

# Banking Services Terms and Conditions

## I. GENERAL.

This document, along with any other documents CoBiz Bank doing business as CoBiz Private Bank and also doing business in Arizona as Arizona Business Bank and in Colorado as Colorado Business Bank (herein the "Bank" or "us") gives Customer pertaining to Customer's account(s), as the same may be amended from time to time, is a contract that establishes rules which control the account (collectively, the "Agreement"). Please read this carefully and retain it for future reference. If Customer signs the signature card or opens or continues to use the account, Customer agrees to these rules. Customer will receive a separate schedule of rates, qualifying balances, and fees if they are not included in this document. If Customer has any questions, it should call Bank.

The purpose of this document is to:

- (1) summarize some laws that apply to common transactions;
- (2) establish rules to cover transactions or events which the law does not regulate;
- (3) establish rules for certain transactions or events which the law regulates but permits variation by agreement; and
- (4) give Customer disclosures of some of Bank's policies to which Customer may be entitled or in which Customer may be interested.

The headings in this document are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular. Throughout this document, when a provision is identified as being applicable to a certain state (for example, "in Arizona"), it means that the provision is only applicable if Customer's account is held at a branch located in that particular state. Any provision which is not described as applying to a particular state, applies to Customer's account.

## A. DEFINITIONS.

The following terms and references shall have the meanings set forth below when used in this Agreement or with respect to the Services:

1. "AAA" means the American Arbitration Association.
2. "ACH" means the Automated Clearing House.
3. "Agent" or "Authorized Agent" means any director, officer, partner, employee, representative, affiliate, Customer Vendor or any other person acting on behalf of Customer with the actual, implied or apparent authority of Customer. Bank may rely on any grant of authority until it receives written notice of its revocation and is given a reasonable amount of time to act upon such notice. With respect to certain Services, the Agent's authority may be limited by Customer in writing pursuant to the Security Procedures.
4. "Agreement" has the meaning given to it in the first paragraph of this Section.
5. "Authorized Accounts" means an account of Customer at Bank which is designated by Customer to be subject to the Agreement.
6. "Authorized Deposit" means a batch of Electronically Presented Checks in an Approved Format to be deposited into an Authorized Account as a result of Authorized Instructions, all in a manner approved by the Agreement.
7. "Authorized Instructions" mean unconditional, immediately executable orders to Bank received by Bank from an Authorized Agent in a manner approved by the Agreement.
8. "Authorized User" means Customer if Customer is a natural person, or if Customer is an entity, means any director, officer, partner, employee, representative, affiliate, Customer Vendor or any other person designated by Customer in reference to a Service offered by Bank and used by Customer.
9. "Available Funds" mean the positive, unrestricted balances in Customer's Authorized Account(s) which are available for withdrawal by Customer, pursuant to Bank's policies which are then in effect and the provisions and requirements of Regulation CC to the Federal Expedited Funds Availability Act in effect from time to time.
10. "Bank" has the meaning given to it in the first paragraph of this Section.
11. "Bank Armored Courier" means the armored courier service(s) contracted directly with, and for a fee paid to, Bank by Customer or as including armored courier service(s) designated by Bank from time to time in connection with the Cash Vault Service and, if more than one such service is available, the one selected by Customer to deliver the Depository Bag. "Bank Armored Courier" does not include any other courier or transportation service made available by Bank which service is contracted or authorized directly between such service provider and Customer or any armored courier service with whom Customer contracts directly for armored courier services, although such armored courier service provider may be the same service provider as is offered or designated by Bank hereunder.
12. "Bank Software" means software licensed to Customer by Bank.
13. "Banking Day" or "Business Day" shall mean that part of any day on which Bank is open to the public for carrying on substantially all of its banking functions; any reference to time of day shall mean and refer to Mountain Standard Time or Mountain Daylight Savings Time, whichever may be in effect in Denver, Colorado on the day in question.
14. "Cancellation Order" means an unconditional, timely, immediately executable order to Bank to cancel a prior Electronic Deposit or a Wire Transfer Payment Order, which order is received by Bank from an Authorized Agent in a manner approved by the Agreement.
15. "Check Act" means the Checks for the 21st Century Act.
16. "Check Issue Report" means a list of checks, described by at least Check number and amount, drawn by Customer on an Authorized Account, provided by Customer to Bank by the terms of the Agreement. If Customer has selected the Payee Positive Pay Service, then the Check Issue Report shall include the payee, check number, and amount.
17. "Consumer Account" means the account of a natural person, including personal checking, personal savings and personal loan accounts.
18. "Consumer Information" means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of Bank for a business purpose. Consumer Information also means a compilation of such records.
19. "Corrected NOC" means a corrected Notification of Change.
20. "Customer" means the owner of the Account.
21. "Customer Administrator" means an Authorized Agent appointed by Customer to establish, modify and terminate Users of the Service and their permissions.
22. "Customer Information" means any record containing nonpublic personal information, as defined in 12 CFR § 216.3(n), about a customer, whether in paper, electronic or other form, that is maintained by or on behalf of Bank.
23. "Customer Software" means software owned, licensed or maintained by Customer and used in connection with a Service.
24. "Customer Vendor" means a third party provider retained by Customer in connection with a Service.
25. "Cut-off Time" means the time by which Authorized Instructions must be received by Bank to permit Bank to transfer funds on the same Business Day. The Cut-off Time may be changed from time to time.
26. "Daily Smart Safe Credit" means the credit given by Bank to Customer's account for funds deposited in a Smart Safe before such funds are delivered to Bank.
27. "DDA" means demand deposit account.
28. "Decision Deadline" means the time of Banking Day established by Bank with respect to a Service from time to time, by which time Customer's instructions must be received for Bank to implement them.
29. "Delivery Location" means the location or facility designated by Bank or by Customer to which Bank Armored Courier shall deliver the Depository Bag(s) to the party designating such location or facility.
30. "Depository Bag" means a tamper proof bag approved by Bank for the transfer of Items to Bank for deposit or the tamper proof bag or container provided with the Smart Safe.
31. "Designated Agent" means the agent or service designated by Customer to transfer Items to Bank for deposit and to Customer after withdrawal from the Authorized Accounts.
32. "Drawdown Request" means a request over the Fedwire to debit an Authorized Account and send the funds to the requesting bank.
33. "Effective Date" means, with respect to any ACH file, a Business Day.
34. "Electronically Presented Checks" mean checks or drafts which Customer has converted to an electronic image in an Approved Format, and in a manner approved by the Agreement, and which Customer has presented to Bank for deposit in a manner approved by the Agreement.
35. "Electronic Deposit" means an Authorized Deposit of Electronically Presented Checks into an Authorized Account.
36. "Electronic Funds Transfer Act" means the EFTA, codified at 15 U.S.C. §1693 et seq. and all regulations promulgated thereunder, including without limitation Regulation E, 12 C.F.R. 205.1 et seq. as the same may be amended from time to time.
37. "Electronic Transmission" means communications by electronic means, including without limitation, facsimile transmission, voice mail, unsecured email, page or other telephonic methods.
38. "Entry" or "Entries" means electronic orders through Bank to transfer funds by means of the ACH.
39. "Exception Check" means a Presented Check that does not match a check included in a Check Issue Report.
40. "Exception Check Report" means a list of Exception Checks which is provided by Bank to Customer by the terms of the Agreement.
41. "Identified Account" means an account designated by Customer as one subject to Reverse Positive Pay.
42. "IRD" means Image Replacement Document within the meaning of the Check Act.
43. "Items" mean cash, checks, and negotiable instruments.
44. "Lockbox" means a post office box or zip code for which Bank will have unrestricted, exclusive access for the purpose of receiving Payments from Customer's obligors.
45. "Mail" means all letters, cards, Payments, documents and Items delivered to Bank in connection with the Lockbox Service.
46. "Master Account" means an account at Bank owned by Customer and designated to provide or receive internal funds transfers to or from the Subordinate Accounts.

47. "Maximum Liability Amount" means the total liability assumed by Bank for a Shipment Claim of all or a part of a Shipment, which shall be \$5,000 unless the parties mutually agree to a different amount.
48. "NACHA" is the National Automated Clearing House Association.
49. "NOC" means a Notification of Change.
50. "On us" Entries are defined as those ACH transactions where the receiving account is held within Bank.
51. "OFAC" means the Office of Foreign Assets Control.
52. "Paid File" means the account number, check number and the amount of the presented check.
53. "Pay Request" means the instruction of Customer to Bank ordering Bank to pay an Exception Check.
54. "Payments" mean checks, drafts, money orders, credit card vouchers or other instruments evidencing payment which Bank receives from obligors of Customer.
55. "Pick-Up Location" means the locations designated by Bank or by Customer from which Bank Armored Courier shall receive the Depository Bag(s) from the party designating such location.
56. "Presented Check" means a check drawn on an Authorized Account and presented to Bank for payment through the check collection system.
57. "Property" means cash, currency, checks and other financial instruments for deposit by Bank to Customer's account or cash or currency delivered to Customer pursuant to a Withdrawal Order.
58. "Remote Check Conversion" means conversion by Customer of checks received by Customer into electronic images and the creation of electronic files in formats as specified or approved by Bank.
59. "Return Request" means the instruction of Customer to Bank ordering Bank not to pay an Exception Check.
60. "Rules" means the NACHA Operating Rules.
61. "Sales Agreement" means the Account and Banking Services - Sales Agreement establishing the Services to be provided, as the same may be amended from time to time.
62. "SEC" means Standard Entry Class.
63. "Security Codes" means any keys, tokens, personal identification numbers, passwords, authentication procedures, digital certificates, digital signatures, template numbers or any other device or code intended to support the Security Procedures.
64. "Security Procedures" mean the measures adopted by Bank and the Company including those described in the Agreement, to ensure the authenticity, authority and accuracy of Authorized Instructions of any transactions pursuant to any Service, the measures adopted to ensure the authenticity, authority, and accuracy of an Electronic Deposit, or the proper storage and disposal of instruments and records containing Consumer Information.
65. "Service" means Banking Services offered by Bank and utilized by Customer pursuant to the Agreement.
66. "Settlement Account" means an account maintained by Customer with Bank to be used to settle transactions with respect to a Service.
67. "Shipment" means one or more Depository Bag(s) into which Customer or Bank, as applicable, has placed Property and related documents and which Depository Bag(s) are received by Bank Armored Courier at the same time at a single Pick-Up Location, which are to be delivered to a single Delivery Location.
68. "Shipment Claim" means any loss of, damage, theft or destruction to Property.
69. "Smart Safe" means equipment with related software and accessories installed by Bank's approved provider pursuant to an agreement with Customer, which equipment is installed in Customer's locations and which equipment counts, records and reports the currency deposited into and accepted by it.
70. "Smart Safe Report" means an electronic file transmission from the Smart Safe reporting the purported value of all currency accepted into the applicable Smart Safe since the transmission of the last report.
71. "Subordinate Account" means an account at Bank owned by Customer and designated to be brought periodically to a target balance pursuant to the Auto Sweep Service.
72. "Third-Party Sender" means Customer. Third-Party Sender is an initiator of ACH originated by its customers. Third-Party Sender is also an Originator for settlement of the proceeds for those transactions to and from its customers. The term "Third-Party Sender" is used to avoid confusion between Customer and customer. If the word, "customer" is used with respect to the Third-Party Sender ACH Service, it refers to the customers of Third-Party Sender, e.g. Customer's customers.
73. "UCC" means the Uniform Commercial Code in Arizona or Colorado, as applicable.
74. "UPIC" means a unique account identifier linked to an Account for the receipt of payments.
75. "Us" or "us" means Bank.
76. "Wire Transfer" means the payment of funds through the Federal Reserve System's "Fedwire" or otherwise.
77. "Wire Transfer Order" means an order to Bank to initiate a Wire Transfer Payment Order. A Wire Transfer Order constitutes Authorized Instructions if it orders the Wire Transfer of Available Funds from an Authorized Account by an Authorized Agent in a manner approved by the Agreement.
78. "Wire Transfer Payment Order" means an unconditional instruction of Bank through the Federal Reserve System's "Fedwire" or otherwise to a Receiving Bank to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary, and to be reimbursed directly or indirectly by Bank.
79. "Withdrawal Order" means an order to Bank to withdraw funds and deliver them to the Designated Agent for transfer to Customer. A Withdrawal Order constitutes Authorized Instructions if it orders the withdrawal of Available funds from an Authorized Account by an Authorized Agent in a manner approved by Bank.
80. "You" or "you" means Customer, its Authorized Agents and Authorized Users.

#### **B. SERVICES.**

Bank will provide Customer with various Services at Customer's request from time to time. Services and the Authorized Accounts to which each Service applies will be reflected on Customer's statement following implementation. Customer's use of a Service, Customer's payment of any fees associated with the Service or Customer's failure to notify Bank that Customer does not desire a Service within thirty (30) days of the date of the first statement showing the Service is being provided, shall constitute Customer's acceptance and approval of the Service.

#### **C. DESIGNATION OF ACCOUNTS.**

Customer will provide Bank with written notice of the Authorized Accounts at Bank or other financial institutions to which Customer wishes the Services to apply. Any changes in the designation of Authorized Accounts will be in writing and will provide reasonable prior notice of such change to Bank.

#### **D. DESIGNATION OF AUTHORIZED AGENTS.**

Any of Customer's Authorized Agent(s) may designate the Services desired and the Authorized Users thereof. Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an Authorized Agent and any such communication shall be deemed to have been signed by such person. Any changes in the designation of Authorized Agents by Customer will be in writing and will provide reasonable prior notice of such change to Bank.

#### **E. CUSTOMER VENDOR.**

If Customer initiates any transactions in connection with any of Customers' accounts or any of the Services through a Customer Vendor, Customer Vendor is the agent of Customer and not of Bank. Bank is not responsible for the acts or omissions of Customer Vendor. Customer agrees to be liable for and hold Bank harmless from any losses caused by the acts or omissions of Customer Vendor.

#### **F. CREDIT VERIFICATION; CUSTOMER'S FINANCIAL CONDITION.**

Customer agrees that Bank may verify credit and employment history by any necessary means, including preparation of a credit report by a credit reporting agency.

Bank's willingness to provide Services to Customer is dependent on Customer's financial condition. Customer's financial condition is subject to review by Bank from time to time, and such reviews must be satisfactory to Bank in its sole discretion. Customer shall, upon request, provide to Bank such information as Bank may require to perform any such review. Customer's failure to meet such standards or provide such information or assistance when requested shall constitute a breach of the Agreement.

#### **G. ADDRESS OR NAME CHANGES.**

Customer is responsible for notifying Bank of any change in Customer's address or name. Unless Bank agrees otherwise, change of address or name must be made in writing by Customer or an Authorized Agent of Customer. Informing Bank of Customer's address or name change on a check reorder form is not sufficient. Bank will attempt to communicate with Customer only by use of the most recent address Customer has provided to Bank. If provided elsewhere, Bank may impose a service fee if Bank attempts to locate Customer.

#### **H. WITHDRAWAL.**

**Checks and withdrawal rules** - If Customer does not purchase check blanks from Bank, Customer must be certain that Bank approves the check blanks. Bank may refuse any withdrawal or transfer request attempted on forms not approved by Bank or by any method Bank does not specifically permit. Bank may refuse any withdrawal or transfer request which is greater in number than the frequency permitted, or which is for an amount greater or less than any withdrawal limitations. Bank will use the date the transaction is completed by Bank (as opposed to the date Customer initiated it) to apply the frequency limitations. In addition, Bank may place limitations on the account until Customer's identity is verified.

Even if Bank honors a nonconforming request, Bank is not required to do so later. If Customer violates the stated transaction limitations (if any), in Bank's discretion it may close Customer's account or reclassify it as a transaction account. If Bank reclassifies Customer's account, Customer's account will be subject to the fees and earnings rules of the new account classification.

If Bank is presented with an item drawn against Customer's account that would be a "substitute check," as defined by law, but for an error or defect in the item introduced in the substitute check creation process, Customer agrees

that Bank may pay such item. See the funds availability policy disclosure for information about when Customer can withdraw funds from Customer deposits. For those accounts to which Bank's funds availability policy disclosure does not apply, Customer can ask Bank when Customer makes a deposit when those funds will be available for withdrawal. Bank may determine the amount of Available Funds in Customer's account for the purpose of deciding whether to return an item for insufficient funds at any time between the times Bank receives the item and when Bank returns the item or sends a notice in lieu of return. Bank need only make one determination, but if Bank chooses to make a subsequent determination, the account balance at the subsequent time will determine whether there are insufficient Available Funds.

**Overdrafts** - Customer understands that Bank may, at Bank's discretion, honor withdrawal requests that overdraw Customer's account. However, the fact that Bank may honor withdrawal requests that overdraw the account balance does not obligate Bank to do so later. So Customer can NOT rely on Bank to pay overdrafts on Customer account regardless of how frequently or under what circumstances Bank has paid overdrafts on Customer's account in the past. Bank can change its practice of paying overdrafts on Customer's account without notice to Customer. Customer can ask Bank if it has other account services that might be available to Customer where Bank commits to paying overdrafts under certain circumstances, such as an overdraft protection line-of-credit or a plan to sweep funds from another account Customer has with Bank. Customer agrees that Bank may charge fees for overdrafts. Bank may use subsequent deposits, including direct deposits of social security or other government benefits, to cover such overdrafts and overdraft fees.

**Facsimile Signatures** - Unless Customer makes advance arrangements with Bank, Bank has no obligation to honor facsimile signatures on Customer's checks or other orders. If Bank does agree to honor items containing facsimile signatures, Customer authorizes Bank, at any time, to charge Customer for all checks, drafts, or other orders, for the payment of money, that are drawn on Bank. Customer gives Bank this authority regardless of by whom or by what means the facsimile signature(s) may have been affixed so long as they resemble the facsimile signature specimen filed with Bank, and contain the required number of signatures for this purpose. Customer must notify Bank at once if Customer suspects that its facsimile signature is being or has been misused.

**Notice of withdrawal** - Bank reserves the right to require not less than 7 days' notice in writing before each withdrawal from any account other than a demand deposit or time deposit as defined by Regulation D. (The law requires Bank to reserve this right, but it is not Bank's general policy to use it.) Withdrawals from a time account prior to maturity or prior to any notice period may be restricted and may be subject to penalty. See the notice of penalty for early withdrawal.

**Early Withdrawal Penalties (and involuntary withdrawals)** - Bank may impose early withdrawal penalties on a withdrawal from a time account even if Customer doesn't initiate the withdrawal. For instance, the early withdrawal penalty may be imposed if the withdrawal is caused by Bank setoff against funds in the account or as a result of an attachment or other legal process. Bank may close Customer's account and impose the early withdrawal penalty on the entire account balance in the event of a partial early withdrawal. See the notice of penalty for early withdrawals for additional information.

#### I. APPLICABILITY OF REGULATION CC.

The availability of funds in transaction Accounts will be governed by Regulation CC to the Federal Expedited Funds Availability Act. In the event of any conflict between the provisions of Regulation CC and the provisions hereof, the provisions of Regulation CC shall be controlling.

#### ABILITY TO WITHDRAW FUNDS

Bank's policy is to make funds from cash and check deposits available to Customer on the first Business Day after the day Bank receives the deposit. Electronic direct deposits will be available on the day Bank receives the deposit. Once the funds are available, Customer can withdraw them in cash and Bank will use the funds to pay checks that Customer has written.

Please remember that even after Bank has made funds available to Customer, and Customer has withdrawn the funds, Customer is still responsible for checks it deposits that are returned to Bank unpaid and for any other problems involving Customer's deposit.

For determining the availability of Customer deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If Customer makes a deposit before closing on a Business Day that Banks are open, Bank will consider that day to be the day of Customer's deposit. However, if Customer makes a deposit after closing or on a day Bank is not open, Bank will consider that the deposit was made on the next Business Day Bank is open. Deposits made at a night depository are considered received on the Business Day that the deposits are removed from the depository and available for processing.

If Customer makes a deposit at an ATM before 3:00 p.m. MT on a Business Day that Bank is open, Bank will consider that day to be the day of Customer's deposit. However, if Customer makes a deposit at an ATM after 3:00 p.m. MT or on a day Bank is not open, Bank will consider that the deposit was made on the next Business Day Bank is open.

If Bank cashes a check for Customer that is drawn on another bank, Bank may withhold the availability of a corresponding amount of funds that are already in Customer's account. Those funds will be available at the time funds from the check Bank cashed would have been available if Customer had deposited it.

#### LONGER DELAYS MAY APPLY

**Case-by-case delays.** In some cases, Bank will not make all of the funds that Customer deposits by check available to Customer on the first Business Day after the day of the deposit. Depending on the type of check that Customer deposits, funds may not be available until the second Business Day after the day of the deposit. The first \$200 of the deposits, however, may be available on the first Business Day after the day of the deposit.

If Bank is not going to make all of the funds from Customer's deposit available on the first Business Day, Bank will notify Customer at the time Customer makes the deposit. Bank will also tell Customer when the funds will be available. If Customer's deposit is not made directly to a Bank employee, or if Bank decides to take this action after Customer has left the premises, Bank will mail Customer the notice by the day after Bank received Customer's deposit.

If Customer will need the funds from a deposit right away, Customer should ask Bank when the funds will be available.

**Safeguard exceptions.** In addition, funds Customer deposits by check may be delayed for a longer period under the following circumstances:

Bank believes a check Customer deposited will not be paid.

Customer deposits checks totaling more than \$5,000 on any one day.

Customer redeposits a check that has been returned unpaid.

Customer has overdrawn its account repeatedly in the last six months.

There is an emergency, such as failure of computer or communications equipment.

Bank will notify Customer if Bank delays Customer's ability to withdraw funds for any of these reasons, and Bank will tell Customer when the funds will be available. They will generally be available no later than the seventh Business Day after the day of Customer's deposit.

#### SPECIAL RULES FOR NEW ACCOUNTS

If you are a new customer, the following special rules will apply during the first 30 days Customer's account is open.

Funds from electronic direct deposits to Customer's account will be available on the day Bank receives the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first Business Day after the day of Customer's deposit if the deposit meets certain conditions. For example, the checks must be payable to Customer. The excess over \$5,000 will be available on the fifth Business Day after the day of the deposit. If the deposit of these checks (other than a U.S. Treasury check) is not made in person to a Bank employee, the first \$5,000 will not be available until the second Business Day after the day of the deposit. Funds from all other check deposits will be available on the seventh Business Day after the day of Customer's deposit.

#### J. BANK RULES AND REGULATIONS.

All Services to be provided hereunder shall be in accordance with, and further subject to, Bank's then applicable rules and regulations which apply to the Authorized Accounts and to such further policies and procedures with regard to the Services as may be communicated to Customer from time to time in writing, including without limitation by posting same on Bank's website or as otherwise set forth herein.

#### K. FEES AND PAYMENTS.

Customer shall pay Bank for the Services provided pursuant to fee schedules or other pricing information provided by Bank from time to time. Any fees for Services may be amended by Bank at any time. Bank may, at its option, include fees arising from the Agreement in an analysis statement of Customer's account relationship, bill Customer, or debit Customer's accounts for the Services rendered during the immediately preceding billing period. Bank may promptly debit Customer's accounts at Bank in the full amount of any such statement, or bill if the amount shown on the statement bill is not paid when due.

#### L. CHECKING ACCOUNT ORGANIZATION.

Bank has organized customer's checking account in a nontraditional way. Customer's checking account consists of two subaccounts. One of these is a transaction subaccount (e.g., a checking subaccount). Customer will transact business on this subaccount. The other is a non-transaction subaccount (e.g., a savings subaccount). Customer cannot directly access the non-transaction subaccount, but Customer agrees that Bank may automatically, and without a specific request from Customer, initiate individual transfers of funds between subaccounts from time to time at no cost to Customer. This account organization will not change the amount of federal deposit insurance available to Customer, the available balance, the information on the periodic statements, or the interest calculation, if this is an interest-bearing account. Customer will not see any difference between the way the checking account operates and the way a traditionally organized checking account operates, but this organization makes Bank more efficient and helps to keep costs down.

#### M. CHECK CASHING.

Bank may charge a fee for anyone that does not have an account with Bank who is cashing a check, draft or other instrument written on Customer's

account. Bank may also require reasonable identification to cash such a check, draft or other instrument. Bank can decide what identification is reasonable under the circumstances and such identification may be documentary or physical and may include collecting a thumbprint or fingerprint.

#### **N. INDORSEMENTS.**

Bank may accept for deposit any item payable to Customer or its order, even if they are not indorsed by Customer. Bank may give cash back to any Authorized Agent. Bank may supply any missing indorsement(s) for any item Bank accepts for deposit or collection, and Customer warrants that all indorsements are genuine.

To ensure that Customer's check or share draft is processed without delay, Customer must indorse it (sign it on the back) in a specific area. Customer's entire indorsement (whether a signature or a stamp) along with any other indorsement information (e.g. additional indorsements, ID information, driver's license number, etc.) must fall within 1-1/2" of the "trailing edge" of a check. Endorsements must be made in blue or black ink, so that they are readable.

As one looks at the front of a check, the "trailing edge" is the left edge. When one flips the check over, be sure to keep all indorsement information within 1-1/2" of that edge. It is important that Customer confines the indorsement information to this area since the remaining blank space will be used by others in the processing of the check to place additional needed indorsements and information. Customer agrees that Customer will indemnify, defend, and hold Bank harmless for any loss, liability, damage or expense that occurs because Customer's indorsement, another indorsement or information Customer has printed on the back of the check obscures Bank's indorsement.

These indorsement guidelines apply to both personal and business checks.

#### **O. EXAMINATION OF CHECKS FOR MULTIPLE AUTHORIZED SIGNATURES.**

Customer acknowledges that Bank does not offer accounts which require two or more signatures to validate an item.

#### **P. TRUNCATION, SUBSTITUTE CHECKS, AND OTHER CHECK IMAGES.**

If Customer truncates an original check and creates a substitute check, or other paper or electronic image of the original check, Customer warrants that no one will be asked to make payment on the original check, a substitute check or any other electronic or paper image, if the payment obligation relating to the original check has already been paid. Customer also warrants that any substitute check Customer creates conforms to the legal requirements and generally accepted specifications for substitute checks. Customer agrees to retain the original check in conformance with Bank's internal policy for retaining original checks.

Customer agrees to indemnify Bank for any loss Bank may incur as a result of any truncated check transaction Customer initiates. Bank can refuse to accept substitute checks that have not previously been warranted by a bank or other financial institution in conformance with the Check Act. Unless specifically stated in a separate agreement between Customer and Bank, Bank does not have to accept any other electronic or paper image of an original check.

#### **Q. DEATH OR INCOMPETENCE.**

Customer agrees to notify Bank promptly if any Authorized User dies or becomes legally incompetent. Bank may continue to honor checks, items, and instructions until: (a) Bank knows of the Authorized User's death or incompetence, and (b) Bank has had a reasonable opportunity to act on that knowledge. Customer agrees that Bank may pay or certify checks drawn on or before the date of death or legal incompetence for up to ten (10) days after the death or legal incompetence unless ordered to stop payment by someone claiming an interest in the account.

#### **R. FIDUCIARY ACCOUNTS.**

Accounts may be opened by a person acting in a fiduciary capacity. A fiduciary is someone who is appointed to act on behalf of and for the benefit of another. This account may be opened and maintained by a person or persons named as a trustee under a written trust agreement, or as executors, administrators, or conservators under court orders. Customer understands that by merely opening such an account, Bank is not acting in the capacity of a trustee or fiduciary nor does Bank undertake any obligation to monitor or enforce the terms of the trust or letters.

#### **S. STOP PAYMENT.**

Unless otherwise provided, the rules in this section cover stopping payment of items such as checks and drafts. Rules for stopping payment of other types of transfers of funds, such as consumer electronic fund transfers, may be established by law or Bank policy. If Bank has not disclosed these rules elsewhere, Customer may ask us about those rules.

Bank may accept an order to stop payment on any item. Customer must make any stop-payment order in the manner required by law and Bank must receive it in time to give Bank a reasonable opportunity to act on it before Bank's stop-payment cutoff time. Because stop-payment orders are handled by computers, to be effective, Customer's stop-payment order must precisely identify the number, date, and amount of the item, and the payee. Customer may stop payment on any item drawn on its account whether Customer signed the item or not. Generally, if Customer's stop-payment order is given to Bank in writing it is effective for six months. Customer's order will lapse after that time if it does not renew the order in writing before the end of the six-month period.

If the original stop-payment order was verbal Customer's stop-payment order will lapse after 14 calendar days if Customer does not confirm the order in writing within that time period. Bank is not obligated to notify Customer when a stop-payment order expires. A release of the stop-payment request may be made only by the person who initiated the stop-payment order.

If Customer stops payment on an item and Bank incurs any damages or expenses because of the stop payment, Customer agrees to indemnify Bank for those damages or expenses, including attorneys' fees. Customer assigns to Bank all rights against the payee or any other holder of the item. Customer agrees to cooperate with Bank in any legal actions that Bank may take against such persons. Customer should be aware that anyone holding the item may be entitled to enforce payment against Customer despite the stop-payment order.

Bank's stop-payment cutoff time is one hour after the opening of the next Banking Day after the Banking Day on which Bank receives the item. Additional limitations on Bank's obligation to stop payment are provided by law (e.g., Bank paid the item in cash or Bank certified the item).

#### **T. TELEPHONE TRANSFERS.**

A telephone transfer of funds from one account to another account with Bank, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing. Unless a different limitation is disclosed in writing, Bank restricts the number of transfers from a savings account to another account or to third parties, to a maximum of six per month (less the number of "preauthorized transfers" during the month). Other account transfer restrictions may be described elsewhere.

#### **U. ADDITIONAL SERVICES.**

Bank may provide Services that are not specifically included in the Services section of the Agreement. By accepting and using any such Service, Customer agrees that the Service will be governed by the Agreement and any other conditions communicated to Customer by Bank. Certain Services included in the Agreement may not be available or may not be provided in certain market areas.

#### **V. PROPRIETARY INFORMATION.**

Customer acknowledges that the Agreement, and all related documentation and systems used in providing Services, are the property of Bank. Customer agrees that it shall not acquire any rights or interests therein as a result of its use of the Services and shall keep all of Bank's proprietary information strictly confidential.

#### **W. SECURITY PROCEDURES.**

Customer shall comply with the Security Procedures established by Bank or agreed to by Bank and Customer from time to time. Customer acknowledges and agrees that the purpose of Security Procedures is to verify the authenticity of the transaction, not to detect errors in the transmission or content of the transaction. The Security Procedures will be as described herein, in a user guide, implementation document, separate agreement, or contained within the Service (for example, an online screen). By utilizing the Service and employing the Security Procedure, Customer agrees that the Security Procedure is commercially reasonable for the type, size and volume of transactions. Customer will conduct using the Service. Bank reserves the right to change, implement or require new or additional Security Procedures or features thereof by giving oral or written notice to Customer. Customer agrees that its use of the Service after Bank provides notice of any such described change will be deemed Customer's acceptance of the new Security Procedure. In addition, Customer understands and agrees that Bank may, in its discretion, adopt other commercially reasonable security procedures from time to time in connection with the Services, in addition to the Security Procedures, which additional security procedures may not be disclosed by Bank to Customer.

Bank may reject any transaction initiated in violation of the applicable Security Procedure or without the appropriate Security Codes. If Bank reasonably complies with the applicable Security Procedures, Customer shall be responsible for any unauthorized transaction and shall hold Bank harmless from such transaction.

Customer agrees to be bound by any payment order, transaction or Service change order that is acted upon by Bank in accordance with the Security Procedures. Customer is solely responsible for maintaining its own internal security and agrees to use appropriate caution in selecting any company or individual given access to use one or more of the Services and the Security Codes. All Security Procedures and Security Codes will be maintained by Customer in strictest confidence, including selectively issuing and securely storing the Security Codes, and shall not be used or divulged to any other party except as Customer deems necessary or advisable for the due performance of any of the Services.

Customer acknowledges the importance of maintaining the Security Codes in the strictest confidence. Customer is solely responsible for the misuse, theft or misappropriation of its Security Codes. Customer shall not disclose any information regarding the Services, the Security Procedures or the Security Codes that an unauthorized user would find helpful to obtain access to all or part of any Service.

If Customer or its Agents have reason to believe that any Security Procedures or Security Codes have or may become known by unauthorized persons (whether or not employed by Customer), Customer shall immediately notify Bank by telephone and confirm such verbal notification in writing to Bank within 24 hours. Bank will replace the Security Procedures and Security Codes in accordance with Bank's security procedures. Customer shall be solely responsible for transactions and communications initiated before Bank received Customer's notice and had a reasonable time to act on such notice.

Bank reserves the right to change any or all of the Security Procedures or Security Codes by giving verbal or written notice to Customer.

For some Services, Bank may choose to honor Customer's request to give Bank verbal instructions regarding the Services. Customer agrees Bank may in good faith rely on such verbal instructions that purport to come from an Authorized Agent of Customer without independent verification by Bank.

Bank shall have no responsibility to verify Authorized Instructions, if the Authorized Instructions are made in compliance with the Security Procedures selected by Customer. However, Bank may (without being required to do so) obtain additional verification of any Authorized Instructions or Cancellation Orders. As long as Bank complies with the Security Procedures, Customer shall be responsible for unauthorized transactions, including without limitation Entries or Wire Transfer Payment Orders, and shall hold Bank harmless therefrom.

Bank may also recognize deviations from stated Security Procedures, if Company has by custom and practice routinely ratified transactions, including without limitation Entries or Wire Transfer Payment Orders representing a standard deviation from the Security Procedures.

The Security Procedures described herein are approved and agreed upon by Customer and Bank with respect to any online or electronic Service utilized by Customer. Customer agrees to institute, maintain, re-evaluate, adjust and upgrade security systems to protect Customer's data and payments in the online or electronic environment. The Security Procedures described herein are in addition to and not in place of those Security Procedures otherwise agreed to between Customer and Bank.

Customer shall designate a Customer Administrator who shall assign user profiles, identification, permissions and Security Codes for Authorized Users to access the Services. The Customer Administrator is responsible for implementing and maintaining Customer's user profile, identification, permission and Security Code security. Customer, Customer Administrator and Authorized Users are responsible for maintaining the confidentiality of each user's identification and Security Codes. Bank is entitled to act on instructions received using the username and Security Code of Customer Administrator and the usernames and Security Codes created by or authorized by Customer Administrator.

Customer acknowledges that data including e-mail, electronic communications and confidential financial data, may be accessed by unauthorized third parties when communicating to Bank using the Internet or other network or dial-up communications facilities, telephone or any other electronic means. By using the internet in connection with the Services or to otherwise communicate with Bank, Customer is assuming the risk that viruses, Trojan horses, spyware, key logging programs, worms, or other harmful components may be transmitted to Customer. Customer is solely responsible for and shall implement, maintain and update (as available) commercially reasonable physical and electronic security to prevent unauthorized access to its equipment, devices, peripherals, computer storage devices and data, including without limitation the following:

- ◆ Access restrictions on computer systems, including commercially reasonable authentication of Authorized Agents, sufficient to restrict access to Customer data, information or funds belonging to Customer from employees or intruders who are not authorized to have or use such information
- ◆ Commercial-grade intrusion protection including a properly configured firewall, virus protection, malware protection, regular and frequent system scans, intrusion logs and real-time monitoring of incoming and outgoing files
- ◆ Properly configured log files to record intrusions and rejected login attempts
- ◆ Program level security
- ◆ Data level security
- ◆ Published employee policies restricting access to the internet on Customer equipment
- ◆ Commercial-grade systems to backup and restore information stored on Customer's computer systems
- ◆ Disaster recovery procedures including periodic testing of recovery systems
- ◆ Background checks on all employees who are authorized to access Bank Services

Customer shall take special precautions to secure and protect confidential personal information of Customer and its customers.

#### **X. LIMITATIONS ON SERVICES.**

Bank will honor Customer's transactions and instructions (including adjustments, amendments and cancellations) only when Customer has complied with the Agreement and related policies and procedures. Bank will be

under no obligation to honor, either in whole or in part, any transaction or instruction that:

1. exceeds Customer's collected or Available Funds on deposit with Bank;
2. Bank has reason to believe may not be authorized by Customer;
3. involves funds subject to a hold, dispute or legal process preventing their withdrawal;
4. violates any provision of any applicable regulation of the Federal Reserve Bank or any other federal, state or local regulatory authority; or
5. Bank has reasonable cause not to honor, for the protection of either Bank or Customer.

Any credit given to an Authorized Account is agreed to be provisional until Bank receives final settlement. If Bank does not receive final settlement, it is entitled to reverse the entry.

#### **Y. TELEPHONE COMMUNICATIONS.**

Customer acknowledges, agrees and consents on behalf of itself, its employees and its agents that Bank may monitor and record telephone conversations at any time without further notice to the parties to such conversations. The decision to record any conversation shall be solely in Bank's discretion, and Bank shall have no liability for failing to do so.

#### **Z. ELECTRONIC AND INTERNET COMMUNICATIONS.**

Customer may elect to send or receive instructions or reports from Bank related to the Accounts and the Services via Electronic Transmission. Customer acknowledges that such Electronic Transmissions are an inherently unsecure communication method due to the possibility of error, delay and observation or receipt by an unauthorized person. Bank may rely in good faith on Customer's instructions regarding how and to what number or email address Electronic Transmissions should be sent and may rely on any Electronic Transmission that it reasonably believes to have been initiated by Customer. Should Customer elect to send or receive Electronic Transmissions to or from Bank, Customer assumes all risks and Bank shall not be liable for any loss that results from the nonreceipt, disclosure or alteration of any such Electronic Transmission.

Bank may provide Services and access to Services through the internet. Customer acknowledges that internet communication is inherently unsecure, and that certain internet transactions are not monitored by Bank. Customer acknowledges that fraud and theft can occur in internet transactions by unauthorized use of Customer's login or Security Codes. Customer is solely responsible for Customer's losses caused by or arising from the unauthorized use of Customer's login information or Security Codes.

#### **AA. COMPUTER EQUIPMENT AND SOFTWARE.**

Many Services require the use of computer hardware and software. Customer is solely responsible for maintaining its computer equipment in good working order, with the necessary compatibility and format to interface with Bank's systems, including, without limitation, the ability to support Bank's security measures. Customer agrees to install upgrades and other system enhancements within a reasonable time of being requested to do so by Bank. License Agreements for necessary software may either be embedded in the software or separately documented. Customer agrees to comply with all applicable software license agreements, whether or not such agreements have been executed by Customer. Customer has no rights or ownership in any software provided by or through Bank and shall not transfer, copy, alter, modify, reverse engineer, reproduce, or convey in any manner, in whole or in part, any such software. Customer shall return all software and user manuals associated with any software upon request. Bank makes no representations or warranties with respect to any equipment or software provided by Bank.

Some Services are provided by Bank through access to a third-party network. Such Services are dependent upon the availability of the third party network on conditions acceptable to Bank. Bank reserves the right to discontinue the Service or provide the Service through an alternative third-party network and shall have no liability should any such network become unavailable. Bank does not warrant and shall not be responsible for Services received by Customer from any third-party network.

#### **BB. TERMINATION.**

Customer may terminate any of the Services at any time. Customer shall remain liable for payment of all Services rendered prior to termination as and when the same are billed to Customer and Bank may withhold so much of Customer's funds as it deems necessary to ensure payment thereof. Bank may terminate the depository relationship or any of the Services upon 30 days written notice to the other party. In addition, Bank may terminate the depository relationship or any of the Services at any time after the commencement of any voluntary or involuntary bankruptcy, dissolution or liquidation by or against Customer, or upon any merger or acquisition of Customer into or by any other entity, or upon the breach by Customer of the terms or conditions of the Agreement or any other agreement or obligation it has entered into with Bank or any of its affiliates, or upon any event evidencing to Bank a material deterioration in the financial status or condition of Customer or that the likelihood that the credit risks undertaken by Bank hereunder may be materially increased, including, but not limited to, insufficient Available Funds to pay items presented for payment or other return item risks, or if Bank has reasonable cause to believe Customer is engaged in any fraudulent or criminal activity.

### CC. BANK LIABILITY.

Bank shall only be liable to Customer under the Agreement for its gross negligence or willful misconduct in performing Services for Customer. Bank shall have no responsibility to verify Authorized Instructions received by Bank if the Authorized Instructions are made in compliance with the Agreement and the applicable Security Procedures. Bank shall not be responsible for Customer's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or due authorization of any transaction received from Customer) or those of any other person. Customer shall be responsible for any unauthorized transactions and shall indemnify and hold Bank, its officers, directors, agents and employees harmless against any loss, liability, and expense (including reasonable attorney's fees, costs and expenses) resulting from or arising out of any claim of any person that Bank is responsible for any act or omission of Customer or any other person. Bank shall not be liable for any damages or other losses of Third-Party Sender due to claims made by any Originator (as same is defined in the Rules) in connection with any arrangement or agreement under which Third-Party Sender transmits Entries pursuant to the Agreement. Bank may recognize deviations from stated Security Procedures, if Customer has by custom and practice routinely ratified transactions representing a standard deviation from Security Procedures. Bank shall have no liability or responsibility to Customer with regard to any other matter, including without limitation, its negligence or breach of contract, any act or omission by any clearing house, any other financial institution, the Federal Reserve Bank, or any other person or entity. Bank shall have no liability to Customer for any nonperformance, damages or losses due to legal constraint; strike; breakdowns; equipment failure; incompatible software or hardware; electronic data corruption; interruption or errors resulting from MICR fraud/tampering detection, image quality, duplicate item detection, or conflicts in the electronic deposit information thereof; from fraud, theft, mis-processing, backup or system failure on Customer's premises or in Customer's computer systems, including any equipment, whether or not supplied by Bank; interruption of transmission or communication facilities; war; emergency conditions; or other causes or circumstances beyond Bank's reasonable control.

Under no circumstances shall Bank have any liability for any incidental, consequential, special, punitive or indirect loss or damages. Subject to the foregoing limitations, Bank's liability shall be limited to the extent to which Customer has incurred a direct loss. Without limiting the effect of the provisions set forth above, any liability of Bank for a transfer incorrectly made by Bank shall be limited to the amount of such transfer which is not recovered within a reasonable period of time. Bank's liability for loss of interest shall be calculated by the average Federal Funds rate at the Federal Reserve Bank of New York for the period involved.

Customer shall promptly furnish written proof of any loss attributable to a Service to Bank in writing and shall provide all reasonable assistance to Bank in recovering the loss. If Customer is reimbursed for any loss by Bank, Bank shall be subrogated to all rights of Customer related thereto.

If Bank is required for any reason to reimburse the federal government for all or any portion of a benefit payment that was directly deposited into Customer's account, Customer authorizes Bank to deduct the amount of Bank's liability to the federal government from the account or from any other account Customer has with Bank, without prior notice and at any time, except as prohibited by law. Bank may also use any other legal remedy to recover the amount of Bank's liability.

### DD. CUSTOMER LIABILITY AND INDEMNITY; USE OF CUSTOMER'S COURIER.

Customer shall be responsible for compliance with the Agreement, including without limitation all representations, warranties and covenants contained in the Agreement, all rules and regulations of any local, state or federal entity, the Rules and with all operating procedures of Bank to the extent the same are applicable to Customer. Customer shall indemnify and hold Bank, its officers, directors, agents and employees harmless from and against any and all claims, demands, costs, fines, penalties, losses, warranties, liabilities or expenses (including attorneys' fees and costs) resulting directly or indirectly from (a) a breach or non compliance with such rules (including without limitation the Rules), regulations or operating procedures by Customer; (b) the delay of any clearing house or any financial institution other than Bank in crediting, or the failure of such institution to credit the amount of any transaction; (c) any breach of the Agreement by Customer, including without limitation, of any covenant, representation or warranty contained herein; or (d) the claims of any third party arising from the Services provided hereunder.

Customer may utilize a courier, armored or otherwise, to deliver or receive banking transactions, and in so doing, agrees at all times and in all respects that the (a) courier is the Agent of Customer and not of Bank; (b) Bank makes no representation or warranty regarding, and assumes no responsibility with respect to, any services performed or promised by courier; and (c) Customer assumes all risk of loss (including loss or theft by third parties or employees of Customer or courier) prior to Bank's acceptance of deliveries from courier and subsequent to courier's acceptance of deliveries from Bank, unless the courier is a Bank Armored Courier. Customer agrees it and courier will be responsible for all loss recovery procedures and processes, unless the courier is a Bank Armored Courier, although Bank will undertake reasonable efforts to facilitate loss recovery.

In the event Customer requests Bank to provide Services to a parent company, subsidiary, affiliate, or other commonly owned Company, Customer agrees it shall be jointly and severally liable for such Company's obligations under the Agreement. If this account is owned by a corporation, partnership or other organization, individual liability is determined by the laws generally applicable to that type of organization.

### EE. NO IMPLIED WAIVER.

No failure by either party to insist upon strict performance of any term or obligation in the Agreement, or to exercise any right or remedy under the Agreement, shall constitute a waiver of any such term, obligation, right or remedy.

### FF. STATEMENTS - CUSTOMER'S DUTY TO REPORT UNAUTHORIZED SIGNATURES, ALTERATIONS AND FORGERIES.

Customer must examine its statement of account with "reasonable promptness." If Customer discovers (or reasonably should have discovered) any unauthorized signatures or alterations, Customer must promptly notify Bank of the relevant facts. As between Customer and Bank, if Customer fails to do either of these duties, Customer will have to either share the loss with Bank, or bear the loss entirely itself (depending on whether Bank used ordinary care and, if not, whether Bank contributed (or in Arizona, substantially contributed) to the loss). The loss could be not only with respect to items on the statement but other items with unauthorized signatures or alterations by the same wrongdoer.

Customer agrees that the time Customer has to examine its statement and report to Bank will depend on the circumstances, but will not, in any circumstance, exceed a total of 30 days from when the statement is first sent or made available to Customer.

Customer further agrees that if it fails to report any unauthorized signatures, alterations or forgeries in its account within 60 days of when Bank first sends or makes the statement available, Customer cannot assert a claim against Bank on any items in that statement, and as between Customer and Bank the loss will be entirely Customer's. This 60-day limitation is without regard to whether Bank used ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this subsection.

**Customer's duty to report other errors** - In addition to Customer's duty to review its statements for unauthorized signatures, alterations and forgeries, Customer agrees to examine its statement with reasonable promptness for any other error - such as an encoding error. Customer agrees that the time it has to examine its statement and report to Bank will depend on the circumstances. However, such time period shall not exceed 60 days. Failure to examine Customer's statement and report any such errors to Bank within 60 days of when Bank first sends or make the statement available precludes Customer from asserting a claim against Bank for any such errors on items identified in that statement and as between Customer and Bank the loss will be entirely Customer's.

### GG. CLAIM OF LOSS.

If Customer claims a credit or refund because of a forgery, alteration, or any other unauthorized withdrawal or transaction, Customer agrees to cooperate with Bank in the investigation of the loss, including giving Bank an affidavit containing whatever reasonable information Bank requires concerning Customer's account, the transaction, and the circumstances surrounding the loss. Customer will notify law enforcement authorities of any criminal act related to the claim of lost, missing, or stolen checks or unauthorized withdrawals. Bank will have a reasonable period of time to investigate the facts and circumstances surrounding any claim of loss. Customer agrees that Customer will not waive any rights it has to recover its loss against anyone who is obligated to repay, insure, or otherwise reimburse Customer for its loss. Customer will pursue rights or, at Bank's option, assign them to Bank so that Bank may pursue them. Bank's liability will be reduced by the amount Customer recovers or is entitled to recover from these other sources.

### HH. CUSTOMER'S RETENTION OF BUSINESS RECORDS.

Customer has obtained and shall maintain in its regular business records and make available to Bank upon reasonable demand, for a period of seven years after termination of the Service, adequate documentary evidence of proper authorization from the account holder of each account, executed by the duly authorized officer(s) of the company.

### II. SEVERABILITY.

Should any provision of the Agreement, contravene any applicable law or regulation of any regulatory agency, or should any provision be held invalid or unenforceable by a court or regulatory body of competent jurisdiction, then each such provision shall be void, and all other provisions of the Agreement, or any Addendum hereto, shall remain in full force and effect.

### JJ. SETOFF.

Bank may (without prior notice and when permitted by law) set off the funds in any account established by Customer against any due and payable debt Customer owes Bank now or in the future. If the debt arises from a note, "any due and payable debt" includes the total amount of which Bank is entitled to

demand payment under the terms of the note at the time Bank set off, including any balance the due date for which Bank properly accelerated under the note.

This right of setoff does not apply to this account if prohibited by law. For example, the right of setoff does not apply to this account if: (a) it is an Individual Retirement Account or similar tax-deferred account, or (b) the debt is created by a consumer credit transaction under a credit card plan (but this does not affect Bank's rights under any consensual security interest), or (c) the debtor's right of withdrawal only arises in a representative capacity. Bank will not be liable for the dishonor of any check when the dishonor occurs because Bank set off a debt against this account. Customer agrees to hold Bank harmless from any claim arising as a result of our exercise of our right of setoff.

#### **KK. LEGAL ACTIONS AFFECTING YOUR ACCOUNT.**

If Bank is served with a subpoena, restraining order, writ of attachment or execution, levy, garnishment, search warrant, or similar order relating to Customer's account (termed "legal action" in this section), Bank will comply with that legal action. Or, in Bank's discretion, Bank may freeze the assets in the account and not allow any payments out of the account until a final court determination regarding the legal action. Any fees or expenses Bank incurs in responding to any legal action (including, without limitation, attorneys' fees and Bank's internal expenses) may be charged against your account. The list of fees applicable to your account(s) provided elsewhere may specify additional fees that Bank may charge for certain legal actions.

If Bank receives an adverse claim against any account, and Bank reasonably believes that it will not be protected if the claim is ignored, Customer agrees Bank may place a hold on the affected account or move the disputed funds to a holding account. Any such action will remain in place only so long as reasonably necessary to resolve the claim or employ legal remedies to allow a court to decide such claim. Bank shall have no liability for dishonored transactions which result from such action, and Customer agrees to reimburse Bank for all costs, including without limitation attorney fees, incurred due to such adverse claim.

#### **LL. GOVERNING LAW AND RULES; COMPLIANCE WITH LAWS.**

The Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Arizona if the Customer's Account is held in Arizona or of the State of Colorado if the Customer's Account is held in Colorado, except to the extent the Federal law is controlling or provides greater rights or remedies to Bank. Any Service shall also be governed by any applicable rules, including, without limitation the Rules as to the ACH Services.

It shall be the responsibility of Customer to ensure that each transaction of every kind complies with all applicable laws, rules, and regulations, including without limitation to obtain information about and comply with sanctions imposed by OFAC (OFAC compliance Hotline 1-800-540-OFAC).

#### **MM. ASSIGNMENT; BINDING EFFECT.**

Neither party hereto shall assign or delegate any of its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. However, Bank shall be permitted without the prior consent of Customer, to assign some or all of its obligations hereunder to a processor or servicing agent designated by Bank who shall be subject to the terms for provision of the subject Service. The Agreement shall be binding upon and benefit the respective successors and assigns of Customer and Bank, subject to the provisions above.

#### **NN. ARBITRATION; NO JURY TRIAL.**

Any controversy or claim arising out of or relating to the Agreement shall be decided by arbitration which shall be conducted, upon the request of either party, before three arbitrators (unless both parties agree upon one arbitrator) designated by the AAA, in accordance with the terms of the Commercial Rules of the AAA, and, to the maximum extent applicable, the Federal Arbitration Act (Title 9 of the United States Code), or if such Act is not applicable, any substantially equivalent state law. The parties further agree that arbitrator(s) will decide which party must bear the expenses of the arbitration proceedings in accordance with the Agreement. The parties agree that any right to a trial by jury is waived.

#### **OO. ATTORNEYS' FEES.**

In the event of any conflict pertaining to the subject matter of the Agreement and in addition to any remedies provided herein or by applicable law, the prevailing party shall be entitled to recover all costs and expenses incurred by the prevailing party in defending itself or in enforcing its rights, including, without limitation, court costs, arbitrator fees, fees of consultants, and reasonable attorneys' fees.

#### **PP. ENTIRE AGREEMENT.**

Each party has read the Agreement and agrees to be bound by its terms and conditions. The Agreement supersedes all prior verbal or written agreements and now constitutes the complete agreement between the parties with regard to its subject matter and cannot be altered except as provided herein. In the event of a conflict between any provisions of the Agreement, the provisions selected by Bank shall control.

#### **QQ. FURTHER ASSURANCES.**

The parties agree to execute and deliver all additional documents and give all further assurances reasonably necessary to carry out the intent of the parties with respect to the Services.

#### **RR. AUTHORITY.**

The individual(s) executing the Sales Agreement represent and warrant (a) that the Sales Agreement is executed and the Agreement is accepted as Customer, or that such individual(s) have full right, power and authority to do so on behalf of Customer and that execution and performance of the Agreement by Customer has been authorized by all necessary corporate, membership or partnership action, as the case may be and (b) that each transaction, transfer or commingling of funds authorized, required or permitted hereunder or by any Service or requested by Customer, and all other aspects of the performance hereby, have been duly authorized, are not in violation of any agreement, by-law or board resolution of Customer or any of its affiliates or subsidiaries, nor are in violation of any applicable federal, state, local law, regulation, or of any decree, judgment, or order of any judicial or administrative authority. Each representation and warranty contained herein shall be continuing and shall be deemed to be repeated upon Bank's effecting each transaction, transfer or commingling of funds authorized hereunder.

#### **SS. CHANGES, SUPPLEMENTS OR AMENDMENTS.**

The Agreement, including the Security Procedures, may be changed, supplemented, or amended from time to time by Bank. Notification of any changes, supplements, or amendments will be provided to Customer by posting on Bank's website. Customer agrees that the Agreement, including the Security Procedures, may be changed, supplemented, or amended in this manner. Customer's failure to object in writing to the changes, supplements or amendments or Customer's continued use of Customer's accounts or of the Services without written objection will be Customer's acceptance of the changes, supplements and amendments. Customer's rejection of any changes, supplements, or amendments to the Agreement is cause for Bank to suspend or terminate the depository relationship with or the Services provided to Customer.

#### **TT. UNLAWFUL INTERNET GAMBLING NOTICE.**

Restricted transactions as defined by Federal Reserve Regulation GG are prohibited from being processed through this account or relationship. Restricted transactions generally include, but are not limited to, those in which credit, electronic fund transfers, checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by others in unlawful Internet gambling.

#### **II. INTERNET SERVICES.**

Bank's information reporting systems allow Customer to access information and utilize Services over the internet. From time to time, Bank may add additional features or Services to its internet services, and those additional features or Services will be governed by the terms of the Agreement, and other applicable agreements, including account agreements, between Bank and Customer.

Customer acknowledges the importance of following the Security Procedures and maintaining the Security Codes in the strictest confidence.

Customer shall run antivirus software before transmitting data to or through any website used in connection with the Authorized Accounts or the Services. Customer may use any commercially available, industry recognized antivirus software of the type that detects and disinfects viruses automatically, without the need for Customer to execute virus scanning for each file manually. Customer shall update its antivirus software on a regular basis to maintain a commercially reasonable level of security for use in banking transactions.

#### **III. ACH SERVICES.**

Upon Bank's approval Customer may initiate Entries through Bank for deposit to, and for payment from, accounts maintained at Bank, by means of the ACH system, and Bank shall act as an Originating Depository Financial Institution according to the terms of the Agreement.

#### **A. ADDITIONAL DEFINITIONS APPLICABLE TO ACH SERVICES.**

Unless otherwise defined herein, capitalized terms in this Section III shall have the meanings prescribed in the Rules.

#### **B. TRANSMISSION OF ENTRIES.**

Customer will transmit Entries to Bank at the location, in the manner, and before the deadlines, all as specified by Bank from time to time. The total dollar amount of Entries, and the frequency of the Entries shall not exceed the Limits imposed by Bank from time to time, and shall not in any event exceed the funds available for payment of the Entries in the Settlement Accounts. Customer authorizes Bank to transmit all Entries received by Bank from Customer in accordance with the Agreement, and to credit or debit the Entries to the specified Authorized Accounts.

Bank has no responsibility for the accuracy of Entries provided by Customer. Customer may initiate credit or debit Entries to accounts designated by Customer at other financial institutions in conformance with the Rules.

### C. RULES.

Customer has obtained, or has access to, the Rules. Customer agrees to comply with, and be bound by, the Rules. Customer will be responsible to procure updates and amendments to the Rules and to comply with them without express notice from Bank. In the event Customer violates any of the Rules and NACHA imposes a fine on Bank because of Customer's violation, Bank may charge the fine to Customer. Customer agrees that Bank has the right to conduct an audit of Customer's ACH origination processes and procedures to ensure compliance with the Rules.

### D. SOFTWARE.

Bank may from time to time provide and support Bank Software to license or sublicense to Customer which will permit Customer to originate independent Entries. Customer Software must create files that are in NACHA format, and must conform all Entries to the format, content, and specifications contained in the Rules.

### E. BANK OBLIGATIONS.

Subject to the provisions of the Agreement, Bank shall in a timely manner and in accordance with the Rules, process, transmit, and settle for the Entries received from Customer.

### F. WARRANTIES.

Customer warrants to Bank all warranties Customer is deemed by the Rules to make with respect to Entries originated by Customer. Without limiting the foregoing, Customer warrants and agrees that:

1. each Entry is accurate, is timely, has been authorized by the party whose account will be credited or debited and otherwise complies with the Rules;
2. each debit entry is for a sum which, on the settlement date with respect to it, will be owing to Customer from the party whose account will be debited, is a sum specified by such party to be paid to Customer, or a correction of a previously transmitted erroneous Entry;
3. Customer will comply with the terms of the Electronic Funds Transfer Act if applicable, or UCC Article 4A if applicable and shall otherwise perform its obligations under the Agreement in accordance with all applicable laws and regulations;
4. Customer will retain the original or a copy of the customer authorizations for consumer Entries as required by the Rules for a period of not less than two years after termination or revocation of such authorization and will, upon request of Bank, furnish such original or copy to Bank; and
5. Customer shall indemnify Bank against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any of the foregoing warranties or agreements.

### G. ON-US ENTRIES.

Subject to the provisions of the Agreement, Bank will settle On-Us Entries in accordance with the Rules, but not before the Effective Date, as provided in this Section III. The Effective Date shall be determined in accordance with Bank policy then in effect.

### H. PROVISIONAL CREDIT.

Customer acknowledges that the Rules make provisional any credit given for an Entry until Bank receives final settlement. If Bank does not receive final settlement, it is entitled to reverse the Entry and provide such notice as required by the Rules.

### I. SETTLEMENT.

Customer will maintain a Settlement Account with Bank at all times that the ACH Service is available to Customer. Customer will maintain in the Settlement Account as of the applicable settlement date Available Funds sufficient to cover all credit Entries initiated by it. Customer authorizes Bank to debit the Settlement Account on the applicable settlement date in the amount of each credit Entry. Customer will maintain in the Settlement Account Available Funds sufficient to cover its Entries. Customer also authorizes Bank, without prior notice, to debit the Settlement Account or any other account of Customer for any amount payable under the Agreement. When required by Bank, Customer will maintain sufficient Available Funds in the Settlement Account at the time Customer initiates an Entry, to pay for the Entry.

### J. CANCELLATION AND AMENDMENT.

Customer shall have no right to cancel or amend any Entry after receipt of the file by Bank. However, Bank shall use reasonable efforts to act on a request by Customer to cancel an Entry before transmitting it to the ACH or settling an On-Us entry. Bank shall have no liability if it fails to cancel the Entry.

Bank may transmit a reversing Entry initiated by Customer to correct an Entry which Customer initiated in error. Customer shall notify the receiver of any reversing Entry which Customer initiates. Notification to the receiver shall include the reason for reversal and shall be made no later than the Settlement Date of the reversing Entry.

### K. REJECTION OF ENTRIES.

Bank may reject any Entry, including an On-Us entry, if it does not comply with the Rules, if the format is improper, if it violates the Security Procedures, if there are not sufficient Available Funds, or if Customer is not otherwise in compliance with the terms of the Agreement. Bank shall use its best efforts to notify Customer of such rejection no later than the Business Day such entry would otherwise have been transmitted by Bank or, in the case of an On-Us

entry, its Effective Date. Bank shall have no liability to Customer by reason of the rejection of any Entry or the fact that such notice is not given at an earlier time than that provided for herein. Bank has no obligation to originate a transaction where authorization has been revoked.

### L. NOTICE OF RETURNED ENTRY.

Bank shall use its best efforts to notify Customer of the receipt of a returned Entry no later than one Business Day after its receipt. Bank shall have no obligation to re-transmit a returned Entry if Bank complied with the terms of the Agreement and the Rules in processing the Entry. Bank shall remake Entries if the Entry was returned by the ACH operator due to mishandling of the Entries by Bank, but only if Customer provides sufficient information to remake the Entry.

### M. CHECK CONVERSION.

If Bank has approved Customer's application for ACH check conversion Services, and upon completion of such additional forms as Bank shall require, Bank shall accept Entries from Customer or Customer Vendor, and converted into ACH compliant format. Bank will process properly created POP, ARC, and BOC Entries from such check conversion in accordance with the Rules. It is the responsibility of Customer to ensure that the Entries which it initiates comply with the Rules and all applicable laws, including the requirements of OFAC. Bank may accept additional SEC codes as applicable to check conversion in the future, and such Entries will be governed by the Agreement. Upon request, Customer shall allow Bank to inspect the compliance and document retention systems of Customer and of Customer Vendor.

### N. INTERNATIONAL PAYMENTS.

An IAT entry is a debit or credit entry, which is part of a Payment Transaction involving a Financial Agency outside of the territorial borders of the United States, which is processed through the domestic ACH network, pursuant to the Rules, including the rules pertaining to International ACH Transactions. The Rules establish SEC code "IAT" for all International ACH Transactions. Customer agrees to be bound by the Rules, International ACH Transaction Rules, NACHA Operating Guidelines, and all other applicable statutes, rules and regulations pertaining to IAT, including all applicable OFAC and FinCEN rules and regulations. Customer acknowledges that IAT Entries require additional mandatory information in the computer record for such Entries within an ACH batch file. Customer expressly agrees to identify and properly initiate all IAT Entries. Before initiating an IAT entry, Customer agrees to understand and accept the rules and requirements of the national payment system of the receiving foreign country. Customer assumes the risk of currency fluctuation in all IAT Entries originated by Customer. Customer assumes the risk of rejection of its entries according to the rules of the national payment system of the receiving foreign country. Customer understands that Entries once transmitted by the Gateway Operator are irrevocable and are not subject to the Rules as they pertain to domestic Receiving Depository Financial Institutions, and are instead governed by the national payments system of the receiving foreign country.

### O. ACH POSITIVE PAY.

If Customer has activated the ACH Positive Pay module on Bank's information reporting and transaction systems, Customer will be notified of Exception Items through Bank's information reporting and transactions systems alert email notifications. Customers will instruct the Bank through Bank's information reporting and transaction systems to PAY an Exception Item, or to RETURN an Exception Item.

In the event of an interruption in the services the Customer will be notified of Exception items by email or by telephone. If the instructions are sent to the Bank by email, the instructions may be sent as a reply to the email sender or a reply to an email notification of an exception item unless otherwise indicated. If the instructions are sent to Bank by telephone, normal telephone Security Procedures for Customer's account will apply.

In any event, Customer's Instructions must be received by Bank by Bank's Decision Deadline. Bank shall have no liability for failing to give effect to instructions received after Bank's Decision Deadline, received in an unauthorized manner, or received by an unauthorized person in Bank's offices.

If Customer's instructions are not received by Bank's Decision Deadline, Bank will handle the Exception Items based upon its default handling policy then in effect. Bank's current default handling policy requires that Bank PAY all Exception Items if Bank has not received Customer's Instructions to return the Exception Item by Bank's Decision Deadline. Bank may change its default handling policy for Exception Items from time to time with 10 days prior written notice to Customer.

### P. INCONSISTENCY OF NAME AND ACCOUNT NUMBER.

Customer acknowledges that, if an Entry describes the receiver inconsistently by name and account number, payment of the Entry may be made on the basis of the account number even if it identifies a person different than he named receiver.

### Q. DATA RETENTION.

Customer shall retain data on file adequate to permit remaking of Entries for five Business Days following the date of their transmittal to Bank as provided herein and shall provide such data to Bank upon its request.



#### **R. UPIC.**

Customer may designate Accounts for use with a UPIC account identifier for receipt of payments.

#### **IV. THIRD-PARTY SENDER ACH SERVICE.**

##### **A. ADDITIONAL DEFINITIONS APPLICABLE TO THIRD-PARTY SENDER ACH SERVICES.**

Unless otherwise defined herein, all capitalized terms used in this Section IV shall have the meanings prescribed in the Rules.

##### **B. TRANSMITTAL OF ENTRIES.**

Following Bank's approval of Customer's use of this Service, Bank authorizes Third-Party Sender to transmit ACH Debit Entries originated by its customers to Bank for processing and transmittal by Bank through the ACH system, subject to the terms and conditions of the Agreement and the Rules. Bank authorizes Third-Party Sender to transmit appropriate Entries to settle for the customer transactions with the customers. Bank hereby agrees to accept such Entries for processing through the ACH system, as provided herein. The parties agree that Bank may limit the transactions initiated by Third-Party Sender to Entries of one or more specific SEC.

##### **C. TRANSMITTAL RELATED REQUIREMENTS.**

Entries transmitted by Third-Party Sender shall: (a) designate the applicable customer as the Originator thereof, (b) comply with the technical specifications and other applicable provisions of the Rules as in effect from time to time, (c) be transmitted to the location designated by Bank in subsection F, by electronic means in compliance with the formatting and other requirements specified by Bank, and in such manner that all files of Entries transmitted are received prior to the applicable deadline specified by Bank in subsection F, and (d) comply with the Security Procedures. Any such location, deadline, Security Procedure or other requirement may be changed by Bank, in its sole discretion and from time to time, upon 30 days' prior written notice to Third-Party Sender, provided, however, that, if it deems such a change appropriate to avoid a breach of security, Bank may change the required security procedure immediately upon notice to Third-Party Sender.

Third-Party Sender must notify Bank of the total dollars represented by the ACH file along with the transmission of the file.

##### **D. ORIGINATORS.**

Third-Party Sender acknowledges its role as a participant in the ACH network when it initiates Entries on behalf of Originators. Third-Party Sender agrees to be bound by and abide by the Rules in its role as a Third-Party Sender. Third-Party Sender agrees to maintain conforming agreements with every Originator for which Third-Party Sender initiates Entries, which agreements require the Originators to comply with the Rules and to be responsible for all Entries through Third-Party Sender.

Third-Party Sender agrees to monitor returns for each Originator and agrees to monitor the financial condition of each Originator, and to report all concerns to Bank as well as Third-Party Sender's plan of action to address each concern. Third-Party Sender agrees to require each Originator to indemnify Third-Party Sender and Bank for each Entry authorized (whether actually or apparently) by Originator, and for the Originator's compliance with the Rules and with applicable law, and agrees to make Bank a third party beneficiary of each such indemnity. Third-Party Sender agrees to share with Bank upon request a list of each Originator that Third-Party Sender initiates Entries for, including the industry of each such Originator. Third-Party Sender agrees to provide all relevant information regarding its Originators to Bank upon request, and shall require each Originator to respond to reasonable inquiries regarding financial information, initiation procedures, and record retention upon request of Bank. Bank may in its reasonable judgment refuse Entries initiated for any Originator after notice to Third-Party Sender.

##### **E. EFFECTIVENESS OF ENTRY.**

If an Entry (or request for cancellation or amendment of an Entry) received by Bank purports to have been transmitted or authorized by Third-Party Sender, it will be deemed effective as Third-Party Sender's Entry (or request for cancellation or amendment as the case may be) and Third-Party Sender shall be obligated to pay Bank the amount of such Entry even though the Entry (or request for cancellation or amendment as the case may be) was not authorized by Third-Party Sender, provided Bank accepted the Entry (or request for cancellation or amendment as the case may be) in good faith and acted in compliance with the Security Procedures.

If an Entry (or request for cancellation or amendment of an Entry) received by Bank was actually transmitted or authored by Third-Party Sender, Third-Party Sender shall pay Bank the amount of the Entry, (Credit Entry) or be fully responsible for such Entry (Debit Entry), whether or not Bank complied with the Security Procedures with respect to that Entry and whether or not any error in the Entry would have been detected if Bank had complied with such procedures.

##### **F. PROCESSING, TRANSMITTAL AND SETTLEMENT BY BANK.**

1. Except as provided in Section H, On-Us Entries, and Section I, Rejection of Entries, Bank shall (i) process Entries received from Third-Party Sender to

conform with the file specifications set forth in the Rules, (ii) transmit such Entries as an Originating Depository Financial Institution to the ACH Operator, and (iii) settle for such Entries as provided in the Rules.

2. Bank shall transmit such Entries to the ACH Operator by the deadline of the ACH Operator set forth below, one Business Day prior to the Effective Entry Date shown in such Entries, provided (i) Entries are received by Bank's related cut-off time set on a Business day, (ii) the Effective Date is at least two days after such Business Day, and (iii) the ACH Operator is open for business on such Business Day.

3. For the purposes of the Agreement, Entries shall be deemed received by Bank, in the case of transmittal by tape, when received by Bank at 717 17th Street 4th Floor, Denver, CO 80202, Attention: ACH Department. Delivery locations and phone numbers may be changed by Bank from time to time upon notice to Customer. Customer should consider backup methods for delivery of ACH files should the electronic mechanism be unavailable.

In the case of electronic transmission, Entries shall be deemed received by Bank when the transmission compliance with any related security procedures provided for herein is completed. All files are processed on Business Days during processing hours (8:00 a.m.-6:00 p.m. MT). Files will not be processed during non-Business Days.

If any of the requirements of clause (i), (ii), or (iii) of subsection F (2) is not met, Bank shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline of the ACH Operator.

Deadlines vary based upon transmission method, as follows:

Transmission of file via FTP must be completed by 4:00 p.m. (MT) on a Business Day to be processed on that day. Any file that is received after 4:00 p.m. MT will be processed the following Business Day.

##### **G. THIRD-PARTY SENDER CREDIT.**

Bank may establish a credit limit and transactional limits for files to be transmitted by Third-Party Sender, and may in its sole discretion reject any file that exceeds the established credit or transactional limits. The limits may be changed by Bank, in its sole discretion and from time to time, immediately upon notice to Third-Party Sender. Third-Party Sender shall provide Bank with such information as required by Bank including customer statistical reports as it relates to transaction and dollar volumes and return item rates. Additionally, Bank reserves the right to audit the operations of Third-Party Sender and shall give Third-Party Sender commercially reasonable notice of such a request.

##### **H. ON-US ENTRIES.**

Excepted as provided in subsection (I), Rejection of Entries, in the case of an On-Us Entry received, Bank shall credit or debit the Receiver's account as appropriate, in the amount of such Entry, provided the requirements set forth in clauses (i) and (ii) of subsection F(2) are met. If either of those requirements is not met, Bank shall use reasonable efforts to credit or debit the Receiver's account in the amount of such Entry no later than the next Business Day following such Effective Entry Date.

##### **I. REJECTION OF ENTRIES.**

Bank may reject any Entry which does not comply with the requirements of IV subsection B, Transmittal of Entries, IV subsection C, Transmittal Related Requirements or the applicable, Security Procedure, or which contains an Effective Entry Date more than 2 Business Days after the Business Day such Entry is received by Bank. Bank may reject an On-Us Entry for any reason for which an Entry may be returned under the Rules. Bank may reject any Entry if Third-Party Sender has failed to comply with its account balance obligations with Bank, if any. Bank may reject any entry if Third-Party Sender does not adhere to established Security Procedures. Bank shall notify Third-Party Sender of such rejection no later than the Business Day such Entry would otherwise have been transmitted through the ACH or, in the case of an On-Us entry, its effective entry date. Notices of rejections shall be effective when given. Bank shall have no liability to Third-Party Sender by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein. Bank reserves the right to reject or refuse to process Entries for Originators who exceed commercially reasonable transaction reject rates or engage in otherwise questionable or potentially criminal activity that could impair Bank's reputation or threaten Bank's ability to comply with current banking regulations, the Rules or the NACHA Guidelines. Bank may reject Entries for any reason required by the Rules.

##### **J. NOTICE OF RETURNED ENTRIES.**

Bank shall notify Third-Party Sender of the receipt of a returned entry from the ACH no later than one Business Day after the day of such receipt. Except for an Entry re-transmitted by Third-Party Sender in accordance with the requirements of subsection B, Transmittal of Entries, Bank shall have no obligation to retransmit a returned Entry to the ACH if Bank complied with the terms of the Agreement with respect to the original Entry.

##### **K. CANCELLATION OR AMENDMENT BY THIRD-PARTY SENDER.**

Third-Party Sender shall have no right to cancel or amend any Entry after receipt by Bank. However, if such request complies with the Security Procedures for the cancellation of data, Bank shall use reasonable efforts to act on a request by Third-Party Sender for cancellation of such Entry prior to

transmitting it to the ACH Operator or, in the case of an On-Us Entry, prior to crediting [or debiting] a Receiver's account, but Bank shall have no liability if such cancellation is not effected. Third-Party Sender shall reimburse Bank for any expenses, claims, demands, costs, losses, damages or fees, including reasonable attorneys' fees, Bank may incur in effecting or attempting to effect the cancellation or amendment of an Entry.

#### **L. STATUS OF THIRD-PARTY SENDER.**

The parties hereto acknowledge and agree that Third-Party Sender is acting as or on behalf of the Originator. Third-Party Sender shall be responsible for providing any funds to Bank to cover any and all Entries it transmits or is subsequently returned or rejected.

#### **M. TAXES.**

Third-Party Sender shall be responsible for payment of any sales, use, excise, value added, utility or other similar taxes relating to the Third-Party ACH Services.

#### **N. NOTIFICATIONS OF CHANGE.**

Bank shall provide Third-Party Sender all information, as required by the Rules, with respect to each NOC Entry or Corrected NOC Entry received by Bank relating to Entries transmitted by Third-Party Sender. Bank must provide such information to Third-Party Sender within two Banking Days of the Settlement Date of each NOC or Corrected NOC Entry. Third-Party Sender shall ensure that changes requested by the NOC or Corrected NOC are made by, or on behalf of, the Originator within six (6) Banking Days of Third-Party Sender's receipt of the NOC from Bank or prior to initiating another entry to the Receiver's account, whichever is earlier.

#### **O. OBLIGATIONS OF THIRD-PARTY SENDER AS THE THIRD-PARTY SENDER UNDER THE RULES.**

Except for any Entry initiated by Third-Party Sender as an Originator, in addition to any other duties, responsibilities, warranties, representations and liabilities under the Agreement, for each and every Entry transmitted by Third-Party Sender to Bank, Third-Party Sender represents and warrants to Bank and agrees that Third-Party Sender shall: (i) perform all of the duties, including, but not limited to, the duty to identify Originators; (ii) assume all of the responsibilities, including, but not limited to, the responsibilities of ODFIs and Originators; (iii) make the warranties, including, but not limited to, the warranties of ODFIs and the warranty that Originators have agreed to assume the responsibilities of Originators under the Rules; (iv) make all of the representations of a Third-Party Sender in accordance with the Rules; and (v) assume all of the liabilities, including but not limited to, liability for indemnification for failure of an Originator to perform its obligations as an Originator.

#### **P. PAYMENT BY THIRD-PARTY SENDER FOR ENTRIES; PAYMENT BY ODFI FOR ENTRIES.**

- (a) Third-Party Sender shall pay Bank the amount of each credit Entry transmitted by Bank pursuant to the Agreement on the date such Entries are sent to Bank for transmittal.
- (b) Third-Party Sender shall promptly pay Bank the amount of each debit Entry returned by an RDFI that was transmitted by Bank pursuant to the Agreement.
- (c) Bank shall pay Third-Party Sender the amount of each debit Entry transmitted by Bank pursuant to the Agreement on the Settlement Date with respect to such Entry.
- (d) Bank shall promptly pay Third-Party Sender the amount of each credit Entry returned by an RDFI that was transmitted by Bank pursuant to the Agreement.

#### **Q. THE SETTLEMENT ACCOUNT.**

Bank may, without prior notice or demand, obtain payment of any amount due and payable to it by debiting the accounts of Third-Party Sender. Third-Party Sender shall at all times maintain a balance of Available Funds in its designated Settlement Account sufficient to cover its payment obligations under the Agreement. In the event there are not sufficient funds in the Settlement Account to cover Third-Party Sender's obligations under the Agreement, Third-Party Sender agrees that Bank may debit any account maintained by Third-Party Sender with Bank or that Bank may set off against any amount it owes to Third-Party Sender, in order to obtain payment of Third-Party Sender's obligations under the Agreement.

#### **R. ACCOUNT RECONCILIATION.**

Entries transmitted by Bank or credited to a Receiver's account maintained with Bank will be reflected on Third-Party Sender's periodic statement issued by Bank with respect to the account. Third-Party Sender agrees to notify Bank of any discrepancy between Third-Party Sender's records and the information shown on any periodic statement. If Third-Party Sender fails to notify Bank of any discrepancy within thirty (30) days of the receipt of the periodic statement, or such greater time as required by applicable law, Third-Party Sender agrees that Bank shall not be liable for any other losses resulting Third-Party Sender's failure to give such notice. If Third-Party Sender fails to notify Bank of any such discrepancy within one hundred eighty days of receipt of such periodic statement, or such greater time as required by applicable law, Third-Party Sender shall be precluded from asserting such discrepancy against Bank.

#### **S. THIRD-PARTY SENDER INDEMNIFICATION.**

In addition to any other indemnity or hold harmless provision of the Agreement,

Third-Party Sender shall be responsible for and shall indemnify Bank, its officers, directors, agents and employees from any warranties, costs, fines and penalties arising from the Entries initiated by Third-Party Sender. Without limiting the generality of the foregoing, Third-Party Sender shall indemnify Bank, its officers, directors, agents and employees, and hold harmless Bank from and against all warranties, costs, damages, claims, demands and fees, including reasonable attorneys' fees arising in any manner from any Entries initiated by Third-Party Sender without proper authorization from the Originator, from any Entries initiated by Third-Party Sender in violation of its own security procedures with its customers, from any Entries initiated as a result of fraud upon the Originator or negligence of the Originator, resulting in an unauthorized Entry, from Third-Party Sender's acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmissions, (or for the authorization of any Entry received from Third-Party Sender)) or those of any other person, including, without limitation, any Fed Reserve Bank, ACH Operator or transmission or communications facility, any Receiver or RDFI (including, without limitation, the rejection of an Entry by such Receiver or RDFI), and no such person shall be deemed Bank's agent. Third-Party Sender shall be responsible to pay Bank for all such Entries.

#### **T. REPRESENTATIONS AND AGREEMENTS.**

With respect to each Entry initiated by Third-Party Sender through Bank, Third-Party Sender represents and warrants to Bank and agrees that (a) each person shown as the Receiver on an Entry received by Bank from Third-Party Sender has authorized the initiations of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry, (b) such authorization is operative at the time of transmittal or crediting by Bank as provided herein, (c) Entries transmitted to Bank by Third-Party Sender are limited to those types of Entries set forth in Section B hereof, (d) Third-Party Sender shall perform its obligations under the Agreement in accordance with all applicable laws and regulations, including the sanctions and law as administered by OFAC, and (e) Third-Party Sender shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the provision making payment of an Entry by the Receiving Depository Financial Institution to the Receiver provisional until receipt by the Receiving Depository Financial Institution of final settlement for such Entry. Third-Party Sender specifically acknowledges that it has received notice of the Rules regarding provisional payment.

#### **U. LIMITATIONS ON BANK LIABILITY.**

- (a) In the performance of the services required by this Section III, Bank shall be entitled to rely solely on the information, representations, and warranties provided by Third-Party Sender, and shall not be responsible for the completeness thereof. Bank shall be responsible only for performing the Services expressly provided for in this Section, and shall be liable only for its gross negligence or willful misconduct in performing those Services. Bank shall not be responsible for Third-Party Sender's acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmissions, or for the authorization of any Entry received from Third-Party Sender) or those of any other person, including, without limitation, any Fed Reserve Bank, ACH Operator or transmission or communications facility, any Receiver or RDFI (including, without limitation, the rejection of an Entry by such Receiver or RDFI), and no such person shall be deemed Bank's agent.
- (b) Without limiting the generality of the foregoing provisions, Bank shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in Bank's reasonable judgment otherwise would violate any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

#### **V. INCONSISTENCY OF NAME AND ACCOUNT NUMBER.**

Third-Party Sender acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by Bank to the RDFI may be made by the RDFI (or by Bank in the case of an On-Us Entry) on the basis of the account number supplied by Third-Party even if it identifies a person different from the named Receiver, and that Third-Party Sender's obligation to pay the amount of the Entry to Bank is not excused in such circumstances.

#### **W. REPRESENTATIONS AND WARRANTIES FOR CONSUMER DEBIT ENTRIES.**

With respect to any consumer Debit Entry initiated by Third-Party Sender through Bank, Third-Party Sender represents and warrants to Bank as follows:

##### **1. For Internet-Initiated Entries:**

- a. Third-Party Sender has employed a commercially reasonable fraudulent transaction detection system.
- b. Third-Party Sender has used commercially reasonable procedures to verify that routing numbers are valid.
- c. Third-Party Sender has established a secure Internet session with each Receiver utilizing a commercially reasonable security technology providing a level of security that, at a minimum, is equivalent to 128-bit encryption technology prior to the Receiver's key entry of any banking information, including but not limited to, the Receiver's financial institution routing number, account number, and PIN number or other identification symbol.
- d. Third-Party Sender conducts an annual audit to ensure that the financial information it obtains from Receivers is protected by security practices and

procedures that include, at a minimum, adequate levels of (1) physical security to protect against theft, tampering, or damage, (2) personnel and access controls to protect against unauthorized access and use, and (3) network security to ensure secure capture, storage, and distribution.

**2. For Telephone-Initiated Entries:**

a. Third-Party Sender has (1) employed commercially reasonable procedures to verify the identity of the Receiver, and (2) has utilized commercially reasonable procedures to verify that routing numbers are valid.

**X. ASSURANCES.**

Third-Party Sender shall at all times have proper authorization and documentation for its Debit Entries, and shall maintain its documentation as required by the Rules. Third-Party Sender shall take responsibility for and shall hold Bank harmless from improper or improperly documented transactions, including responsibility for any fines or penalties imposed upon Bank as ODFI for any such transactions initiated or requested by Third-Party Sender.

**Y. COMMENCEMENT.**

Third-Party Sender may begin transmitting Entries pursuant to the terms of the Agreement on behalf of a Bank Customer upon the date specified by Bank by notice to Third-Party Sender.

**V. WIRE TRANSFER SERVICE.**

Upon Bank approval of Customer's use of this Service, Customer may authorize the Wire Transfer of funds from Authorized Accounts at Bank at such times, and in such amounts as Customer may from time to time direct.

**A. WIRE TRANSFER SERVICES.**

Bank shall issue a Wire Transfer to transfer Available Funds from the Authorized Accounts in accordance with a Wire Transfer Payment Order received by Bank in a form acceptable to Bank. Bank may make such Wire Transfer by any reasonable means, including without limitation, the use of such intermediary bank or banks as Bank deems advisable.

If requested by Customer and agreed to by Bank, Customer may initiate a standing payment order, which is one where Customer pre-programs the beneficiary, the beneficiary's financial institution, and the accounts to be debited and credited and such information remains constant for subsequent payment orders. Customer shall provide Bank with the necessary information to execute the standing payment order, including, without limitation, the dollar amount to be transferred or the desired pre-established balance, the frequency of the order and the day of the week or month when the payment order is to be executed. Customer may terminate a standing payment order at any time upon receipt by Bank of a written notice.

If Customer issues a Wire Transfer Payment Order which initiates a Wire Transfer to a recipient in a foreign country, Bank may convert the funds to the currency of the destination country at the option of Bank, unless otherwise agreed with Customer. If Bank converts the currency to the currency of the destination country, Bank will make the conversion at Bank's then-prevailing rate of exchange, and will transfer the converted funds to the recipient in the destination country pursuant to Customer's Authorized Instructions. Customer shall bear the risk of intervening currency fluctuation, and Customer shall be responsible for paying Bank's prevailing rates for both the purchase and the sale of the foreign currency.

If requested by Customer and agreed to by Bank, Customer authorizes Bank to debit Customer's account(s) with Bank upon receipt of a Fedwire Drawdown Request, and to send funds to the Requesting Bank. Each transfer will be done on the Business Day Bank receives the incoming request from the Requesting Bank if the request is received within a reasonable time to determine whether Customer's Account has sufficient Available Funds and to obtain access to the Federal Reserve network prior to the end of Business Day.

Customer's obligation to pay Bank the amount of the funds transfer in the event that the Fedwire message does not identify the same account or financial institution is not excused in such circumstances. When names and numbers are inconsistent, the numbers shall control. With respect to incoming wire transfers that do not indicate an account number recognizable to Bank; Bank may return the Wire Transfer to the sending financial institution without incurring any liability. Customer does not have the right to reverse, adjust, or revoke any Fedwire message after it is received by Bank; however, Bank will use reasonable efforts to act on such a request by Customer to reverse, adjust or revoke such message before Bank has sent the outgoing Wire Transfer. With respect to an outgoing Wire Transfer already transmitted by Bank, Bank shall, at Customer's request, request the receiving financial institution to return funds previously transferred. Customer understands and agrees that the receiving financial institution may or may not comply with any such request.

Customer's authorization for reverse wire requests shall remain in effect until Customer gives written notice to Bank. Bank will have a reasonable time to act on any written notice received from Customer.

In consideration of Bank's compliance with this authorization, Customer agrees Bank's treatment of any charge, and Bank's rights with respect to it, shall be

the same as if the entry were initiated personally by Customer. Bank shall have no liability if any charge is dishonored.

**B. TIMING.**

Unless the Authorized Instructions otherwise direct, Bank shall initiate the Wire Transfer on the Business Day on which the Wire Transfer Payment Order is received. If the Wire Transfer Payment Order is received after the Cut-off Time, Bank shall initiate the Wire Transfer on the next Business Day.

**C. DECLINED TRANSACTIONS.**

Bank may reject a Wire Transfer Payment Order if the format of the Authorized Instructions is improper, if Customer has not complied with the Security Procedures, if Bank has a concern about the authenticity, authority and accuracy of the Payment Order, if there are not sufficient Available Funds, or if Customer is not otherwise in compliance with the terms of the Agreement. If Bank receives a Cancellation Order that does not comply with Security Procedures, Bank may, but shall not be required to, decline to issue the Wire Transfer. Bank has no obligation to originate a Wire Transfer where authorization has been revoked.

**D. NOTIFICATION.**

In the event Bank declines to make a Wire Transfer, or in the event Bank refuses to honor a Cancellation Order, Bank shall notify Customer before the Cut-off Time, by telephone call directed to one of the Authorized Agents at the telephone number provided by Customer. If Bank cannot reach Customer by telephone after reasonable attempts to do so, Bank may provide notice by email or fax, and such notice shall be mailed to Customer on the same Business Day. Bank shall have no obligation to notify Customer of Bank's failure to honor any Wire Transfer Payment Order for which Bank has received and honored a Cancellation Order that complies with the Security Procedures.

**E. CANCELLATION AND AMENDMENT.**

Bank shall cancel a Wire Transfer Payment Order upon receipt of a Cancellation Order that complies with the Security Procedures, provided Bank has not already issued the Wire Transfer. Authorized Instructions may not be amended. Authorized Instructions may be cancelled and new Authorized Instructions may be issued. In all amendments and cancellations, Bank shall have a reasonable time to implement the changes to the prior Wire Transfer Payment Order or Cancellation Order, and Bank shall have no liability if the prior orders are executed before Bank can reasonably implement the amendment or cancellation.

**F. REFUND.**

In the event a Wire Transfer Payment Order of Bank, issued in acceptance of Customer's Authorized Instructions, is not completed for any reason, Bank shall not be required to refund any funds to Customer until Bank has received satisfactory confirmation of cancellation of the Wire Transfer. In the case of a refund to Customer, Bank may deduct all expenses it may have incurred in connection with the uncompleted transfer, including any losses from currency valuations or fluctuations at the time of the refund.

**G. WARRANTIES OF CUSTOMER.**

1. Customer represents and warrants to Bank that the Authorized Instructions to Bank is for and on behalf of Customer, unless otherwise stated.
2. Customer will comply with the terms of the Electronic Funds Transfer Act if applicable, or UCC Article 4A if applicable and shall otherwise perform its obligations under the Agreement in accordance with all applicable laws and regulations.

**H. LIABILITY OF BANK.**

In addition to other limits on Bank's liability set forth in the Agreement, Bank shall not be liable to Customer for any losses, damages, claims or causes of action arising from:

1. Bank's declining to conduct any funds transfer in accordance with the subsection governing Declined Transaction;
2. the act or omission of any other receiving bank, beneficiary's bank, or other person or entity in connection with a funds transfer initiated by Customer and Bank; or
3. losses experienced in the international transfer of funds.

Claims for interest compensation are subject to the National Council for Uniform Interest Compensation (NCUIC) for domestic transactions and the U.S. Council of International Banking (USCIB) rules for international transactions.

**I. ACKNOWLEDGMENT BY CUSTOMER.**

Customer acknowledges that:

1. Customer shall be solely liable for any Authorized Instructions received by Bank that are the result of unauthorized use of or access to the Security Procedures, whether by agents or employees of Customer, by third parties or otherwise
2. Bank may rely on the identifying number of any intermediary or beneficiary's bank included in Customer's Wire Transfer Order as proper and conclusive identification of such intermediary or beneficiary's bank, even though Customer's Wire Transfer Order also identifies such intermediary or beneficiary's bank by name; Customer shall be responsible

for any mistake in such number(s) as provided to Bank and Bank has no duty to verify any identifying number provided by Customer.

- The beneficiary's bank may make payment on Customer's Wire Transfer Order on the basis of an identifying or bank account number, even if such number identifies a person other than the beneficiary named in the payment order; Customer shall be responsible for any mistake in such number as provided to Bank; and Bank has no duty to verify any identifying or bank account number provided by Customer.

## **VI. CASH VAULT.**

### **A. CASH VAULT SERVICE.**

Upon Bank's approval of Customer's use of this Service, Bank agrees to accept deposits of Items by Customer into the Authorized Account, which are delivered by the Designated Agent on Banking Days and at such locations and times as are designated by Bank to Customer from time to time. Bank agrees to permit Customer to withdraw Available Funds from Authorized Accounts and have the funds delivered to the Designated Agent for transfer to Customer. Customer may, by separate agreement with Bank, cause some or all of its currency to be held separate from other currency held by Bank at such vault location as Bank may designate from time to time.

### **B. TIMING.**

All Items properly received by Bank in the Depository Bag will be processed for deposit to the Authorized Account through normal banking procedures and will be credited to the Authorized Account on the same day, if delivered before Bank's deadline on any Banking Day.

If Customer has Smart Safe(s), upon receipt of the Smart Safe Report, Bank will provide Customer with Daily Smart Safe Credit as shown in the applicable Smart Safe Report. Any required adjustment will be made following Bank's receipt of the applicable Depository Bag in accordance with the preceding paragraph. If the applicable Depository Bag is not delivered to Bank within one (1) Business Day of the date such delivery is required under the agreement between Customer and the provider of the Smart Safe, the amounts credited to Customer related to such Depository Bag shall be deducted from Customer's account on the next Banking Day.

### **C. ADDITIONAL SECURITY PROCEDURES.**

In addition to the Security Procedures in the Agreement, the following additional Security Procedures shall apply to the Cash Vault Service.

- The delivery of Items and receipt of cash withdrawals shall be done by an Authorized Agent, who shall be identified to Bank. The use of Security Codes for identification of the Authorized Agent is optional, but if Customer elects not to use them, Customer shall be responsible for all losses which such Security Codes could have prevented regardless of the conduct of Bank. Bank reserves the right to provide Security Codes and require that they be used in placing a cash Withdrawal Order.
- If arranged by Customer, Bank shall verify that a Withdrawal Order is authorized by confirming the identification code that accompanies the order with the code furnished to Bank by Customer. Bank may, in its sole discretion, but shall not be obligated to, verify cash orders by telephone call-back or other verification. Customer agrees that the identification code security procedure is commercially reasonable.
- Bank shall have no responsibility to verify the Authorized Instructions, if the Authorized Instructions are made in compliance with the Security Procedures. However, Bank may (without being required to do so) obtain additional verification of any Authorized Instructions or Withdrawal Orders.
- As long as Bank complies with the Security Procedures, Customer shall be responsible for unauthorized Withdrawal Orders, and shall hold Bank harmless therefrom.
- Bank may also recognize deviations from stated Security Procedures, if the Company has by custom and practice routinely ratified Withdrawal Orders representing a standard deviation from the Security Procedures.
- Customer assumes all risk of a Shipment Claim which occurs after delivery of the Items to the Designated Agent and prior to Bank's receipt thereof. Bank will have no responsibility whatsoever for Depository Bags or Items delivered to, or left with, Bank at any locations or during any hours not designated by Bank. Customer assumes responsibility for any Shipment Claim or confusion from its failure to use a proper Depository Bag, and from its failure to sort and label the contents.
- Customer shall be fully responsible for its choice of a Designated Agent, for all acts and omissions of such Designated Agent and for any contractual relationships it may enter into with such Designated Agents. The Designated Agent will be an agent of, and under the direction of, Customer and not of Bank.
- Customer may designate which Authorized Agent may be contacted by Bank for verification of the type or amount of the contents of a Depository Bag.

### **D. RECEIPT OF DEPOSIT.**

Receipt of the Depository Bag by Bank shall not be effective until Bank makes written receipt therefore on a manifest sheet or other receipt according to the procedures of Bank. Bank's acceptance or acknowledgment of such manifest sheet or receipt shall not evidence Bank verification of the contents of the Depository Bag or accuracy of the deposit slip. It is specifically agreed that Bank will not verify the amount of the deposit contained in the Depository Bag

upon Bank's receipt of the Depository Bag, but that Bank will later verify the amount of said deposit in accordance with its normal banking practices.

If the deposit is submitted to Bank, but not in compliance with the requirements of the Agreement, Bank may reject said deposit and refuse to process it, or Bank may, but shall not be obligated to, contact Customer by telephone and attempt to verify the contents of the Depository Bag before accepting the Items for deposit.

### **E. DEPOSIT PROCESSING.**

Bank will attempt to total the cash contained in the Depository Bag before it is deposited to the Authorized Account unless circumstances require Bank to credit the Authorized Account before verifying the cash. If the Authorized Account is credited before the cash is verified, Bank will make any necessary cash adjustments the next Banking Day. In the event of a discrepancy in the amount of cash counted by Bank and that indicated on Customer's deposit slip, Bank will follow Customer's written instructions regarding necessary adjustments as a result of such variances. Customer agrees that Bank's count of cash and other Items in the Depository Bag shall be deemed correct for all purposes. Customer understands Bank's procedures for receipt of, totaling and depositing the Items and acknowledges that these procedures are adequate and commercially reasonable. No special handling procedures for the Items will be effective unless agreed to by Bank in writing.

If Customer chooses to pre-encode its checks or other Items for deposit, Customer agrees to comply with the pre-encoded deposit procedures and specifications as may be established and revised by Bank. Customer shall be responsible for any of its encoding errors. Bank may treat certain deposits as un-encoded deposits if there is an unacceptable rate of encoding errors.

### **F. WITHDRAWAL ORDERS.**

Orders for cash withdrawals may be made to Bank in writing, through the online system, or by telephone. Each Withdrawal Order shall designate the amount of funds requested and the denominations in which the funds are to be furnished. All cash disbursement requests will be charged directly to Customer's Authorized Account unless special arrangements have been made with Bank. Customers may require their employees to use identification codes which have been previously provided to Bank. If used, Bank will use its best efforts to decline Withdrawal Orders with invalid identification codes. If identification codes are not used by Customer, Customer assumes responsibility for any losses which could have been prevented by the use of identification codes.

### **G. DECLINED TRANSACTIONS.**

Bank may reject a Withdrawal Order if the Authorized Instructions are improper, if Customer has not complied with Security Procedures, if Bank has a concern about the authenticity, authority, or accuracy of the Authorized Instructions, if there are not sufficient Available Funds, or if Customer is not otherwise in compliance with the Agreement.

### **H. DELIVERY TO DESIGNATED AGENT.**

Prior to delivery of any cash to Customer's Designated Agent, Bank will require execution by the Designated Agent of a receipt in form and substance satisfactory to Bank. Customer agrees that Bank's count of cash disbursed shall be deemed correct for all purposes. Customer agrees that it fully understands Bank's cash count procedures and that the same are adequate and accurate. Unless Customer uses a Bank Armored Courier, Bank shall have no responsibility other than to make reasonable efforts to ascertain the identity of the Designated Agent receiving Customer's cash disbursement and to obtain that Designated Agent's receipt for said cash. Unless Customer uses a Bank Armored Courier, Bank shall have no responsibility for the handling of such cash after receipt thereof by the Designated Agent. Bank reserves the right to terminate any cash disbursement at any time in its sole discretion.

### **I. ARMORED COURIER SERVICE.**

If Customer uses Bank's armored courier service, Customer authorizes the Bank Armored Courier to pick up its Shipment at the Pick-Up Location and to deliver the Shipment to the Delivery Location for deposit processing or withdrawal. Bank Armored Courier shall (a) arrive at the Pick-Up Location to request the Shipment; (b) sign a receipt for Shipments received; and (c) deliver such Shipments to the Delivery Location. Such services will be performed during Bank Armored Courier's regular business hours as scheduled by Bank Armored Courier. Bank Armored Courier's performance may be delayed due to inclement weather or some other irregularity. With respect to Property transmitted for deposit, Customer: (a) shall place all Property in a Depository Bag, properly sealed and secured, together with such documents and information as is required by Bank under this Section VI or otherwise; (b) warrants that it shall declare the actual value of each Shipment and each Depository Bag and that it shall not conceal or misrepresent any material fact or circumstance concerning the Property; (c) shall, in the event of a Shipment Claim, be bound by its declaration of value.

Bank's liability for Customer's use of this service including without limitation liability for a Shipment Claim, shall not exceed the lesser of the following: Maximum Liability Amount; the actual value of the Shipment or the declared value of the Property subject to the Shipment Claim. Bank's liability for this

service shall commence when the Shipment has been received into Bank Armored Courier's possession and shall terminate when the Shipment has been delivered to the Delivery Location, or returned to the Pick-Up Location in the event that delivery cannot reasonably be made by Bank Armored Courier. Bank's liability for a Shipment Claim shall not exceed the Maximum Liability Amount, notwithstanding anything to the contrary contained in any oral statement, invoice, receipt or other document. If Customer requests Bank Armored Courier transport an amount over the Maximum Liability Amount, the Maximum Liability Amount for a Shipment Claim arising out of that Shipment will increase only if mutually agreed in writing by Bank and Customer prior to the Bank Armored Courier receiving the Shipment and if Customer paid the additional charges associated with such transport.

#### **J. CASH VAULT BY MAIL**

If Customer is approved for Cash Vault Services by mail, Customer may mail to the Designated Agent deposits of currency, money orders and checks and Bank may cause cash withdrawals be mailed to Customer by the Designated Agent. The maximum amount of each deposit and cash withdrawal shall be established by Bank.

Customer shall use designated online electronic deposit system to create deposit Shipments and deposit tickets, shall place the Property in a Depository Bag and shall place no more than four (4) Depository Bags (provided the value thereof does not exceed the approved amount for a single deposit) in a postage paid, pre-addressed mailing envelope, using only the Depository Bag, mailing service provider, envelopes and mailing supplies provided by Bank and in accordance with the procedures and instructions provided by Bank. Each Depository Bag is considered a separate deposit and each mailing envelope is a Shipment. Each Shipment containing deposits shall be delivered by Customer to the mail service provider within 72 hours of creation of the deposit contained therein on the designated electronic deposit system. Customer shall not leave any Shipment unattended. Customer shall personally deliver each deposit Shipment to an employee of the mail service provider and shall not use any drop box provided by or used by the mail service provider. Bank shall have no liability for any deposit Shipment Claim unless the Shipment's bar code has been scanned by the mail service provider. The parties agree the mail service provider's reporting mechanisms shall be conclusive as to determining whether and when a Shipment was scanned. Bank shall process the deposit within two Business Days of receipt thereof. Customer agrees that Bank's count of cash and other Items in the Depository Bag shall be deemed correct for all purposes. Customer agrees Bank's procedures for mailing and delivery of deposits hereunder and for Bank's receipt of, totaling and depositing the Items are adequate and commercially reasonable.

Customer shall request cash withdrawals by mail by using the designated online system or the telephone order system. Customer must sign for any deliveries of cash withdrawals. The Security Procedures described in subsection C apply to cash withdrawals by mail. Customer agrees Bank's procedures for cash withdrawals by mail are adequate and commercially reasonable.

In the event of a discrepancy, Customer shall notify Bank within one Business day of receipt from the mail service provider or within five Business Days of Bank's correction of any deposit in the online system. Bank shall have a minimum of 60 days to investigate any discrepancy. Bank's determination as to any discrepancy shall be binding and conclusive on Customer.

Customer, and not Bank, shall be responsible for the safety and security of Customer's employees, representatives and agents in creating, preparing, delivering and accepting Shipments to and from the mail service provider.

Bank shall have no liability for a Shipment as to which the requirements hereof or the procedures established by Bank or Designated Agent were not followed by Customer. Bank's liability for any deposit Shipment shall be limited to the Maximum Liability Amount. For any cash withdrawal Shipment, the Maximum Liability Amount shall be the maximum amount of cash withdrawal approved by Bank under this subsection, not to exceed \$25,000. Bank's liability shall in no circumstances exceed the lesser of the applicable Maximum Liability Amount, the actual value of the Shipment or, as to a deposit, the declared value of the Property stated by Customer when the deposit was created in the applicable electronic deposit system.

#### **VII. POSITIVE PAY.**

Upon Bank's approval of Customer's use of this Service, Customer provides to Bank from time to time a list of checks initiated by Customer to enable Bank to verify by check number and amount the checks which Bank charges to the account of Customer (Positive Pay) or by payee, check number and amount (Payee Positive Pay). Bank has agreed to verify the checks which it pays according to the terms of the Agreement

#### **A. STATUTORY DEFINITIONS.**

Unless otherwise defined in the Agreement, words or phrases used in this Section shall have the meanings set forth in UCC Article 3- "Negotiable Instruments" and UCC Article 4- "Bank Deposits and Collections."

#### **B. CHECK ISSUE REPORT.**

Customer shall submit a Check Issue Report to Bank. The Check Issue Report shall accurately state the check number and the exact amount (and for Payee Positive Pay the check number, amount and payee) of each check written on each Authorized Account since the last Check Issue Report was submitted. Customer shall send the Check Issue Report to Bank in the format and medium, by the deadline(s), at scheduled day(s), and at the place(s) from time to time specified by Bank from time to time.

#### **C. REPORTING OF EXCEPTION CHECKS.**

Bank shall compare each Presented Check received by Bank. When checks are presented for payment and for charge to the Authorized Account, Bank:

1. shall not refuse to pay and charge to the Authorized Account by reason of the Agreement, each Presented Check that matches by check number and amount (and for Payee Positive pay the check number, amount and payee) a check shown in any Check Issue Report;
2. shall provide to Customer an Exception Check Report that specifies the check number and amount (and for Payee Positive Pay the check number, amount and payee) of any Exception Check; and
3. shall send the Exception Check Report to the place(s) specified by Customer and in the format and medium, and by the deadline(s), from time to time specified by Bank from time to time.

#### **D. PAYMENT AND DISHONOR OF EXCEPTION CHECKS.**

In the absence of a valid and timely Pay Request or Return Request, Bank will pay or return an Exception Check in accordance with the default option selected by Customer for each Authorized Account.

#### **E. PAY DEFAULT.**

This option is selected automatically if Customer makes no selection or revokes a selection without making a new default selection.

Where Customer has selected the pay default option to apply to an Authorized Account, Bank shall not refuse to pay and charge to the Authorized Account by reason of the Agreement, any Exception Check provided that Customer has not objected to such payment in a timely Return Request.

A Return Request shall identify each Exception Check Customer desires not to pay by the check number and amount (and for Payee Positive Pay the check number, amount and payee) and shall instruct Bank to return the Exception Check. The Return Request shall be sent to Bank in the format and medium, by the deadline(s), and at the place(s) specified by Bank from time to time. Bank shall return to the depository bank or presenting party any Exception Check Customer instructs Bank to return as provided above.

#### **F. RETURN DEFAULT.**

This Option is only selected by an Authorized Agent in writing and not revoked by Customer.

Where Customer has selected the return default option to apply to an Authorized Account, Bank shall return to the depository bank or to the party presenting the check any Exception Check presented for payment on that Account, unless Customer instructs Bank to pay the check in a timely Pay Request. The Pay Request shall identify each Exception Check that Customer desires to be paid by the check number and amount (and for Payee Positive Pay the check number, amount and payee) specified in the Exception Check Report and shall instruct Bank to pay such Exception Check. The Pay Request shall be sent to Bank in the format and medium, by the deadline(s), and at the place(s) specified by Bank from time to time.

Bank shall not refuse to pay and charge to the Authorized Account by reason of the Agreement, any Exception Check that Customer directs Bank to pay as provided above.

#### **G. CUSTOMER AND BANK COMMUNICATIONS.**

Customer or Bank, at its discretion, may each submit to the other party a revision of any communication provided for under this Section. The revised communication must (a) be sent in its entirety and not in the form of a partial amendment to the communication originally sent, (b) identify the original communication, and (c) be sent in the format and medium, by the deadline(s), and at the place(s) established by the receiving party. A properly submitted revised communication serves to revoke and replace the original communication.

Bank shall use only Check Issue Reports that comply with the Agreement and have not been revoked as provided herein in the preparation of Exception Check Reports. Customer shall use only Exception Check Reports that comply with the Agreement and have not been revoked as provided herein in the preparation of Pay Requests and Return Requests.

Bank shall not be obligated to comply with any Pay Request or Return Request received in a format or medium not permitted under the agreement, at a place not permitted under the agreement or after a deadline, but may instead treat such a Pay Request or Return Request as though it had not been received. Bank is not responsible for detecting any Customer error contained in any Check Issue Report, Pay Request or Return request sent by Customer to Bank.

#### **H. REMEDIES.**

To the extent applicable, the liability provisions of UCC Articles 3 and 4 shall govern this Service, except as modified below.

It shall constitute wrongful honor by Bank if Bank pays an Exception Check which it failed to list in a timely Exception Check Report, or if Bank pays an Exception Check listed in a timely Exception Check Report if: (a) Customer issued a timely Return Request, or (b) Customer selected the Return default option and did not issue a timely Pay Request. In the event that there is wrongful honor:

1. Bank shall be liable to Customer for the lesser of the amount of the wrongfully paid Exception Check or Customer's actual damages resulting from Bank's payment of the Exception Check.
2. Bank expressly waives any right it may have to assert that Customer is liable for the amount of the wrongfully honored Exception Check on the grounds that the Exception Check was properly payable under UCC section 4-401.
3. Bank retains the right to assert Customer's failure to exercise reasonable care under UCC sections 3-406(a) and 4-406(c). Bank's wrongful honor shall however constitute a failure of Bank to have exercised ordinary care under the loss allocation provisions of UCC sections 3-406(b) and 4-406(e).
4. Bank retains the right to assert the defense that Customer has sustained no actual damages because Bank's honor of the Exception Check discharged for value a valid indebtedness to Customer.
5. Customer has the duty to mitigate its damages.
6. If Bank credits the Authorized Account for a check wrongfully honored, Bank may at its option be subrogated to the rights and claims of Customer to recover the wrongfully paid amount from the payee or transferee of the check.

#### **I. WRONGFUL DISHONOR.**

Except as provided below, it shall constitute wrongful dishonor with respect to this Service by Bank if Bank by reason of this Section of the Agreement dishonors a check which was not an Exception Check, or if Bank by reason of this Section of the Agreement dishonors an Exception Check if: (a) Customer issued a timely Pay Request, or (b) Customer selected the pay default option and did not issue a timely Return Request.

Bank's liability for wrongful dishonor of an Exception Check shall be limited to the damages for wrongful dishonor recoverable under UCC Articles 3 and 4. Notwithstanding Section 3.3.1, Bank shall have no liability to Customer for wrongful dishonor when Bank, acting in good faith, returns an Exception Check:

1. that it reasonably believed was not properly payable;
2. if there are insufficient Available Funds on deposit in the Authorized Account;
3. if required to do so by the service of legal process on Bank or the instructions of regulatory or government authorities or courts; or
4. otherwise in conformance with Bank's rules, regulations and policies.

#### **J. RIGHTFUL PAYMENT AND DISHONOR.**

Except as provided below:

1. If Bank honors an Exception Check in accordance with a Pay Request issued by Customer, such honor shall be rightful, and Customer waives any right it may have to assert the Exception Check was not properly payable under UCC section 4-401.
2. If Bank dishonors an Exception Check in accordance with the return default option selected by Customer or in accordance with a Return Request issued by Customer, the dishonor shall be rightful and Customer waives any right it may have to assert that the dishonor was wrongful under UCC section 4-402.
3. Customer agrees Bank exercises ordinary care whenever it rightfully pays or returns an Exception Check consistent with the provisions of this Section of the Agreement.

#### **K. FAULTY INFORMATION.**

Bank shall not be liable for any losses proximately caused by its honor of a check that was not properly payable or its dishonor of a check that was properly payable if the honor or dishonor occurred because Bank, in accordance with the provisions of section 2 of the Agreement:

1. Should have shown the check as an Exception Check but failed to do so; or
2. Showed the check on an Exception Check Report but referenced the wrong check number or amount (and for Payee Positive Pay the wrong check number, amount or payee) unless Bank provided Customer with timely correct information, or unless Customer had actual knowledge of the error.

To the extent that Customer has incurred a direct loss, Bank's liability for loss of interest shall be calculated by the average Federal Funds rate at the Federal Reserve Bank of New York for the period involved. To the extent that Customer suffers a loss under the Agreement, Bank assigns to Customer any claim that Bank would have against a depository or collecting bank to recover the loss, including any claim of breach of warranty under UCC sections 4-207, 4-208, and 4-209.

#### **L. SECURITY PROCEDURES.**

Customer shall comply with the Security Procedures established by Bank, and Bank may reject Check Issue Reports, Pay Requests or Return Requests which are provided to Bank in violation of the Security Procedures. If Bank reasonably complies with the applicable Security Procedures, Customer shall be responsible for any unauthorized reports or requests originating from Customer and shall hold Bank harmless therefrom.

#### **VIII. REVERSE POSITIVE PAY.**

Following Bank's approval of Customer's use of this Service, Customer may use this Service. When a check is presented for payment against an Identified Account, Bank shall deliver the Paid File to Customer prior to the designated time, on the Business Day following the day of presentment of the check.

Customer shall compare the information provided by Bank with Customer's check issuance records. Customer shall notify Bank prior to the deadline established by Bank of Customer's decision on any reported checks that should be dishonored. Bank may rely on any instructions received from Customer that it reasonably believes to be genuine. Bank is authorized to finally pay any check listed on the Paid File unless Customer instructs Bank to return the item prior to the established deadline. Customer shall notify Bank by the designated deadline if the Paid File has not been received from Bank. Bank will make reasonable efforts to provide the Paid File to Customer and honor Customer's instructions. Bank's failure to provide a Paid File will not discharge Customer's obligation with regard to any item that was otherwise properly payable at the time of presentment.

#### **IX. ACCOUNT RECONCILIATION.**

Following Bank's approval of Customer's use of this Service, Customer may obtain at specified intervals from Bank a report of cleared checks and deposits for reconciliation with Customer's internal accounting system.

Customer shall designate the Authorized Accounts which are subject to this Service. Customer shall select the type of reconciliation service for each Authorized Account from among the reconciliation services then offered by Bank.

If full reconciliation is selected by Customer, provided it is then offered by Bank, Customer shall provide to Bank each day a list of checks Customer has issued, including date of issuance, check number, and amount. Customer may also use its list of checks for Bank's Positive Pay service. Using Customer's most recent check list, Bank will produce a reconciliation report with the issued checks that have cleared the account, and the issued checks which remain outstanding.

Nothing contained herein shall be construed to require payment of items from insufficient funds or which are otherwise subject to dishonor pursuant to the account agreements or pursuant to the Authorized Instructions from Customer.

#### **X. LOCKBOX.**

##### **A. LOCKBOX SERVICE.**

Following Bank's approval of Customer's use of this Service, Bank will establish for Customer a Lockbox to which Customer may direct the mailing of Payments from Customer's obligators. Bank is authorized and instructed to open the Mail, remove the contents and deposit the Payments to the Authorized Accounts, or transmit the credit card vouchers through the internet to Customer's credit card processor. Anything to the contrary within this Section notwithstanding, Bank may provide the Lockbox Service through a third party, and Bank may change its third party lockbox processor from time to time. Bank shall have no liability hereunder by reason of any actions or failures of the third party lockbox processor.

##### **B. INDORSEMENT.**

Bank shall supply the indorsement to credit the Payment to the account of Customer. When required by a subsequent holder, Bank is authorized to indorse the item in the name of and on behalf of Customer by any of Bank's authorized employees. In instances where the actual indorsement of Customer is required, Bank shall forward such Items to Customer as described below.

##### **C. DEPOSIT.**

Bank will create a deposit slip for each Payment or series of Payments received and indorsed by Bank, and Bank will deposit the Payments to Customer's Authorized Account, or Bank will transmit the credit card vouchers to Customer's credit card processor.

##### **D. TIMING.**

The Payments will be processed on Banking Day the Payments are received by Bank. The Payments will be processed and forwarded by Bank for payment through regular banking channels in accordance with Bank's then current procedures.

##### **E. INSPECTION.**

Bank will make its best efforts to inspect each Payment for the name of payee, signature of maker and the amount. Bank will attempt to deliver to Customer any checks without the signature of maker.

#### **F. FORWARDING.**

Bank shall physically or electronically forward to Customer periodically:

1. any material obtained by Bank other than the Payments and the envelopes containing the Payments;
2. any item which requires the physical indorsement of Customer; unsigned checks;
3. any Payments which Bank believes in its sole judgment contain any
4. material alteration or discrepancy;
5. an image of the Payments and the deposit slip; and
6. an image of the Mail received with the Payments.

Physical Lockbox materials shall be sent to Customer through first class U.S. Mail. Alternative physical delivery methods may be selected by Customer, and the cost of such delivery services shall be the responsibility of Customer.

#### **G. LIABILITY OF BANK.**

In addition to the limits on Bank's liability set forth in the Agreement, the following provisions apply to this Service.

Bank does not guarantee specific receipt or collection of Payments within a specific time frame. Bank cannot be responsible for specialized processing of Payments bearing restrictive indorsements, postdated Payments, Payments incorrectly drawn or containing incomplete or ambiguous provisions. Such Payments will be processed or rejected according to Bank's standard operating procedures unless other procedures are agreed to by Bank and Customer in writing. Bank does not guarantee the images of the Mail will be complete or legible. Bank will have no liability for the failure to provide images of all of the Mail, or for the failure to provide images of legible quality. The failure to provide complete or readable images of the Mail shall not go to the essence of the Lockbox services, and shall not be deemed a material default in Bank's agreement to provide Lockbox services. In the event that Bank shall use a third party lockbox processor, Customer agrees that Bank shall have no liability for the actions or failures of the third party lockbox processor.

#### **H. RETURNED PAYMENTS.**

If any of the Payments are returned to Bank unpaid after Bank has forwarded the same for payment and if the Payment can be re-presented, Bank has the authority to forward the item for payment a second time unless otherwise specified by Customer. If the item is not paid after being forwarded for payment the second time, the Payment shall be sent to Customer and the unpaid amount shall be charged back to Customer's Account.

#### **I. COMMUNICATION.**

Subject to Bank's then existing capabilities and requirements, and for such additional fees as Bank's then existing schedule of fees and services may provide, Bank will forward the daily deposit totals to Customer as the parties may agree from time to time.

#### **J. CREDIT CARD PAYMENTS.**

Bank may agree to transmit credit card vouchers to Customer's credit card processor as set forth in Bank's Merchant Services Agreement. Bank shall have no liability for the functioning of the internet or any incompatibility between Bank's systems and equipment, and the systems and equipment of Customer's credit card processor. Bank at its option may contract with a third party to transmit Customer's credit card vouchers, and Bank may change its third party provider from time to time. Bank shall have no additional liability hereunder by reason of any actions or failures of the third party processor. The third party processor selected by Bank shall have the capability to transmit Customer's credit card payments to Customer's credit card processor. Customer accepts the risk of any incompatibility between the equipment of the third party processor and Customer's credit card processor.

#### **K. ONLINE HEALTH CARE MANAGEMENT SERVICE.**

Bank's Online Healthcare Management Service is available for a Customer in the health care industry which has chosen to use the Lockbox Service.

#### **XI. AUTO SWEEP.**

Following Bank's approval of Customer's use of this Service, Customer may transfer balances between Subordinate Accounts and a Master Account in the exact amount necessary to maintain a target balance in the Subordinate Accounts.

Customer authorizes and directs Bank to transfer funds between the Master Account and the Subordinate Accounts to bring the balances of all Subordinate Accounts to a designated amount. Notwithstanding contrary provisions herein, Customer may draw checks against Subordinate Accounts provided that the aggregate amount of all such checks does not exceed Customer's available or collected funds on deposit in the Master Account, subject to uncollected funds, negative balance or other charges.

#### **A. TRANSFER SERVICES.**

Bank shall transfer funds between the Master Account and the Subordinate Accounts to adjust the balances in the Subordinate Accounts as directed by Customer in writing from time to time. If the designated balance in the Subordinate Account exceeds the target balance, then the excess funds will be

debited from that account and credited to the Master Account. If the balance in the Subordinate Account is less than the target balance, then the required funds will be debited from the Master Account and credited to the Subordinate Account.

#### **B. ACCOUNTS.**

Customer shall designate the Master Account and Subordinate Accounts in writing. No Customer-initiated debits will be permitted in the Subordinate Accounts. The deposits of Customer will be separately reported to Customer by Subordinate Account. Bank initiated debits to the Subordinate Accounts will be settled to the Subordinate Account and funded from the Master Account if necessary to avoid overdrawing the Subordinate Accounts.

#### **C. FREQUENCY.**

Transfers will be made daily.

#### **D. AMOUNT.**

Bank is authorized and directed to transfer funds between the Master Account and the Subordinate Accounts, to bring the ledger balance or collected balance of the Subordinate Accounts to the value designated by Customer (as designated by Customer in writing from time to time).

#### **E. CHANGES TO DIRECTIONS.**

Customer may change these directions at any time by delivering Authorized Instructions to Bank. Changes to these instructions shall be implemented by Bank within a reasonable time after Bank's receipt of the new Authorized Instructions.

#### **F. AVAILABLE FUNDS.**

Customer is responsible for maintaining Available Funds in the Master Account in an amount to cover checks and other debit items presented to the Subordinate Accounts. If there are insufficient Available Funds in the Master Account to cover the total amount of checks and other debit items presented to the Subordinate Accounts, Bank may return the checks or items to the parties who presented them for payment.

#### **XII. COMMERCIAL SWEEP ACCOUNTS.**

**NOTICE: THE INVESTMENT OPTIONS OFFERED BY BANK UNDER THE COMMERCIAL SWEEP ACCOUNT ARE NOT DEPOSITS, ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, ARE NOT OBLIGATIONS OF, OR GUARANTEED BY, THE BANK, THE UNITED STATES GOVERNMENT OR ANY AGENCY OR INSTRUMENTALITY THEREOF, AND ARE SUBJECT TO INVESTMENT RISKS, INCLUDING LOSS OF PRINCIPAL OF THE AMOUNT INVESTED.**

If a Commercial Sweep Account Investment Option has been requested by Customer and approved by Bank, Customer authorizes Bank to transfer funds on a manual or automated basis to and from the DDA and investment device designated in the schedule as described herein. Funds will be transferred between the accounts so that:

1. To the extent funds are available in either account, Customer's DDA maintains an average collected balance equal to a pre-established balance; and (b) any collected funds in the DDA that exceed the Pre-established balance are invested by Bank as directed by Customer in accordance with the Specification Sheet. Amounts invested in other investment options, including interest or other investment income, will be credited back to the DDA upon maturity. Bank may limit the amount of excess collected funds that it will invest on behalf of Customer on any particular Business Day. Bank may also impose a maximum redemption amount to bring the DDA to the Pre-established balance on a particular Business Day.
2. Bank is authorized to accept verbal instructions, including telephone instructions, from Customer representatives for the transfer of funds between Bank and Customer and between Customer's accounts. Bank may rely on any instructions received from Customer that it reasonably believes to be genuine.
3. Bank is authorized to execute as Agent for Customer all certificates of ownership and other instruments required by law or by contract. Bank shall not be accountable for errors in judgment but only for gross negligence or willful misconduct. Bank shall not be required to comply with any direction of Customer which in Bank's judgment, may subject it to liability or to defend or prosecute any suit or action unless indemnified in a manner and amount satisfactory to it.
4. Customer may, by written instrument executed by Customer and delivered to Bank, terminate this Service and withdraw from the account the principal and accumulated income upon paying all sums due to Bank and indemnifying Bank to its satisfaction against liabilities incurred in the administration of the account.
5. If Customer chooses to invest excess funds in Repurchase Agreements, Customer agrees to execute the Master Repurchase Agreement with Bank, as Bank may require from time to time. Customer also agrees that in the event of a Bank failure, Customer would be an owner of the purchased securities.
6. If a Commercial Sweep Account-Loan Option has been requested by Customer and agreed to by Bank, Customer authorizes Bank to transfer funds on a manual or automated basis to and from Customer's DDA to a

pre-established credit facility (such as a promissory note or revolving line of credit). Funds will be transferred between the accounts so that Customer's DDA maintains the pre-established balance. Funds will be drawn from Customer's credit facility if Customer's DDA falls below the pre-established balance. Funds in excess of the pre-established balance shall be applied to any outstanding balance on Customer's credit facility. The Commercial Sweep Account-Loan Option may be used in conjunction with the Commercial Sweep Account - Investment Option. This section is subject to the provisions of the Agreement and Customer's credit facility. In the event of Bank failure, funds transferred to the loan will reduce the outstanding balance, while funds remaining in the deposit account will be insured under applicable insurance coverage limits.

### **XIII. CORRESPONDENT BANK DEPOSIT SERVICES.**

Following Bank's approval of Customer's use of this Service, Customer may request that Bank establish an account at one or more of its correspondent banks for the benefit of Customer into which Customer may deposit funds, using the account information and documents provided by Bank. Customer authorizes Bank to share Customer's information with such correspondent bank(s) as may be necessary to establish this Service.

All funds in the accounts at the correspondent bank(s) shall be swept following the end of each Banking Day from the correspondent bank(s) to Bank to be deposited by Bank to Customer's designated account(s) with Bank and the transactions shall be posted in accordance with Bank's customary procedures. Customer shall pay all fees of Bank and of the correspondent bank(s) associated with this Service. Customer shall comply with all requirements of the correspondent bank(s) in making its deposits at such correspondent bank(s). No withdrawals or transfers may be made directly by Customer from the account(s) established by Bank with the correspondent bank(s). Customer shall promptly notify Bank of any discrepancies in the account transactions, in accordance with Bank's then-current account agreement or the terms and conditions governing Customer's accounts with Bank. Except to the extent Bank is able to recover from the correspondent bank(s), Bank shall have no liability to Customer for the conduct, action or failure to act of the correspondent bank(s), including without limitation, the proper processing of items presented for deposit, the sufficiency of deposit insurance, or the insolvency or failure of such correspondent bank(s).

### **XIV. REMOTE DEPOSIT IMAGING SERVICE.**

Following Bank's approval of Customer's use of this Service, Customer authorizes the imaging of its check payments in a location which is not on the premises of Bank or any of its branches, and authorizes the electronic presentation of the imaged checks for deposit into the designated accounts of Customer. Bank has agreed to provide the remote deposit services as set forth herein.

#### **A. ELECTRONIC DEPOSITS.**

Bank shall accept Authorized Deposits of Electronically Presented Checks from Customer directly or through intermediaries as may be approved in the Agreement, in accordance with the terms and provisions of the Agreement.

Bank shall accept the Electronic Deposits provided hereunder on the Business Day on which Authorized Instructions are received. If the Electronic Deposit is received after the Cutoff Time, Bank shall accept the deposit on the next Business Day.

#### **B. ACCOUNTS AND AGENTS.**

Customer shall provide Bank with written notice on Bank approved forms of the Authorized Accounts which shall be subject to the Agreement, and of the Authorized Agents who may act for Customer in establishing and modifying the Services. Any changes of Authorized Accounts or Authorized Agents shall be in writing, signed by a duly designated officer of Customer, or by e-mail from a duly designated officer of Customer, and will provide reasonable prior notice for Bank to change its records. Bank may but shall not be required to request written authorization following a notice by e-mail, and Bank may act upon the e-mail notification without waiting for written confirmation.

#### **C. SECURITY.**

Customer shall comply with the Security Procedures as provided in this Agreement, and as agreed between Customer and Bank from time to time, and Bank may reject Electronic Deposits which do not conform to the Security Procedures.

#### **D. CONVERSION OF DEPOSIT ITEMS.**

Customer agrees to create Electronic Deposits according to then-current commercially reasonable standards and procedures to ensure that the Electronic Deposits:

1. Have acceptable image quality;
2. The image accurately represents all of the information on the front and back of the original check and includes an accurate record of all MICR line information;
3. Do not contain an altered or artificial MICR line which differs in any respect from the MICR line on the check or instrument as presented to Customer;
4. Have an image capable of being processed by Bank's systems;
5. Do not contain previously scanned Items;
6. Do not contain previously deposited Items;

7. Have been processed to avoid duplicate processing of the Electronically Presented Checks;
8. Have used the electronic images only for the transmittal of the Items to Bank, and if applicable, for data retention;
9. Have any required indorsements for the legal negotiation and transfer of the Electronically Presented Checks.
10. Each paper check is indorsed "for remote deposit only".

Customer agrees that the Electronic Deposits will be used solely for the deposit of the Items in the Authorized Accounts, and for no other purpose. Customer agrees to keep all scanning devices used for Electronic Deposits in good condition, including installing upgrades, preventative maintenance and a reasonable cleaning and servicing schedule. Customer agrees to monitor the quality of the images produced by all scanning devices to ensure continuous acceptable image quality.

#### **E. ROUTING OF DEPOSIT PAYMENTS.**

Customer shall select whether to route its eligible payments through the ACH system. If Customer selects the option to route payments through different systems, Bank's systems will automatically route payments according to eligibility. Customer shall comply with all requirements of the selected payment system and shall protect Bank from Customer's violations thereof. Customer shall be responsible to understand the use of the payment systems according to the eligibility of the payments. Customer will not alter Deposit Items to improperly route Items through any of the payment systems.

#### **F. STORAGE OF DEPOSIT ITEMS.**

Customer shall store securely all original deposit items in accordance with Customer's written remote deposit record retention policy. Customer shall use commercially reasonable policies and procedures to store the original deposit Items, including secure physical storage, pending final credit of the Electronic Deposit in Customer's Authorized Accounts. Customer shall maintain and follow a commercially reasonable written document destruction policy for Customer's original deposit Items, which policy is compliant with the then-current requirements of the payment systems used to process Customer's Electronic Deposits. Customer shall document its record retention and document destruction policy at or prior to use of this Service, and review it from time to time thereafter as the policy may be amended or replaced. Bank may audit Customer's document destruction policy and procedures upon reasonable request to ensure compliance with payment system rules. Upon request of Bank from time to time, Customer shall certify that it is in compliance with its written remote deposit record retention and destruction policies.

#### **G. DECLINED TRANSACTIONS.**

Bank may reject an Electronic Deposit if the format of the transmission is improper, if Customer has not complied with the Security Procedures, if the Deposit exceeds Customer's daily dollar limit, if Bank has a concern about the authenticity, authority, clarity and accuracy of the Electronic Deposit, or if Customer is not otherwise in compliance with the terms of the Agreement. If Bank receives a Cancellation Order that does not comply with Security Procedures, Bank may, but shall not be required to, reject the Electronic Deposit. Bank has no obligation to process an Electronic Deposit if authorization has been revoked.

#### **H. NOTIFICATION.**

In the event Bank declines to accept an Electronic Deposit, or in the event Bank refuses to honor a Cancellation Order, Bank shall notify Customer by e-mail, which shall constitute written notice from Bank. Customer agrees to accept such e-mail notification as adequate written notice. Customer shall keep Bank apprised of all changes to e-mail addresses of the Administrators. Bank shall have no obligation to notify Customer of Bank's failure to accept an Electronic Deposit for which Bank has received and honored a Cancellation Order that complies with the Security Procedures.

#### **I. CUSTOMER'S COVENANTS.**

Bank shall make available to Customer a license to use software to scan, verify, quantify and transmit the Electronically Presented Checks to Bank. Customer agrees that the software is licensed to Bank and sub-licensed to Customer. Customer agrees:

1. Not to reverse engineer, decompile, disassemble, modify, translate, create derivative works, or make any attempt to discover the source code of any software involved in the remote deposit capture process;
2. Not to remove, obscure, or alter any proprietary notices, disclaimers, trademarks, or other proprietary rights;
3. Not to copy any software involved in the remote deposit capture process, except for archive purposes consistent with the licensee's archive procedures;
4. Not to export any software involved in the remote deposit capture process or underlying technology in contravention of applicable U.S. and foreign export laws and regulations;
5. Not to use the check scanner or the remote deposit software in any unauthorized manner or for any purpose other than the creation of Authorized Deposits hereunder.

#### **J. WARRANTIES OF CUSTOMER.**

Customer represents and warrants to Bank that:

1. Customer is the holder of all checks or drafts transmitted for deposit hereunder;



2. Any prior indorsements on the back of the checks or drafts are genuine and authorized;
3. After imaging, the checks and drafts will be accounted for, stored in secure storage, retained for a reasonable period, and then destroyed in accordance with Customer's document retention and destruction policies as required in subsection M (1);
4. No checks or drafts whose image is presented for deposit according to the terms hereof will be deposited more than once, either by additional imaging or by depositing the original check or draft independently of the Electronic Deposit.
5. Images sent by Customer to Bank for Electronic Deposit processing shall be of reasonable commercial clarity as defined from time to time by Bank, and failure of any deposit or transmission to maintain reasonable commercial clarity may be rejected by Bank.
6. Images sent by Customer to Bank for Electronic Deposit processing shall represent the payor's order for the payment of valid debts owing to Customer, and Customer shall not deposit any Items knowing that the payor has not authorized, or has revoked authorization for, the payment.
7. Customer has adopted security systems, policies and procedures to promote the safety and data security of its transactions involving its computer equipment and the use of the Internet. Customer shall only scan and store checks at commercially reasonable business operating locations. Customer's computer systems are capable of properly running the software necessary to initiate Electronic Deposits, and Customer's computer systems are compatible with Bank's systems and software. Customer's computer systems including its software will be regularly updated, including security patches as available to maintain compatibility with Bank systems and software.
8. Customer makes all of the warranties of an originator under the Rules, as amended from time to time, with respect to Automated Clearinghouse Items.
9. Customer makes all of the warranties of a re-converting bank under the Check Clearing for the Check Act with respect to Items converted to image replacement documents.

#### **K. ACKNOWLEDGMENT BY CUSTOMER.**

Customer acknowledges that:

1. Customer shall be solely liable for any Electronic Deposit received by Bank that is the result of unauthorized use of or access to the Security Procedures, whether by agents or employees of Customer by third parties or otherwise.
2. Bank shall have no responsibility to verify the Electronic Deposits, if the Electronic Deposits are made in compliance with the Security Procedures and the Agreement. However, Bank may (without being required to do so) obtain additional verification of any Electronic Deposit which causes concern.
3. As long as Bank complies with the Security Procedures, Customer shall be responsible for unauthorized Electronic Deposits, and shall hold Bank harmless therefrom.
4. Bank may also recognize deviations from stated Security Procedures, if Customer has by custom and practice routinely ratified Electronic Deposits representing a standard deviation from the Security Procedures.
5. Customer shall only use software approved by Bank to create and transmit Electronic Deposits.
6. For software obtained by Bank and made available to Customer, Bank has obtained a license of the software and has the permission of the licensor to sub-license the software to Customer pursuant to the terms of the Agreement. Bank makes no warranty or representation concerning the operation, reliability, effectiveness or security of the sub-licensed software, except to pass through any warranty made by the licensor or the owner of the software. Bank makes no representation about any such warranties.
7. All implied warranties concerning the software and hardware obtained through Bank are expressly disclaimed by Bank, and the implied warranties of merchantability and fitness for a particular purpose are expressly disclaimed herein.

#### **L. TERM AND TERMINATION.**

Either party may terminate this Service upon reasonable notice to the other party, which the parties agree will not be greater than 3 Business Days, provided however, that Bank will have a reasonable time to terminate the Services. Bank may terminate the Agreement or any Services provided to Customer at any time after the commencement of any voluntary or involuntary bankruptcy, dissolution or liquidation by or against Customer, or upon any merger or acquisition of Customer into or by any other entity, or upon the breach by Customer of the terms or conditions of the Agreement or any other agreement or obligation it has entered into with Bank or any of its affiliates, or upon any event evidencing to Bank a material deterioration in the financial status or condition of Customer or that the likelihood that the credit risks undertaken by Bank in furnishing Services hereunder may be materially increased, including, but not limited to, insufficient Available Funds to pay Items presented for payment or other return Item risks, or if Bank has reasonable cause to believe that Customer is engaged in any fraudulent or criminal activity.

#### **M. DOCUMENT RETENTION AND DOCUMENT DESTRUCTION POLICY.**

1. All original instruments that are scanned and submitted to Bank as remote deposits will be securely and safely stored for 30 days. A reproducible, legible image, microfilm or copy of the front of the instrument will be retained for two years from the settlement date of the payment of the deposited Items. The image, microfilm or copy will be securely and safely stored to avoid the inadvertent disclosure of confidential personal information.

2. All original instruments that are scanned and submitted to Bank as remote deposits will be destroyed at the end of their document retention period. The destruction procedures will be commercially reasonable to avoid the inadvertent disclosure of confidential personal information. All images, microfilm and copies of the front of the instruments will be destroyed at the end of their document retention period.

#### **XV. DEPOSITS DROPPED AT TELLER LINE.**

If Customer drops deposits at Bank's teller line, Customer shall itemize the currency and each check, draft, or other item included in the deposit on the deposit slip. Customer shall place the deposit in a bag or envelope before leaving said deposit at Bank's teller line.

Bank shall verify and process the deposit and credit Customer's account for the amount listed on the deposit ticket. If the verification discovers any discrepancy between the amount of the deposit as shown on the deposit slip and the amount of the deposit actually received, a deposit correction will be made to the account. The deposit will be credited on the Business Day it is received.

Bank shall be liable only for the deposit actually received and that which was credited to Customer's account as previously described.

The findings and verification of such deposit(s) by Bank, as performed jointly by any two officers or employees, shall be binding and conclusive upon Customer.

Customer acknowledges that the provisions hereof are for the convenience of Customer, and that clerical errors do occur, and are expected to occur in Bank's performance of its covenants hereunder.

Customer therefore agrees to assume all risks, and that Bank shall have no liability to Customer for its good faith processing of Customer's deposits as provided herein.