Bank will prepare copies of the image for the Customer or make them available online.

G. Correspondence: The Bank may attempt to deliver any correspondence received with a Check by Bank to Customer or Customer's Agent, if any; provided, however, Bank shall have no liability if such correspondence is not so delivered. Customer may request delivery of correspondence with consent of the Bank and for an additional fee. Further, Bank may make available images of any correspondence and make them available online.

H. Missing Coupon Payments: In the event that the Bank receives payments missing coupons or other identifying information, the Bank will attempt to process the payments after receipt of three prior payments with the same missing information, using MICR line identification.

6.4 Information Transmittal

Each Business Day, Bank may provide information to Customer in the manner specified in the Enrollment Form concerning Checks received but not processed and additional information concerning the deposit for the Business Day.

6.5 Lockbox Payments Via Credit Card

The Services described in this **Section 6.5** are available to certain Accounts and Customers, and their Agents. As a convenience to Customer, Bank may offer the Customer the option to accept Cards through the Bank's website. If Customer utilizes this Service, Customer agrees to comply with all Card Organization Rules. Customer agrees to pay the Service Fees associated with this Service.

SECTION 7 - TARGET BALANCE ACCOUNT SERVICE

This **Section 7** sets forth the terms and conditions relating to Target Balance Account Service and is applicable only to Customers who execute an Enrollment Form requesting Target Balance Account Service.

7.1 Target Balance Account Service

By executing a Target Balance Account Enrollment Form, Customer will designate a Concentration Account and one or more Subsidiary Account(s) and will establish a Target Ledger Balance for each Subsidiary Account. Customer may make deposits, issue Checks and other debits drawn against any Account designated as a Subsidiary Account or Concentration Account, regardless of the then-current balance in that Account. At the end of each Business Day, Bank will engage in the Settlement Process to transfer funds as necessary so that at the end of the Settlement Process, each Subsidiary Account will contain the Target Ledger Balance designated for that Account. Funds will be transferred as necessary

- A. from the Concentration Account to each Subsidiary Account, and/or
- B. from each Subsidiary Account to the Concentration Account, to cause the balance of the Subsidiary Account to equal the Target Ledger Balance.

7.2 Rejected and Dishonored Debits

A. Customer Obligation: Customer shall not issue any items drawn on any Subsidiary Account or the Concentration Account if the aggregate amount of all such items would exceed the aggregate funds on deposit in the Concentration Account and Subsidiary Account(s).

B. Concentration Account Overdrafts: Bank is not required to honor any items drawn on any Subsidiary Account or the Concentration Account if the aggregate funds on deposit in the Concentration Account and Subsidiary Account(s) would be insufficient to pay items and maintain the Target Ledger Balance.

7.3 Bank Options

Bank may reverse the transfer of any funds in whole or in part between a Subsidiary Account and the Concentration Account and then reject any items not finally paid if such transfer causes any Subsidiary Account to fall below the Target Ledger Balance or if for any reason any Subsidiary Account or the Concentration Account would have a negative balance at the end of the Settlement Process.

SECTION 8 - SWEEP SERVICE

This **Section 8** sets forth the terms and conditions relating to Sweep Service and is applicable only to Customers who execute an Enrollment Form requesting Sweep Service. We may offer automated transfers from one of your accounts with us to another of your accounts with us, or automated sweeps to and from one of your accounts with us and a line of credit (if applicable) you may have with us (an "internal sweep"). We may also offer automated sweeps to accounts not held by us ("external sweeps"). All such sweep services shall be subject to a separate written agreement, in form and substance satisfactory to us in our sole discretion. By signing the Sweep Service Enrollment Form and specifying the loan option on the Sweep Service Enrollment Form, Customer requests Bank to apply certain cash balances in the Designated Account at the end of each Business Day to a loan account ("Loan Account") specified by Customer (the "Loan Sweep").

8.1 Loan Sweep

A. Loan Sweep Process: Customer requests that any cash balance (for purposes of the Loan Sweep, Bank may require that the balance may be collected funds only) in the Designated Account in excess of the Target Collected Balance be applied to an eligible Loan Account(s). Any transfer of funds from the Designated Account to the Loan Account(s) will not eliminate Customer's obligation to make payment on the Loan

Account(s) as required under the loan documents. Funds transferred pursuant to the Loan Sweep process will be allocated to principal, interest and fees on the Loan Account(s) in accordance with the terms of Customer's loan documents. Bank may, at its option, establish a minimum amount for each transfer and shall have no obligation to initiate transfer pursuant to the Loan Sweep process if the cash balance exceeding the Target Collected Balance is less than the minimum amount.

B. Additional Credit: If there are not sufficient funds in the Designated Account to maintain the Target Collected Balance, Customer authorizes Bank to extend additional credit (if available in accordance with the terms of the applicable loan agreement) in an amount sufficient to maintain the Target Collected Balance in the Designated Account. Nothing in this Agreement shall obligate Bank to extend credit to Customer except in accordance with the terms of the applicable loan agreement. If Customer has no available credit, Checks may be returned. Upon termination of the Loan Account(s) with Bank, the Loan Sweep will terminate.

8.2 Important Notice Regarding Deposit Insurance & Customer's Sweep Account

The FDIC has established rules for determining deposit and other liability account balances when an insured depository institution fails. If Customer participates in a bank sweep product or automated cash management program, and in the event of a bank failure, Customer's eligibility for deposit insurance and the status of Customer's funds as an insured deposit may be impacted as follows:

Loan Sweep – funds swept out of Customer's deposit Account will be used to reduce Customer's loan balance; remaining funds in Customer's deposit Account are eligible for deposit insurance.

SECTION 9 - DRAWDOWN WIRE SERVICE

This **Section 9** sets forth the terms and conditions relating to Bank's Drawdown Wire Service (the "Drawdown Wire Service"), and is applicable only to Customers who execute an Enrollment Form requesting Drawdown Wire Service (the "Drawdown Wire Service Enrollment Form").

9.1 Drawdown Wire Service

By executing a Drawdown Wire Service Enrollment Form, Customer requests Bank to execute Drawdown Requests received through FED Wire, SWIFT or other funds transfer system acceptable to Bank against the Account identified in the Drawdown Wire Service Enrollment Form.

9.2 Authorization

Customer authorizes Bank to debit the Account for the amount of the Drawdown Request if the information contained in the request is consistent with the information provided to Bank on the Drawdown Wire Service Enrollment Form. The authority granted to Bank

shall continue until thirty (30) days after Bank receives written notice from Customer revoking such authority.

9.3 Execution of Drawdown Requests

On the Drawdown Wire Service Enrollment Form Customer shall provide Bank with a list containing:

A. the name and ABA routing number of each financial institution which Customer has authorized to request and receive Drawdown Transfers out of the identified Account; and

B. the titles and account numbers of Customer's accounts with each such financial institution which are to be credited. Before executing a Drawdown Request, Bank will verify that the financial institution requesting the Drawdown Transfer and the account to receive the transfer are included on such list. If the financial institution or account to receive the transfer is not identical to the information included on such list, Bank has no obligation to honor the Drawdown Request or make the Drawdown Transfer. Bank has no obligation to honor the Drawdown Request or make the Drawdown Transfer if Customer's Account does not have sufficient collected and available funds.

9.4 Reliance on Account Numbers and Identification Numbers

In the event that the Drawdown Request contains the correct account number, payment may be made on the basis of the account number, even if it identifies a person different from the named beneficiary. Similarly, if the Drawdown Request identifies a participating financial institution inconsistently by name and identification number, the identification number may be relied on as the proper identification of the financial institution.

SECTION 10 - CASH VAULT SERVICE

This **Section 10** sets forth the terms and conditions relating to Bank's Cash Vault Service (the "Cash Vault Service") and is applicable only to Customers who execute an Enrollment Form requesting Cash Vault Service (the "Cash Vault Service Enrollment Form").

10.1 The Cash Vault Service

By using the Cash Vault Service, Customer, through the Authorized Contacts designated by Customer on the Cash Vault Service Enrollment Form, may request that Bank make available certain specified amounts of Cash from Bank's cash vaults and accept deposits of Cash. Only Cash may be processed through the Cash Vault Service. Maximum limits may be established from time to time by Bank for Customer's use of the Cash Vault Service. Initial limits, if any, will be described on the Cash Vault Service Enrollment Form.

10.2 Access

A. Authorized Contacts and Authorized Users: Customer will designate on the Cash Vault Service Enrollment Form Certain Authorized Contacts who are authorized to place Cash orders and to perform certain other duties on behalf of Customer in connection with the Cash Vault Service. Customer may add or delete Authorized Contacts for Cash Vault Service by providing written notice to Bank; however, Bank shall have no obligation to honor such additions or deletions until Bank or its Vendor has had a reasonable time to process such information, which time shall be no less than the time specified in the Supplemental Documentation. Authorized Contacts may designate Authorized Users on the "Customer Profile" form provided to Bank. Authorized Users will have access to the automated change ordering system. An Authorized Contact may add or delete Authorized Users by providing written notice of such change to Bank.

B. Security Procedures for Cash Ordering: Bank will provide each Authorized User with a customer ID number and access code for placing cash orders through the automated cash ordering system. Customer is solely responsible for implementing internal procedures to safeguard the customer ID number and access code, for changing the access code upon termination of employment of any Authorized Contact or Authorized User and for notifying Bank immediately if Customer believes that the integrity of the ID number and access code may have been compromised. Customer is responsible for any transactions initiated by use of the customer ID number and access code.

C. Transport: Customer will be solely liable for all preparation and accuracy of Cash, Checks and other property received or made available pursuant to this Cash Vault Service and expressly acknowledges that it is assuming any risk of loss or shortage. Bank's records shall at all times be conclusive evidence of the contents of any Approved Container.

10.3 Processing of Transported Items

A. Deposits: Customer agrees to prepare all deposits accurately and in good faith and to follow all procedures described to Customer in the Supplemental Documentation. All Cash delivered to Bank shall be delivered in a sealed Approved Container, accompanied by a deposit slip listing the contents of the delivery. Checks will not be accepted without the prior written consent of the Bank. All Approved Containers must be provided by Bank or, if provided by Customer, must be approved in advance by

Bank. Bank will not accept, open or process the contents of any Approved Container which appears to have been tampered with or opened or does not appear to be properly sealed. Any such deposit will be returned to Customer by Carrier. All deposits are subject to verification by Bank. If deposits are delivered prior to the cutoff time established by Bank, Bank will credit the Designated Account for such deposits in accordance with Applicable Law, subject to later verification and Bank's availability schedule. If deposits are delivered after the applicable cutoff time, Bank will credit the Designated Account for such deposits on the next Business Day or in accordance with Applicable Law. Bank shall verify and correct any provisional credit so as to be consistent with the verified amount. Bank may, at its option, establish a minimum adjustment amount in compliance with Applicable Law. If Bank establishes a minimum adjustment amount, and a discrepancy is discovered when verifying a deposit, Bank will not adjust the deposit if the discrepancy is less than the established minimum adjustment amount; provided, however, if the total amount of Checks exceeds what is listed on a deposit ticket, then the Bank will credit the account regardless of any minimum adjustment amount. If the discrepancy exceeds the minimum adjustment amount, Bank will debit or credit the amount of the discrepancy to the Designated Account.

B. Withdrawals: Customer authorizes Bank to debit the Designated Account on the Business Day the Cash is made available to the Carrier. Bank shall have no obligation to release any Cash under the Cash Vault Service unless there are sufficient collected and available funds in the Designated Account to pay for such order. All Cash made available to Customer through the Carrier shall be provided in a sealed Approved Container and accompanied by an itemization of its contents.

10.4 Liability for Transported Items

Bank shall have no liability whatsoever for any items transported by Carrier to Bank until Bank has acknowledged receipt of such items in writing. With respect to items to be delivered from Bank to Customer via Carrier, Bank shall have no liability for such items upon delivery of such items to the designated Carrier. The transportation of items and Cash for purposes of the Cash Vault Service is at Customer's risk and Bank shall have no liability for such transportation, including but not limited to, liability arising out of the items' loss, theft or destruction during transportation. Customer must immediately notify Bank if any transported items are believed to be lost, missing or misdirected.

10.5 Investigations

Customer shall maintain a complete record of all items transported through the Cash Vault Service in the case of loss, and shall promptly, diligently, and fully cooperate, and cause its employees, agents, officers, contractors and subcontractors to cooperate fully with Bank in any investigation of any loss or discrepancy. If Customer fails to comply with these duties of cooperation, Bank will be released from any liabilities, claims or expenses incurred by Customer or a third party in connection with a discrepancy.

SECTION 11 - CARD PAYMENT PROCESSING SERVICE

This **Section 11** sets forth the terms and conditions relating to Bank's Card Payment Processing Service (the "Card Payment Processing Service"), and is applicable only to Customers who execute an Enrollment Form requesting Card Payment Processing Service (the "Card Payment Processing Service Enrollment Form") or utilize the Bank's website for Card Payment Processing Service. By utilizing the Card Payment Processing Service, Customer shall have the option to accept Cards through the Bank as a payment service provider.

11.1 Acceptance of Cards

A. Customer agrees to comply with the Operating Procedures and all Card Organization Rules, as such may be changed from time to time. Customer acknowledges that Bank or Payment Facilitator may be required to modify the Operating Procedures and this Agreement from time to time in order to comply with requirements imposed by the Card Organizations. Bank shall have the right to monitor and audit Customer from time to time to ensure Customer is complying with all Card Organization Rules, including review Customer's website content and active IP addresses, and other verifications to comply with the Card Organization Rules. Customer consents to Bank performing such activities to ensure compliance with the Card Organization Rules.

B. In offering payment options to Customer's clients, Customer may elect any one of the following options: **(i)** accept all types of Visa and MasterCard cards, including consumer credit and debit/check cards, and commercial credit and debit/check cards; **(ii)** accept only Visa and MasterCard credit cards and commercial cards (If Customer selects this option, it must accept all consumer credit cards (but not consumer debit/check cards) and all commercial card products, including business debit/check cards); or **(iii)** accept only Visa and MasterCard consumer debit/check cards (If Customer selects this option, it must accept all consumer debit/check card products (but not business debit/check cards) and refuse to accept any kind of credit cards). The acceptance options above apply only to domestic transactions.

C. If Customer chooses to limit the types of Visa and MasterCard cards accepted, Customer must display appropriate signage to indicate acceptance of the limited acceptance category Customer has selected (that is, accept only debit/check card products or only credit and commercial products).

D. For recurring transactions, Customer must obtain a written request or similar authentication from clients for the goods and/or services to be charged to the client's account, specifying the frequency of the recurring charge and the duration of time during which such charges may be made.

E. Customer agrees not to process payments greater than One Million and no/100 Dollars (\$1,000,000.00) annually (based upon the date the account is boarded) for any of its authorized card brands unless the Payment Facilitator shall have entered into such direct agreements required by the Card Organization Rules.

11.2 Settlement

A. Upon Bank's receipt of the Transaction Data for Card transactions, Bank will process the Transaction Data to facilitate the funds transfer from the various Card Organizations for the Card sales. After Bank receives credit for such Transaction Data, subject to Bank's other rights under this Agreement, Bank will provide provisional credit to Customer's Settlement Account.

B. Customer must not submit transactions for payment until the goods are delivered or shipped, or the services are performed. If the Cardholder disputes a charge for merchandise or services before receiving them, a Chargeback may result.

11.3 Chargebacks

A. General: Chargebacks can be received for a number of reasons. The following are some of the most common reasons for Chargebacks: **(i)** a refund is not issued to a client upon the return or non-delivery of goods or services; **(ii)** an authorization/approval code was required and not obtained; **(iii)** the transaction was allegedly fraudulent; **(iv)** the client disputes the Card sale or the signature on the sale documentation, or claims that the sale is subject to a set-off, defense or counterclaim; or **(v)** The client refuses to make payment for a Card sale because in the client's good faith opinion, a claim or complaint has not been resolved, or has been resolved but in an unsatisfactory manner.

B. Charge Back Fees: Bank will assess a fee to the Customer's Account disclosed on Customer's fee schedule, or, at Bank's discretion, to the Card holder's account(s) for each Chargeback related to a card payment.

C. Special Termination Provision Regarding Chargebacks: Upon the termination of Customer's Account or Reserve Account, Bank may set off or otherwise hold back Customer's funds in an amount sufficient to cover any possible Chargebacks that may occur on the closed Account or Reserve Account for such period that is reasonably determined by Bank.

11.4 Fees

Customer agrees to pay the fees associated with the provision of the Card Payment Processing Service contemplated hereunder.

11.5 Reserve

A. Reserve Account: Bank may establish a Reserve Account to satisfy the obligations or potential obligations under this Agreement, which may be funded by: **(i)** demand and receive immediate payment for such amounts; **(ii)** debit the account identified in the Settlement Account; **(iii)** withhold Customer settlement payments until all amounts are paid, **(iv)** delay presentation of Customer refunds until Customer makes a

payment to Bank of a sufficient amount to cover the Reserve Account; and **(v)** pursue any remedies Bank may have at law or in equity.

B. Funding: The Reserve Account will contain sufficient funds to cover any unbilled processing costs plus the estimated exposure based on reasonable criteria for Chargebacks, fines, returns and unshipped merchandise and/or unfulfilled services. Bank may (but are not required to) apply funds in the Reserve Account toward, and may set off any funds that would otherwise be payable to Customer against, the satisfaction of any amounts which are or become due from Customer pursuant to this Agreement. The Reserve Account will not bear interest, and Customer will have no right or interest in the funds in the Reserve Account; provided that upon satisfaction of all of the obligations under this Agreement, Bank will pay to Customer any funds then remaining in the Reserve Account. Any funds in the Reserve Account may be commingled with other funds, and need not be maintained in a separate account.

C. Security Interest: Effective upon the establishment of a Reserve Account, Customer irrevocably grants to Bank a security interest in any and all funds, together with the proceeds thereof, that may at any time be in Bank's possession and would otherwise be payable to Customer pursuant to the terms of this Agreement. Customer agrees to execute and deliver to Bank such instruments and documents that Bank may reasonably request to perfect and confirm the security interest and right of setoff set forth in this Agreement. The parties' rights and obligations under this Section shall survive termination of this Agreement.

11.6 Financial Information

Upon request, Customer shall provide Bank with financial statements. Such financial statements shall be prepared in accordance with generally accepted accounting principles, if applicable. Customer will also provide other information concerning Customer's business and compliance with the terms and provisions of this Agreement as Bank may reasonably request, including sufficient information for Bank to properly evaluate Customer from a risk perspective.

11.7 Data Security and Privacy

Customer represents to Bank that Customer does not have access to Card information (such as the cardholder's account number, expiration date, and CVV2) and Customer will not request access to such Card information from Bank or Payment Facilitator. In the event that Customer receives such Card information in connection with the processing services provided under this Agreement, Customer agrees that it will not use it for any fraudulent purpose or in violation of any Card Organization Rules, including but not limited to Payment Card Industry Data Security Standards ("PCI DSS") or Applicable Law. If at any time Customer believes that Card information has been compromised, Customer must notify Bank promptly and assist in providing notification to the proper parties. Customer must ensure its compliance and that of any third party service provider utilized by Customer, with all security standards and guidelines that are applicable to Customer and published from time to time by Visa, MasterCard or any other Card Organization,

including, without limitation, the Visa U.S.A. Cardholder Information Security Program ("CISP"), the MasterCard Site Data Protection ("SDP"), and (where applicable), the PCI Security Standards Council, Visa, and MasterCard PA-DSS ("Payment Application Data Security Standards") (collectively, the "Security Guidelines"). If any Card Organization requires an audit of Customer due to a data security compromise event or suspected event, Customer agrees to cooperate with such audit. Customer may not use any Card information other than for the sole purpose of completing the transaction authorized by the client for which the information was provided to Customer, or as specifically allowed by Card Organization Rules, Operating Procedures or required by law.

11.8 Events of Default

A. With respect to the Card Payment Processing Service, if any of the following events shall occur (each an "Event of Default"):

- I.** a material adverse change in Customer's business, financial condition, business procedures, prospects, products or services; or
- II.** any assignment or transfer of voting control of Customer or Customer's parent; or
- III.** a sale of all or a substantial portion of Customer's assets; or
- IV.** irregular Card sales by Customer, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by Bank, of any Card Organization, or any other entity, or an actual or suspected data security breach, or any other circumstances which, in Bank's sole discretion, may increase Bank's exposure for Chargebacks or otherwise present a financial or security risk to Bank; or
- V.** any of Customer's conditions, covenants, obligations or representations or warranties in this Agreement are breached in any material respect or are incorrect in any material respect when made or deemed to be made; or
- VI.** Customer shall file a petition or have a petition filed by another party under the Bankruptcy Code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against Customer in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its property; or make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or
- VII.** a violation by Customer of any Applicable Law or Card Organization Rule or Bank's reasonable belief that termination of this Agreement or

suspension of services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury or Customer's breach, as determined by Bank, of Customer's requirement to comply with all Applicable Laws;

VIII. if Customer's total annual transaction volume exceeds \$1,000,000 and a direct agreement is not obtained from Customer;

then, upon the occurrence of **(a)** an Event of Default specified in subsections IV., VI., VII. or VIII., Bank may consider this Service to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by Customer, and **(b)** any other Event of Default, this Agreement may be terminated by Bank giving not less than ten (10) Business Days' notice to Customer, and upon such notice all amounts payable hereunder shall be due and payable on demand.

Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable. Such provisions shall survive the expiration or termination of this Agreement. All obligations by Customer to pay or reimburse Bank for any obligations associated with transactions Customer has submitted to Bank and Payment Facilitator are intended to survive termination of this Agreement.

If any Event of Default shall have occurred and regardless of whether such Event of Default has been cured, Bank may, in its sole discretion, exercise all of its rights and remedies under Applicable Law, and this Agreement including, without limitation, exercising its rights under Section.

The Card Organizations often maintain lists of merchants who have had their merchant agreements or Card acceptance rights terminated for cause. If this Agreement is terminated for cause, Customer acknowledges that Bank may be required to report Customer's business name and the names and other information regarding its principals to the Card Organizations for inclusion on such list(s). Customer expressly agrees and consents to such reporting if terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by Visa, MasterCard or Discover Network. Furthermore, Customer agrees to waive and hold Bank and/or Payment Facilitator harmless from and against any and all claims which Customer may have as a result of such reporting.

Bank may terminate this Service at any time and for any or no reason upon the provision of thirty (30) days prior notice. Bank may also temporarily suspend or delay payments to Customer during its investigation of any issue and/or designate an amount of funds that Bank must maintain in order to protect it against the risk of, among other things, existing, potential, or anticipated Chargebacks arising under this Agreement or other amounts that may be owing to Bank under this Agreement.

11.9 Warranties; Exclusion of Consequential Damages; Limitation on Liability

A. This Agreement and any addenda is an agreement for Services and except as expressly provided in this Agreement, and any addenda, Bank and Bank's Affiliates disclaim all representations or warranties, express or implied, made to merchant or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise (regardless of any course of dealing, custom or usage of trade) of any services or any goods provided incidental to the Services provided under this Agreement.

B. Notwithstanding anything in this in this Agreement and any addenda to the contrary, in no event shall Bank or Bank's Affiliates be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages.

C. Notwithstanding anything in this Agreement and any addenda to the contrary, Bank and Bank's Affiliates' cumulative liability, in the aggregate (inclusive of any and all claims made by Customer against Bank and/or Bank's affiliates, whether related or unrelated) for all losses, claims, suits, controversies, breaches, or damages for any cause whatsoever (including, but not limited to, those arising out of or related to this Card Payment Processing Service and any addenda) and regardless of the form of action or legal theory shall not exceed the lesser of **(i)** \$100,000; or **(ii)** the amount of fees received by Bank pursuant to any addenda attached and incorporated herein for the Card Payment Processing Service performed in the immediately preceding twelve (12) months.

SECTION 12 - BILLER IQ SERVICES

12.1 Use of Biller IQ Bill Presentment & Payment Services

A Customer may request Biller IQ Bill Presentment & Payment Services ("Biller IQ") as set forth on the Enrollment Form, subject to applicable Supplemental Documentation relating to BILLER IQ. Customer will only use Biller IQ for its internal purposes in the ordinary course of business. Customer will not (a) permit the use of Biller IQ by any third party in a service bureau, timesharing or similar arrangement; (b) reproduce, download, modify, create derivative works from, distribute, or attempt to reverse engineer, decompile, disassemble, or access the source or object code for, the software portion of Biller IQ; (c) use Biller IQ, or any component thereof, in any manner contrary to Applicable Laws; or (d) otherwise effect, attempt or enable the unauthorized use (with or without administrative user ID and/or password) or misuse of Biller IQ.

12.2 Passwords

Customer will be solely responsible for verifying each of Customer's client's identity, and for contracting with, and managing the relationship with each client user of Biller IQ (each, an "End User"), and obtaining all necessary End User authorizations to provide Biller IQ. Customer and End Users shall be responsible for selecting and safeguarding their passwords for using Biller IQ. Any use of Biller IQ through a valid password shall be authorized use, provided that Bank or its supplier will cancel or disable any End User promptly following notification from Customer. Customer will be responsible for validating the transactions of its End Users, including assigning passwords.

12.3 Reliance on Security Procedures

Bank or its supplier may assign Customer (a) a unique uniform resource location ("URL") on the Internet for accessing Biller IQ, and (b) a unique user identifier ("ID") and/or a unique password to access Biller IQ (or a group of such IDs and passwords). Customer will be solely responsible for assigning each additional administrative user a single unique password and an ID. Customer shall be solely responsible for the administration of all passwords and IDs issued by Customer to administrative users for access to Biller IQ and will use commercially reasonable efforts to ensure that each password provided to an administrative user and the URL are kept confidential and utilized solely by such administrative user for the purposes authorized hereunder.

12.4 Blocked Payments

Bank or its supplier shall have the right to remit, stop, cancel, and manage payments and Automated Clearing House ("ACH") re-issuance and returns as deemed most reasonable by Bank or its supplier, and Bank or its supplier may cancel payments, or block Customer or any End User from initiating additional payments, if Bank or its supplier reasonably believes that an invalid or fraudulent transaction would otherwise be processed. Bank or its supplier will promptly notify Customer of the decision to cancel or block the payment. It is Customer's sole responsibility to contact the End User regarding the cancelled or blocked payment. Bank or its supplier may process payments using ACH. In doing so, Bank or its supplier acts as End User's third-party service provider and is not itself an "Originator," "ODFI," or "RDFI" (as defined under the Rules). From time to time, Bank or its supplier may contact Customer to recover payment errors. It is Customer's sole responsibility to contact the End User to recover payment errors.

12.5 Intellectual Property Rights

Customer acknowledges and agrees that Bank or its supplier retain all right, title and interest in and to all intellectual property related to Biller IQ as provided under applicable contracts, including, without limitation, all rights under any patents, copyrights and related laws, and other proprietary rights, and Customer shall use Biller IQ consistent with such right, title and interest of Bank and/or its supplier.

12.6 Data License

Customer hereby grants to Bank and its supplier (a) a non-exclusive, royalty-free, fully paid-up license to use, reproduce, display, modify and create derivative works from data based on information transmitted by or to Customer via Biller IQ solely for the purpose of operating, maintaining, supporting and enhancing Biller IQ; and (b) a non-exclusive, royalty-free, fully paid-up, perpetual irrevocable license to use, display, modify, create derivative works from and disclose in any manner the data derived by Bank or its supplier from Customer's use of Biller IQ ("Usage Data") for any purpose, provided that Usage Data is only used or disclosed in an aggregate form and does not, directly or indirectly, identify Customer or any End User, or identify, or contain any personally identifying information about, any employee, consultant, or any other individual affiliated with Customer or an End User.

12.7 Confidentiality

Biller IQ, its documentation and underlying software, is confidential and proprietary information of Bank or its supplier, and Customer agrees to take all reasonable steps to ensure that any such confidential information will not be disclosed to others, in whole or in part, without the prior written permission of Bank, except as contemplated herein. Such confidential information includes, but is not limited to, trade secrets or proprietary information related to the development or operation of any computer system or software that is subject to these terms, regardless of whether such information is identified as being confidential.

12.8 Supplier

Customer understands and agrees that Biller IQ may be provided by Bank or one or more suppliers. For purposes of this Agreement, the provision of Biller IQ by any supplier shall be deemed provision by Bank itself. Bank shall remain fully responsible for the provision or non-provision of Biller IQ by any supplier, to the same extent as if Bank itself provided or failed to provide Biller IQ. Customer agrees to look solely to Bank and not to any supplier, for satisfaction of any claims Customer may have arising out of this Agreement or the provision or non-provision of Biller IQ.

12.9 Compliance with Agreement, Rules, Procedures, Etc.

Customer agrees that it will comply and will cause its End Users to comply with all of the terms of this Agreement and any schedules, attachments or amendments hereto; all of the rules and procedures to be followed when using Biller IQ; and all applicable NACHA and card processing rules. As between Bank and Customer, Customer will bear the full financial liability and cost of processing the ACH, credit card and debit card transactions.

SECTION 13 - MOBILE DEPOSIT SERVICE

This Section 13 sets forth the terms and conditions relating to the Bank's Mobile Deposit Service and is applicable only to Customers who execute an Enrollment Form requesting

Mobile Deposit Service. In order to enroll in Mobile Deposit Service, Customer must also be enrolled in the Remote Deposit Capture Service (Section 5 of this Agreement).

13.1 Description of the Service.

The Mobile Deposit Service allows Customer to make mobile deposits (each such deposit a "Mobile Deposit" and collectively "Mobile Deposits") to its Accounts from a remote location by using a mobile device with the Bank's downloadable mobile application (the "Mobile Application") to capture images of paper checks and transmitting the images and associated deposit information to the Bank or the Bank's designated processor ("Processor"). The terms "Bank" and "Processor" are used interchangeably when used in relation to any services performed by a Processor on behalf of the Bank including, but not limited to, the receipt and processing of images and check data and any notices related thereto. The mobile device must capture an image of the front and back of each check (as herein defined) to be deposited (each an "Image" and, if more than one, "Images") in accordance with the procedures outlined in the Agreement and provided to Customer in any Supplemental Documentation (the "Mobile Deposit Procedures"). After capture of the front and back Images and all other required data and information from the paper check, Customer will transmit, via the Internet, the Mobile Deposit containing the Images and all other required data and information from or pertaining to the check to the Bank or Processor using the Software. Subject to compliance with the terms, provisions and conditions of this Agreement, the Bank will process the Mobile Deposit on the day of receipt of the Mobile Deposit and enter the Images of the check into the collection process, in accordance with the Account Disclosures pertaining to the Account(s) into which the Mobile Deposit is to be made and this Agreement.

13.2 Eligible Items and Security Interest.

Customer will scan and deposit only checks as the term "check" is defined in Federal Reserve Regulation CC ("Reg. CC"). Customer acknowledges that the Image of the check that is transmitted to the Bank shall be deemed an "item" within the meaning of Articles 3 and 4 of the Uniform Commercial Code in the state where the Account is located.

Customer will not use the Mobile Deposit Service to scan and deposit any checks listed in Section 5.4 (each a "Prohibited Check") which shall be considered prohibited notwithstanding that such checks may constitute a "check" under Reg. CC. In addition, checks that are drawn or otherwise issued by the U. S. Treasury Department are not eligible for Mobile Deposit Service.

Bank may, in its sole discretion, amend the list of Prohibited Checks from time to time. If Customer deposits a Prohibited Check, Customer will indemnify and reimburse the Bank for, and hold the Bank harmless from and against, any and all losses, costs and expenses (including reasonable attorneys' fees) the Bank may incur associated with any warranty, indemnity or other claim related thereto.

13.3 Endorsements and Procedures.

Customer will restrictively endorse any check transmitted through the Mobile Deposit Service with Customer's name and the restriction "FOR MOBILE DEPOSIT ONLY" or as otherwise instructed by Bank. Customer shall scan the front and back of each check to be deposited and thereby capture the image of the front and back of each check and any other required data from each check and transmit the Images to be deposited, along with all other required data and information from or pertaining to such checks to Bank or Processor in accordance with the Mobile Deposit Procedures. Bank reserves the right to amend the Mobile Deposit Procedures, with or without prior notice to Customer. Customer will comply at all times with the Bank's Security Procedures for the Mobile Deposit Service. Customer agrees to take reasonable steps to maintain the confidentiality of the Security Procedures and any passwords, unique identifiers, codes, security devices, and any related information provided by Bank or established by Customer in connection with the Security Procedures. Customer will immediately notify Bank if it suspects or knows that any Security Procedures or any passwords, unique identifiers, codes, security devices, or any related information have been accessed by or provided to an unauthorized person. Customer will be responsible for unauthorized Mobile Deposits made in good faith by Bank until Bank has been notified of the unauthorized access and has had a reasonable opportunity to act upon such notice.

13.4 Image Quality.

The Images of checks transmitted to the Bank using the Mobile Deposit Service must be legible, as determined in Bank's sole discretion. Without limiting the foregoing, each Image of each check must be of such quality that the following information can be clearly read and understood by sight review of such Image:

- The amount of the check;
- The payee of the check;
- The signature of the person who wrote the check;
- The date of the check;
- The check number;
- The information identifying the drawer and the paying bank that is preprinted on the check, including the MICR line; and
- All other information placed on the check prior to the time an Image of the check is captured, such as any required identification written on the front of the check and any endorsements applied to the back of the check.

13.5 Receipt of Mobile Deposit and Notification.

Customer shall be solely liable for, and the Bank shall not have any liability whatsoever to Customer for, any Mobile Deposit or the Images or other information contained therein that are not received by the Bank. Customer is also liable for Mobile Deposits or the Images or other information contained therein that are intercepted or altered by an unauthorized third party or dropped during transmission. Bank has no obligation to accept a Mobile Deposit and, therefore, Bank reserves the right to reject any Mobile Deposit or the Images or other information contained therein transmitted through the Mobile Deposit Service, in its discretion, without liability to Customer. Unless required by Applicable Law, the Bank has no obligation to notify Customer of the rejection of a Mobile Deposit or the Images or other information contained therein and shall have no liability to Customer for failing to do so. A Mobile Deposit is considered received by the Bank when a complete copy of the Mobile Deposit has been written on a Bank electronic storage device in conformity with the Bank's technical and operational requirements. To meet the cut-off time referenced in this section, the Mobile Deposit must be received by the Bank prior to the cut-off time and successfully pass the edits for conformity with the technical requirements. For purposes of determining when a Mobile Deposit has been delivered and received, the Bank's records shall be determinative. If Customer elected to receive a receipt, upon receipt of a Mobile Deposit, Bank will send a confirmation that Bank has received the Mobile Deposit. Customer's receipt of such confirmation does not mean the transmission was error free, complete or will be considered a Mobile Deposit and credited to Customer's Account.

Upon receipt of a Mobile Deposit submitted by Customer, the Bank may examine such Mobile Deposit and the Images and other information contained therein to ensure that Customer has complied with this Agreement and followed the Procedures. If the Bank determines that Customer has not complied with this Agreement or followed the Procedures or if errors exist in the Images or other information contained in the Mobile Deposit, the Bank, in its sole discretion, may either reject the Mobile Deposit or elect to correct the error, and accept and process the corrected Mobile Deposit (a "Corrected Mobile Deposit"). As a form of correction, the Bank may credit the applicable Account for the full amount of the deposit and make any necessary adjustments to the Account to correct the error. The Bank may, at its option, also perform a risk management analysis of one or more Mobile Deposits submitted by Customer to detect potentially fraudulent checks, and, in its sole discretion, the Bank may reject any such Mobile Deposit, the Images or other information contained therein. If after examination of a Mobile Deposit, the Images and other information contained therein, the Bank determines that Customer has complied with this Agreement, processed and transmitted the Mobile Deposit in accordance herewith and with the Procedures, the Bank shall accept the Mobile Deposit for deposit to the Account. Notwithstanding the fact that Bank has accepted a Mobile Deposit for processing, any credit made to Customer's Account(s) shall be provisional until the final settlement of the deposited item, and Customer shall remain liable to the Bank for any errors, inaccuracies, breach of warranties and any other loss sustained by, or claim made against, the Bank.

Each time Customer makes a Mobile Deposit, it represents and warrants that the Image shall also comply with Applicable Law and any other requirements established from time to time by the Bank, and shall meet all standards for image quality established by the American National Standards Institute (ANSI), the Board of Governors of the Federal Reserve, or any other regulatory agency, clearinghouse or association.

13.6 Availability of Funds.

Funds from a Mobile Deposit that are received Monday through Friday prior to 10:00 PM Central Time will be available the next Business Day. Funds from a Mobile Deposit that are received after 10:00 PM Central Time or on a weekend or Bank Holiday will be available in three (2) Business Days.

For additional information on Bank's policies and Bank Holidays, please refer to the Account Disclosures or Bank's website. The Mobile Deposit Service is subject to transaction limitations and the Bank reserves the right to change the availability of funds as outlined above, in Bank's sole discretion, subject to Applicable Law. Mobile Deposits are not covered by the Funds Availability Policy that was previously provided to Customer.

Bank shall establish limits on the dollar amount and/or number of Images or Mobile Deposits from time to time. Customer's limits will be established by the Bank and the Customer will be notified of such limits in advance of its use of the Mobile Deposit Service. The Bank reserves the right to change the limits at any time. Any such change shall be effective immediately and may be implemented prior to Customer's receipt of notice thereof. If Customer attempts to initiate a Mobile Deposit in excess of these limits, Bank may reject the Mobile Deposit. If Bank permits Customer to make a Mobile Deposit in excess of these limits, such Mobile Deposit will still be subject to the terms of this Section 13, and Bank will not be obligated to allow such a Mobile Deposit at other times.

13.7 Laws, Rules, and Regulations.

Customer agrees to comply with the terms of this Agreement, the Supplemental Documentation for the Mobile Deposit Service, as may be amended by Bank from time to time, and all Applicable Law in its use of the Mobile Deposit Service, including, but not limited to, all rules and procedural guidelines established by the Board of Governors of the Federal Reserve and the Electronic Check Clearing House Organization ("ECCHO") and any other clearinghouse or other organization in which Bank is a member or to which rules Bank has agreed to be bound. These procedures, rules, and regulations (collectively the "Check Rules") and laws are incorporated herein by reference. In the event of conflict between the terms of this Agreement and the Check Rules, the Check Rules will control.

13.8 Presentment.

The manner in which the Images are cleared, presented for payment, and collected shall be in the Bank's sole discretion subject to Applicable Law and the Account Disclosures. The Bank, in its sole discretion, shall select the clearing agents used to collect and present

the Images, and the Bank's selection of the clearing agents shall be considered to have been designated by Customer.

13.9 Maintenance and Disposal of Transmitted Checks.

Customer shall mark, stamp, or write on the original check "Electronically Presented" after scanning the check in accordance with this Section 13. Customer shall securely store the original check for a period of fifteen (15) calendar days from the date of the Image transmission (such period the "Retention Period"). During the Retention Period, Customer shall take appropriate security measures to ensure that: (a) only authorized persons shall have access to original checks, (b) the information contained on such checks shall not be disclosed, (c) such checks will not be duplicated or scanned more than one time and (d) such checks will not be deposited or negotiated in any form. During the Retention Period, Customer shall promptly (but in all events within ten (10) Business Days) provide the original check to the Bank upon request. The risk of loss due to the unavailability of the original or copy of a check for any reason, during the Retention Period, shall be exclusively on Customer.

Upon expiration of the Retention Period, Customer shall securely and irretrievably destroy the original checks Customer transmitted using commercially reasonable methods of destruction. Customer is obligated to ensure that the original checks are not accessed by unauthorized persons during the storage, destruction and disposal process and, once destroyed, the original checks will be un-negotiable and all sensitive personal and financial information undecipherable. Customer hereby indemnifies the Bank for, and hold the Bank harmless from and against, any and all claims, demands, actions, causes of action, losses and damages, of whatever nature or kind, and regardless of the theory upon which the same is (are) based, caused directly or indirectly by, arising out of, related to, in connection with or resulting wholly or partially from, the retention and destruction of original checks by Customer.

13.10 Return of Checks and Chargebacks.

Any credit to an Account of any deposit using the Mobile Deposit Service is provisional until final payment of the item deposited. If a check deposited through the Mobile Deposit Service is dishonored, rejected, or otherwise returned as unpaid by the drawee bank, or the item is rejected, or returned by a clearing agent or collecting bank for any reason, including, but not limited to, issues relating to the quality of the Image, Bank may charge back the amount of the original check and provide Customer with an Image of the original check, a paper reproduction of the original check, or a substitute check (each, a "Chargeback"). Customer will reimburse Bank for all loss, cost, damage or expense caused by or relating to the Chargeback as permitted by Applicable Law. Customer will not to deposit or otherwise negotiate an original check after Bank's Chargeback. Bank reserves the right to Chargeback to an Account at any time for any check Bank subsequently determines was a Prohibited Check. Bank is not liable for any loss, costs, or fees Customer may incur as a result of Bank's Chargeback of any item deposited through the Mobile Deposit Service.

13.11 User Warranties.

Customer warrants to Bank that:

- The Mobile Deposit Service will not be used for personal, family or household purposes.
- Customer will not (i) create duplicate Images of the checks, (ii) transmit a duplicate Image to Bank, or (iii) deposit or otherwise negotiate the original of any check of which an Image was created. Customer further warrants that no subsequent transferee, including but not limited to Bank, a collecting or returning bank, drawer, drawee, payee or endorser, will be asked to pay the original check from which the Image(s) was created or a duplication (whether paper or electronic, including ACH entries) of the check(s).
- No subsequent transferees of the Image(s), including but not limited to Bank, a collecting or returning bank, drawer, drawee, payee or endorser, shall sustain a loss as the result of the fact that the Image was presented for payment or returned instead of the original check.
- Each Image that Customer transmits to Bank contains an accurate representation of the front and the back of each check and complies with the requirements of this Section 13.
- All data and other information Customer provides to Bank, including, but not limited to, data contained in the MICR line of each check is complete, accurate and true and complies with the requirements of this Section 13.
- Customer is not aware of any factor that may impair the collectability of the check.
- All checks, and all Customer's transactions using the Mobile Deposit Service, will be bona fide. All signatures on checks are authentic and authorized.

13.12 Hardware and Software.

In order to use the Mobile Deposit Service, Customer must obtain and maintain, at its sole cost and expense a compatible mobile device and/or other hardware and software that meets all technical requirements, as specified by the Bank from time to time, for the proper use of the Mobile Deposit Service and that fulfills Customer's obligation to obtain and maintain secure access to the Internet. Customer understands and agrees that it may also incur, and shall pay, any and all expenses related to the use of the Mobile Deposit Service, including, but not limited to, telephone, mobile data, or Internet service charges from any third party. Customer is solely responsible for the operation, maintenance and updating of all equipment, software and services used in connection with the Mobile Deposit Service and the cost thereof, and hereby agrees that it will perform, or cause to be performed, all vendor recommended maintenance, repairs, upgrades and replacements. The Bank is not responsible for, and Customer hereby releases the Bank from, any and all claims or damages resulting from, or related to, any virus or malware or related problems that may be associated with using electronic communication or the Internet. The Bank is not responsible for, and Customer releases the Bank from, any and

all claims or damages resulting from, or related to, defects in or malfunctions of hardware or software, or failures of or interruptions in any electrical, telephone, mobile data, or Internet services used by Customer in connection with the Mobile Deposit Service. The Bank hereby advises Customer, and Customer agrees to scan its computer or mobile device, hardware and software on a regular basis using a reliable virus detection product in order to detect and remove viruses or harmful malware.

13.13 Mobile Deposit Service Security Controls

In order to reduce the risk of fraud and to minimize service interruptions, you should also implement security practices and controls, including, but not limited to, the following:

- Develop a contingency plan to deposit checks in the event you lose Internet access or our website is inaccessible;
- Periodically perform testing of your systems to minimize service interruptions;
- Segregate user duties and implement dual controls where reasonably possible to mitigate the risk of one individual having responsibility for end-to-end processing and accounts receivable reconciliation;
- Implement a routine to audit user's use of the Mobile Deposit Service;
- Ensure access credentials are removed when a user leaves the company or is reassigned to other duties;
- Ensure that users cannot share access to the Mobile Deposit Service or equipment with a third party without our knowledge and prior written approval;
- Ensure deposit files stored on a server or desktop computer are adequately secured and/or encrypted;
- Develop written procedures to train new users on the Mobile Deposit Service;
- Implement controls to safeguard non-public information in paper and image format, and limit access to the information to only employees who are authorized to handle deposit accounts on the Mobile Deposit Service;
- Implement system security and antivirus software to safeguard against viruses, malware and other potential system risk; and
- Dedicate a workstation for the Mobile Deposit Service and other bank services to minimize the risk of viruses and malware.

SECTION 14 - GLOSSARY OF TERMS

“Acceptable Payee” means, with respect to the Lockbox Service, the names specified to Bank by Customer as the payee names that Bank may accept in connection with items received for deposit.

“Account” means any deposit account, investment deposit account, reserve account, certificate of deposit, overdraft protection line of credit, commercial loan or any other

deposit or loan account that Customer has established and maintained with Bank primarily or exclusively for business-related purposes, as identified in any Enrollment Form.

“Account Analysis” means the process by which Bank determines an earnings credit available to offset Service Fees based on the balances in Customer’s Accounts, as described in Section 1.2.

“Account Disclosures” means any terms and conditions, agreements or disclosures provided to Customer relating to any Account.

“ACH Block Service” has the meaning set forth in Section 2.2.

“ACH Block Service Enrollment Form” has the meaning set forth in Section 2.2.

“Affiliate” means an entity that, directly or indirectly, (i) owns or controls a party to this Agreement or (ii) is under common ownership or control with a party to this Agreement.

“Agreement” means this Treasury Services Terms and Conditions as agreed upon by Customer or its Agent and Bank by an executed Enrollment Form(s).

“Agent” means a person, legal entity, management services company, or other person or legal entity that is authorized to act on Customer’s behalf in connection with the specific Services described on the relevant Enrollment Form and in this Agreement.

“Applicable Law” means all applicable federal, state or local laws, executive orders, ordinances, rules or regulations together with all applicable rules or regulations of any clearinghouse or other organization.

“Approved Container” means a container provided by Bank or, if provided by Customer, approved by Bank for transport of Cash and Checks under the Cash Vault Service.

“ARC Entry” means an ARC Entry as defined by the Rules.

“Authorized Contact” means a representative of Customer who is designated on an Enrollment Form and authorized to act on Customer’s behalf in connection with the specific Services described on the relevant Enrollment Form.

“Bank” means CIT Bank, a division of First-Citizens Bank & Trust Company, and any branch where Customer maintains the deposit account(s) identified on the applicable Enrollment Form.

“BOC Entry” means a BOC Entry as defined by the Rules.

“Business Day” means any day that the Bank is open to the public for carrying on substantially all business functions, but excludes Bank holidays, any day that is not a business day for the Federal Reserve or any day which is not a business day for any Vendor the Bank utilizes for business functions.

“Card” is an account, or evidence of an account, authorized and established between a person or legal entity and a Card Organization, or representatives or members of a Card Organization, that is accepted from the person or legal entity. Cards include, but are not limited to, other Card brands and debit cards, electronic gift cards, authorized account or access numbers, paper certificates, credit accounts and the like.

“Card Organization” is any entity formed to administer and promote Cards, including without limitation MasterCard Worldwide (“MasterCard”), Visa U.S.A., Inc. (“Visa”), DFS Services LLC (“Discover Network”) and any applicable debit networks.

“Card Organization Rules” are the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization.

“Carrier” means an armored carrier service acceptable to Bank.

“Cash” means United States coin and currency.

“Cash Vault Service Enrollment Form” has the meaning set forth in Section 10.

“Chargeback” means a returned Check, returned ACH as described in the Rules, and for purposes of Section 11, is a Card transaction dispute (or disputed portion) that is returned to Payment Facilitator by the issuer. Customer is responsible for payment to Bank for all Chargebacks.

“Check” means a draft, payable on demand and drawn on or payable through or at a United States office of a bank, whether or not negotiable, that is handled for forward collection or return, including a traveler’s check or cashier’s check. An instrument may be a check even though it is described on its face by another term, such as money order.

“Company Administrator” means, for purposes of Section 4, the primary User appointed by Customer to have full authority under Section 4 to issue Instructions to Bank and delegate authority to other Users.

“Concentration Account” means the Account designated on a Sweep Services Enrollment Form as the Concentration Account.

“Customer” means Bank’s Customer requesting treasury management services, either directly or through the use of an Agent, pursuant to this Agreement and one or more Enrollment Forms. The term “Customer” also includes a person or entity acting as Agent.

“Designated Account” means an Account held at Bank named as the Designated Account for Services by Customer.

“Digital Platform” has the meaning set forth in Section 5.2(B).

“Drawdown Request” means a request from another financial institution transmitted via FED Wire, SWIFT or other funds transfer service acceptable to Bank, pursuant to which

Bank is requested to debit an Account identified by Customer and wire the funds requested to an account maintained at another financial institution.

“Drawdown Transfer” means a transfer of funds pursuant to a Drawdown Request.

“Drawdown Wire Service Enrollment Form” has the meaning set forth in Section 9.

“Electronic Communications” means secured and unsecured electronic mail and facsimile transmissions.

“Enrollment Form” means any properly executed enrollment form

A. which has been completed by Customer, or its authorized Agent, and

B. in which Customer requests one or more Services and agrees to comply with the terms, conditions and procedures for a specific Service.

“Entry” means an “Entry” as defined in the Rules, including the data that Bank receives from Customer to prepare an ACH transmission.

“Equipment” means any equipment provided by Bank or a Vendor for use in a Service.

“Equipment Software” means software incorporated into any Equipment.

“Exposure Limits” has the meaning set forth in Section 2.1.H.

“Fed Wire” means the Federal Reserve Bank’s wire transfer system.

“FinCEN” means the Financial Crime Enforcement Network Agency of the United States Department of Treasury.

“Funds” means the mutual funds and other investment opportunities identified on a Sweep Services Enrollment Form or as communicated by Bank to Customer from time to time.

“IAT Entry” means an “IAT Entry” as defined in the Rules.

“Image Exception” has the meaning set forth in Section 6.3.

“Infringement Claim” means a claim that Licensed Software infringes another party’s intellectual property rights.

“Instruction” means any instruction Customer issues to Bank, either electronically, verbally or in writing, to perform certain Services.

“Licensed Software” means the Equipment Software and any other software required for use by Customer in connection with the Image Deposit Service and provided to Customer by Bank through the sublicense set forth in Section 5.9.

“Loan Account” has the meaning set forth in Section 8.

“Loan Sweep” has the meaning set forth in Section 8.

“Master License” means a master license agreement entered into by Bank with a third-party vendor to Bank in which Bank has the right to sublicense Licensed Software.

“MICR Line” means the line on the bottom of an original Check containing information concerning the Check and is printed in Magnetic Ink Character Recognition form.

“NACHA” means the National Automated Clearing House Association.

“NOC” has the meaning set forth in Section 2.1.F.III.

“Operating Procedures” mean Payment Facilitator’s operating rules and regulations, as may be changed by Bank from time to time.

“Originator” means an “Originator” as defined in the Rules.

“OFAC” means the U.S. Department of Treasury’s Office of Foreign Assets Control.

“Payment Account” is the account Customer designates on any Enrollment Form for payment of that Service Fees.

“Payment Facilitator” is the Vendor for Bank and Customer for the Card Payment Processing Service.

“POP Entry” means a “POP Entry” as defined in the Rules.

“Product” means Equipment, Licensed Software and any Supplemental Documentation such as a user guide or other materials provided to Customer by Bank, a Vendor, a third-party vendor to Bank or the manufacturer of Equipment and/or Equipment Software.

“Product Support Services” are services that may be provided by Bank to support the Product as set forth in Section 5.

“RCK Entry” means an “RCK Entry” as defined in the Rules.

“RDCS” has the meaning set forth in introduction to Section 5.

“Receiver” means a person that has authorized an Originator to initiate a credit Entry, debit Entry, or non-monetary Entry to the Receiver’s account at the Receiving Depository Financial Institution.

“Related Entity” has the meaning set forth in Section 1.6.D.

“Reserve Account” means an account established and funded at Bank’s request or on Customer’s behalf, pursuant to the Card Payment Processing Service.

“Retrieval Request” is a request for information by Customer or Card Organization relating to a claim or complaint concerning a Transaction.

“Reversal” means a “Reversal” as defined in the Rules.

“Risk Exposure Limits” has the meaning set forth in Section 5.7.C.

“Rules” means the NACHA operating rules, as amended from time to time.

“Same Day Entry” means a “Same Day Entry” as defined in the Rules.

“Security Administrator” means, for purposes of Section 1.5, the primary User appointed by Customer to have full authority under Section 1.5 to issue Instructions to Bank and delegate authority to other Users.

“Security Procedures” means the security procedures applicable to a particular Service agreed to by Customer, which at Bank’s discretion may be provided to the Customer in the Bank’s Supplemental Documentation, an Enrollment Form, or in verbal format.

“Service” means each treasury management service described in this Agreement.

“Service Fee” means the charges, fees and assessments established by Bank from time to time applicable to each Service, which may include but not limited to, fees from any third party agents, vendors, or contractors engaged to provide services to Bank and the Bank’s cost for providing the service.

“Settlement Account” is an account or account(s) at a financial institution designated by Customer as the account to be debited and credited by Payment Facilitator or for Card transactions, fees, Chargebacks and other amounts due under or in connection with the Card Payment Processing Service.

“Settlement Process” means the closing process on each Business Day by which Bank transfers money between the Concentration Account and any of Subsidiary Account to ensure that all Items drawn on the Subsidiary Account are paid and the Subsidiary Account maintains the specified Target Ledger Balances.

“Standing Wire Transfer Request” has the meaning set forth in Section 3.8.

“Subsidiary Account” means the Account designated on a Sweep Services Enrollment Form as the Subsidiary Account.

“Substitute Check” means a paper reproduction of the original Check that meets all requirements of Applicable Law.

“Supplemental Documentation” means supplemental information provided to Customer from time to time by Bank with respect to certain Services, including instructions, security procedures and tokens and operational guidelines.

“Target Collected Balance” means, for purposes of Section 9, the minimum amount Customer designates on a Sweep Service Enrollment Form to be available in a Designated Account at the end of each Business Day.

“Target Ledger Balance” means the balance designated on a Target Balance Account Service Enrollment Form to be maintained in a Subsidiary Account at the close of business each Business Day.

“TEL Entry” means a “TEL Entry” as defined in the Rules.

“Third-Party Service Provider” is an organization other than an Originator, ODFI or RDFI that performs a function of ACH processing on behalf of the Originator, the ODFI or the RDFI.

“Third-Party Sender” is an organization that is not an Originator that has authorized an ODFI or a Third Party Service Provider to transmit, for its account or the account of another Third-Party Sender a credit entry, debit entry, or non-monetary entry to the Receiver’s account at the RDFI. An organization acting as a Third-Party Sender is also a Third-Party Service Provider.

“Transaction” is a transaction conducted between a person or legal entity and Customer utilizing a Card in which consideration is exchanged between the person or legal entity and Customer.

“Transaction Data” is the written or electronic record of a Transaction.

“Truncated Check” has the meaning set forth in Section 5.1.

“User” means an employee or Agent designated by Customer’s Company Administrator from time to time as being authorized to issue Instructions on Customer’s behalf.

“User Manual” means, for purposes of Section 4, collectively, any on-line or printed instructions and any licensing or other related agreements regarding the Commercial Online Banking Service, as may be amended, modified and supplemented from time to time.

“Vendor” is a third party that provides Equipment, Licensed Software or services to Customer or Bank.

“WEB Entry” means a “WEB Entry” as defined in the Rules.

“Wire Transfer” means any transfer of funds into or out of Customer’s Accounts accomplished via Fed Wire or other wire transfer service.

“Wire Transfer Request” means any Instruction received by Bank from Customer as affects a transfer of funds activity with Customer’s Accounts.

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