



**TERMS AND CONDITIONS  
TO THE  
MASTER TREASURY MANAGEMENT SERVICES AGREEMENT**

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This Terms and Conditions to the Master Agreement, (as defined below), is made between the Company ("Company") and Central Bank & Trust Company, a Kentucky banking corporation (the "Bank"), with an effective date of the later date set forth on the Master Treasury Management Services Agreement. This Terms and Conditions to the Master Agreement (as defined below), combined with the Related Agreements (as defined below), which includes the Security Procedures Supplement, (all of which may be collectively referred to as the "Agreement") all of which are incorporated by reference herein, together constitute the entire agreement between the parties, and supersede all prior agreements or representations between the parties, whether written or oral. The Agreement sets forth the general terms and conditions for the Treasury Management Services that the Bank makes available to its commercial customers. By applying for any of the Services (as defined below), the Company agrees to be bound by these terms and conditions. The Company's use of any Services will be additional evidence of its agreement to these terms and conditions.

## **I. DEFINITIONS APPLICABLE TO ALL TREASURY MANAGEMENT SERVICES**

- A.** Definitions. As used in the Master Agreement, these Terms and Conditions and any of the Subparts, the following terms will have the following meanings:
1. **"Access Credentials"** has the meaning given it in the Security Procedures Supplement.
  2. **"Accounts"** means one or more Accounts maintained with Bank as designated on Company's Application.
  3. **"Deposit Account Rules and Regulations"** means the deposit account agreement titled "Your Deposit Account Rules and Regulations" which govern the operation and use of Company's deposit account(s) with Bank, as it may be amended from time to time.
  4. **"ACH"** means an automated clearing house network used for electronic transfers of funds between deposit accounts at financial institutions.
  5. **"ACH Transfer"** means a Funds Transfer made through an ACH.
  6. **"Administrator"** means the person identified by Company in its Application and in Company's authorizing resolutions as the primary contact person for purposes of communicating with Bank regarding the Services and designating the Authorized Representatives. Bank may act as Administrator for limited purposes as set forth herein, and in such context, the Administrator will mean Bank.
  7. **"Applicable Laws"** means applicable state and federal laws, regulations, and orders, including but not limited to, the EFTA, the Federal Reserve Act, the USA Patriot Act, bank Secrecy Act, Articles 3, 4, and 4A of the UCC, the Check 21 Act, the Fair Credit Reporting Act, each as may be amended; all of the then current implementing regulations and Operating Circulars promulgated under any applicable state or federal law and through the Federal Reserve Board of Governors, including without limitation Regulation J and Regulation CC; all associated rules, regulations and guidance promulgated by OFAC, FinCEN, Fedwire, FFIEC, SWIFT, Federal Trade Commission, NACHA, the bank card association networks, the National Check Exchange, Small Value Payments Company, Viewpointe, Endpoint Exchange, or Electronic Check Clearinghouse, and the rules of any image exchange network and any other clearinghouse or other organization in which Bank is a member and whose instrumentality is employed, in whole or in part, with any Service.
  8. **"Application"** means the Treasury Management Services Application completed by Company with respect to each of the Services it has selected, and delivered to Bank, as amended or modified from time to time.

9. **“Authorized Representative(s)”** means the person or persons designated as such by the Administrator on the Application or as otherwise required by Bank.
10. **“Bank Secrecy Act”** means the Bank Secrecy Act of 1970, 12 U.S.C. 1951-1959, as it may be amended from time to time.
11. **“Business Customer”** means a customer that is chartered as a corporation, limited liability company, or other similar entity under the laws of a State or Indian Tribe who owns or holds an Account at the Bank that is used primarily for purpose other than Consumer Purposes.
12. **“Business Day”** is that day as defined in your Deposit Account Rules and Regulations for business Accounts and Consumer Accounts.
13. **“Check”** means an Original Check, as defined in Regulation CC, except that “Check” does not include a Substitute Check or a remotely created check.
14. **“Check 21 Act”** means The Check Clearing for the 21st Century Act of 2003 (12 USC § 5001, et seq.), as it may be amended from time to time.
15. **“Confidential Information”** means any information obtained by, or disclosed or made available to such party (whether in writing, verbally or by observation of objects or processes) from or by the other party, that is accompanied by a clear indication that the disclosing party considers the information to be confidential or proprietary, or is of a type that the recipient should reasonably consider it the confidential or proprietary information of the disclosing party or its licensors. Confidential Information does not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by the recipient; (ii) was in the recipient's possession before the time of disclosure; (iii) becomes available to the recipient on a non-confidential basis from another source, provided that the recipient has no actual knowledge that the source of such information was bound by and in breach of a confidentiality obligation with respect to such information; or (iv) is independently developed by the recipient without reference to or use of the disclosing party's other Confidential Information. The User Guide and any materials relating to the User Guide will be deemed the Confidential Information of Bank for purposes of this Subpart. Any nonpublic personal information regarding Company's customers shall be deemed the Confidential Information of Company for purposes of this Subpart.
16. **“Consumer Purpose”** means an Account held or funds expended for personal, family or household use.
17. **“Cut-Off Time”** means the latest time by which Company may advise Bank as to any action it must take hereunder, as set forth in these or Terms or in the applicable User Guide.
18. **“EFTA”** means the Federal Electronic Funds Transfer Act, 15 U.S.C. Section 1693, et seq. and Regulation E, as it may be amended from time to time.
19. **“Fair Credit Reporting Act”** means 15 U.S.C. §§1681-1681x, as it may be amended from time to time.
20. **“Fee Schedule”** means the schedule of fees charged by Bank for the Services, as it may be amended from time to time.

21. **“Final Available Balance”** (or “Final Collected Balance”) means the balance of collected funds in the Account at the end of each Business Day, determined by taking the ledger balance, and posting all applicable charges and credits.
22. **“Final Ledger Balance”** means the balance of funds in the Account before adjustment for all applicable charges and credits, based upon Bank’s Funds Availability Schedule.
23. **“FinCEN”** means the U.S. Department of the Treasury’s Financial Crimes Enforcement Network.
24. **“Funds Availability Schedule”** means Bank’s schedule for availability for withdrawal of deposited funds as set forth in “Funds Availability” contained in the Deposit Account Rules and Regulations.
25. **“Funds Transfer”** means a funds transfer as defined in Article 4A of the Uniform Commercial Code, if initiated by one or more “payment order” received by Bank from Company, and includes ACH Transfer orders, wire transfer orders and online bill payment orders.
26. **“Master Agreement”** means the Master Treasury Management Services Agreement between Company and Bank, as amended or modified from time to time.
27. **“Mobile Banking”** means accessing Online Banking through a specific mobile banking application (app).
28. **“NACHA”** means the National Automated Clearing House Association.
29. **“NACHA Rules”** means the NACHA Operating Rules, as they may be amended by NACHA from time to time.
30. **“ODFI”** means an originating depository financial institution with respect to entries it transmits directly or indirectly to its ACH Operator for transmittal to an RDFI and on which it is designated as ODFI, as more fully defined in the NACHA Rules.
31. **“OFAC”** means the Office of Foreign Assets Control.
32. **“Online Banking”** means Bank’s online banking system for businesses known as Commercial Online Banking Service, as is more specifically describe in Subpart G herein.
33. **“RDFI”** means a receiving depository financial institution with respect to entries from its ACH Operator for debit or credit to the accounts of receivers and on which it is designated as the RDFI, as more fully defined in the NACHA Rules.
34. **“Regulation CC”** means 12 CFR Part 229.1 et seq., as the same may be amended from time to time.
35. **“Regulation E”** means 12 CFR Part 1005.1 et seq., as the same may be amended from time to time.
36. **“Related Agreements”** means the Master Treasury Management Agreement, the User Guides, the Security Procedures Supplement, Company’s Application, as well as any other schedules or exhibits to the Application, the Deposit Account Rules and

Regulations, and all other Account agreements, policies and disclosures issued by Bank and governing the Accounts, as they may be amended from time to time.

- 37. **“Security Procedures”** means the security procedures requirements described in the Security Procedures Supplement, or as described in the User Guides, or as otherwise described in the Subparts.
- 38. **“Security Procedures Supplement”** means the Security Procedures Supplement which includes the security procedure requirements for the Services, as amended or modified from time to time.
- 39. **“Service Provider”** includes any agent, licensor, independent contractor or subcontractor that the Bank may involve in the provision of the Services.
- 40. **“Services”** means the Treasury Management Services listed in the Application. Company agrees that its use of any Service signifies its agreement of the terms and conditions of that Service regardless of whether the Service is listed as an enrolled Service designated in the Application.
- 41. **“Subpart” or “Subparts”** means any of the sections in Part II below describing the terms and conditions for the Services.
- 42. **“Substitute Check”** means a paper reproduction of a Check that satisfies the requirements and definition of Substitute Check set forth in the Check 21 Act and Regulation CC.
- 43. **“Sweep Account”** means the Account identified in the Application for Investment Sweep Services (as defined in Part II Subparts J and K) or Line of Credit Sweep Services (as defined in Part II, Subpart L).
- 44. **“Target Balance”** means the amount of collected funds to be maintained in the Sweep Account as set forth in the Application.
- 45. **“Terms”** means these Terms and Conditions to the Master Treasury Management Agreement.
- 46. **“Third Party”** means anyone other than Company or Bank, or their respective employees.
- 47. **“UCC”** means the Uniform Commercial Code as in effect in the Commonwealth of Kentucky.
- 48. **“USA Patriot Act”** means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, 31 U.S.C. 5318, as it may be amended from time to time.
- 49. **“User Guide”** means the user manuals, instructions, documentation and guides provided by Bank for use of each of the Services, including without limitation any security procedures contained therein.

## II. TERMS AND CONDITIONS APPLICABLE TO SPECIFIC TREASURY MANAGEMENT SERVICES

The following Subparts to these Terms are applicable to specific Services offered by Bank and constitute Subparts to these Terms. Bank may change the number or type of Services offered at any time.

### A. ACH ORIGATION AND THIRD PARTY SENDER SERVICES

1. Definitions. In addition to the defined terms in Part I above and terms used in the “ACH User Guide”, the following terms will have the following meanings as used in this Subpart. Capitalized terms used in this Subpart and not otherwise defined in these Terms will have the meanings given them in the NACHA Rules.
  - 1.1 **“ACH Services”** means the funds transfer services as offered by Bank by use of an Automated Clearing House (ACH) network financial transaction in the United States.
  - 1.2 **“Authorization”** means the written authorization to initiate an Entry required of Company’s customers pursuant to the NACHA Rules or as otherwise required under the NACHA Rules and/or Regulation E, as or if applicable.
  - 1.3 **“Entry”** or **“Entries”** means an order or request for the electronic funds transfer (credit) or withdrawal (debit) of money, or a file of entries to or from the Accounts of Company, or the deposit accounts of Company’s customers or employees, or for other purposes, by means of an ACH and all as more fully defined in the NACHA Rules, and will also mean the data received from Company hereunder from which Bank initiates each Entry.
  - 1.4 **“Exposure Limit”** means the Bank-defined limit that is the total dollar amount of ACH Entries that may be initiated by Company through a Service on a given day, as communicated by Bank in the Application/set up process.
  - 1.5 **“IAT Entry”** or **“IAT Entries”** means an international ACH Transaction.
  - 1.6 **“Settlement Account”** means the Account referred to in Section 0 below and designated by Company on the Application, through which the Entries initiated by Company are settled, as more fully defined in the NACHA Rules.
2. Operating Rules. If requested by Company and agreed to by Bank, Company shall initiate CTX, CTP, CCD+, CCD, IAT, and/or PPD debit and credit Entries as an Originator or as a Third Party Sender (if indicated on the Application) to Bank in compliance with the formatting and other requirements set forth in the NACHA Rules, and in doing so agrees to comply with and be bound by the NACHA Rules, a copy of which is available to Company by contacting NACHA directly.
3. Bank will also make a copy of the NACHA Rules or any revisions thereto, subject to Bank’s receipt thereof, available to Company upon request for a nominal fee. The duties of Company set forth in this Subpart are not intended to nor shall they in any way limit the requirements of the NACHA Rules. Company will not initiate any Entries in violation of Applicable Laws, or where preapproval, as needed, has not been obtained from Bank.

4. **Bank Obligations.** In a timely manner and in accordance with the NACHA Rules, under the terms and conditions of this Subpart, Related Agreements and Applicable Law, Bank will process, transmit and settle Entries received from Company. Company directs and authorizes Bank to transmit all Entries received by Bank from Company in accordance with the terms and conditions of this Subpart and Related Agreements and to credit or debit such Entries to the specified Accounts designated in the Application.
5. **Entry Authorizations and Record Retention.** Company is responsible for ensuring compliance with the authorization requirements of the NACHA Rules. Before the initiation by Company of the first credit or debit Entry to a Receiver that provides authorization to Company as Originator to submit an ACH credit or debit to an account at an RDFI, Company will obtain from each Receiver the required Authorization in accordance with the NACHA Rules, which shall be in writing in the case of debit Entries. Upon request by Company, Bank will provide Company with a form of Authorization. Each Entry to such Receiver thereafter will be made pursuant to such Authorization, and no Entry will be initiated by Company after such Authorization has been revoked or the arrangement between Company and such person or Company has terminated. Company will retain the original or a copy of each notice and other document required to be given to the Receiver under the NACHA Rules and shall retain consents and Authorizations for a period of not less than two (2) years after its termination. Company will, upon request of Bank, furnish such original or copy to Bank for any purpose as required by the Rules.
6. **Administrator Responsibilities.** Company designates its Administrator to initiate ACH Services Entries or to request an amendment, modification or deletion of transmitted an Entry or batches of Entries to Bank. The Administrator will be solely responsible for designating Authorized Representatives, if any, and for the setup process in order to assign the Access Credentials required by the Security Procedures that will allow the Authorized Representatives to initiate Entries. The Administrator will be Company designee to receive from Bank all communications, including security authorizations for use by the Administrator.
7. **Security Procedures.**
  - 7.1 This Service is subject to the Security Procedures as described, in part, in the Security Procedures Supplement, which is incorporated by reference as if fully set forth verbatim herein.
  - 7.2 Company shall be bound by any instructions communicated to Bank relating to an Entry (or a request for cancellation or amendment of an Entry) if accepted by Bank in good faith and authenticated under the terms of this Subpart, Applicable Law and the Related Agreements, including but not limited to the Security Procedures Supplement, even if the Company subsequently perceives the Entry was fraudulent, erroneous or mistaken in any characteristic. In the event Company desires to place any restriction upon Bank relating to the Bank's acceptance or processing of Entries, or otherwise to amend or modify the Security Procedures; then the restriction or instruction must be made in writing, must be received by Bank as provided in this Agreement, must be accepted by an authorized Bank representative via an authenticated writing and must be received by Bank such that Bank has a reasonable amount of time to act on the same notification of restriction or instruction.
  - 7.3 If an Entry (or request for cancellation or amendment of an Entry) received by Bank was transmitted or authorized by Company, Company shall pay Bank the amount of the Entry, whether or not Bank complied with the Security Procedures with



respect to that Entry, and whether or not that Entry was erroneous in any respect or that an error would have been detected if Bank had complied with the Security Procedures.

**8. Compliance with Security Procedures.**

Company hereby certifies now and each time a Service is accessed that it has complied with all terms, conditions, and provisions contained in the Master Agreement, the User Guides and Related Agreements (including the Security Procedures Supplement).

- 8.1 Company will notify Bank immediately of any deviations from or breaches of the Master Agreement, the User Guides or Related Agreements (including the Security Procedures Supplement). The occurrence of any such breach will not affect any transfers made in good faith by Bank prior to receipt of notification and within a reasonable time period to prevent unauthorized transfers.
  - 8.2 Bank is authorized, in its sole discretion, to deploy an alternative security procedure for ACH Services should an event occur requiring use of Company's disaster recovery plan.
  - 8.3 Authorized Representatives, as communicated to Bank by Administrator are agents of Company and Company shall be bound by all acts, errors and omissions by one or more. Authorized Representatives in connection with or use of a Service. Company is solely liable for ensuring and monitoring that its Administrator and all Authorized Representatives follow all instructions provided to Company with respect to the Security Procedures.
  - 8.4 Company is solely responsible to establish, implement, and update security policies, procedures, and systems related to the initiation, processing, and storage of ACH Entries to 1) protect the confidentiality and integrity of Protected Information as that phrase is provided in the NACHA Rules; 2) protect against anticipated threats or hazards to the security or integrity of Protected Information; and 3) protect against unauthorized use of Protected Information that could result in substantial harm to a natural person; as provided in the NACHA Rules' ACH Security Framework amendment to include storage, processing and destruction of such information. Protected Information is defined as the non-public personal information, including financial information, of a natural person used to create, or contained within, an Entry and any related Addenda Record.
  - 8.5 To mitigate certain ACH fraud risks for which company is liable, Company may enroll in Bank's ACH Block and ACH Positive Pay Service which is an optional service offered under this Agreement. Company agrees that Bank shall have no liability for, and shall hold Bank harmless from, any loss, liability or damage resulting from a fraudulent or erroneous ACH Entry authenticated by Bank pursuant to the Service and Related Agreements, if the loss, liability or damage could have been avoided in whole or in part through the Company's use of and compliance with the ACH Block and ACH Positive Pay Service.
9. Delivery of Entry Information; Exposure Limits. Company will deliver or transmit each Entry or file of Entries to Bank at the location and in compliance with the formatting and other requirements set forth in the NACHA Rules, the User Guide, and/or in the Application. Company acknowledges that its ability to originate Entries under this Subpart is subject to Exposure Limits as may be set forth by Bank in the Application. Company agrees that the

total dollar amount of Entries initiated by Company through Bank by use of any of the ACH Services and pending on a given day, will not exceed the Exposure Limit, as it may be adjusted from time to time at the sole discretion of Bank. Establishment of an Exposure Limit should not be construed by Company as a commitment or agreement to provide any credit or loans to Company and is subject to modification or termination at any time by Bank.

10. Rejection of Prenotifications. For all types of Entries, Company may at its option deliver pre-notifications to Bank. If the pre-notification process is used, such notice shall be provided to Bank three Business Days prior to initiating the first Entry to a particular Account and in the format and on the medium provided in the NACHA Rules. After Company has received notice that any such notification has been rejected by a RDFI, or that a RDFI will not receive Entries without having first received a copy of the Authorization signed by the Receiver, Company will not initiate any Entry to such Receivers, except after providing the RDFI with such Authorization, within the time limits provided by the NACHA Rules. Company shall pay all fines resulting from violations of the NACHA Rules.

11. Submission and Processing of Entries.

- 11.1 Unless otherwise specified in the Application, for standardization purposes, all transmittals of Entries shall be made by use of Online Banking and shall be deemed received by Bank when the transmission (in compliance with the related Security Procedures) is completed. To process ACH files Company MUST provide a summary of the file(s) sent to Bank as described in the Application. Company will transmit all debit and credit Entries to Bank at the location, on or before the deadlines, described in the Application. Company will conform all Entries to the format, content and specifications contained in the NACHA Rules, except as provided in the Application.
- 11.2 Entries will be made only to accounts held at Bank or other Participating Depository Financial Institutions.
- 11.3 Except in the case of same day Entries, if an order to Bank to transfer funds via ACH is received by Bank on any Business Day by the Cut-Off Time, and the ACH is open for business on such Business Day, the order will be processed and charged against the Account from which the transfer is to be made on the Effective Entry Date, which is the Business Day specified by the Originator on which it intends a batch of Entries to be settled. If the order is received by Bank on any Business Day after the Cut-Off Time or on a day that is not a Business Day, it will be processed on the next Business Day and charged against the Account from which the transfer is to be made on the effective date of each file received as determined by Bank, unless that date is a not a Business Day, and then on the next Business Day.
- 11.4 Unless Company has been approved by Bank for same day ACH Services, Bank will not accept and process a credit Entry or a debit Entry submitted by Company that is coded as a same day Entry. Same day Entries are subject to the terms of Section 32 of this Subpart.
- 11.5 All Entry information so delivered shall be in the medium required by Bank and the format required by the NACHA Rules. If the file of Entries to Bank is by electronic transmission, Company will transmit the Entries in accordance with the NACHA Rules or as otherwise instructed by Bank.

- 11.6 If the amount of a debit Entry initiated by Company for processing to a Receiver's account for personal, family, or household purposes, differs from that of the previous debit Entry relating to the same Authorization, or from the preauthorized amount, Company shall provide the Receiver with the notification required by EFTA, if applicable.
- 11.7 If Company is scheduled to initiate credit Entries for processing to a Receiver's account for personal, family, or household purposes maintained at Bank at least once every sixty (60) days, Company shall provide to the Receiver notice that each Entry has been initiated as required by EFTA, if applicable.
- 11.8 Unless otherwise provided herein, Bank shall (i) process Entries received from Company to conform with the file specifications set forth in the NACHA Rules, (ii) transmit such Entries as an ODFI pursuant to the NACHA Rules, and (iii) settle for such Entries as required by the NACHA Rules.
- 11.9 If any of the requirements of Company set forth in Section 0 are not met, Bank shall use reasonable efforts to transmit such Entries to the ACH by the next deposit deadline of the ACH for Entries following that specified in Section 0 which is a Business Day and a day on which the ACH is open for business.
- 12.** Settlement by Company for Entries. Company will maintain a Settlement Account at Bank as specified in its Application, with balances sufficient to offset all Entries submitted and against which any rejected Entries may be credited or debited. Company shall pay Bank for all Entries and authorizes Bank to either charge or credit Company's Settlement Account with any credit or debit Entry initiated by Company, (including any returned Entries transmitted by Bank for which Bank has previously received payment from Company) on the Settlement Date. Company will reimburse Bank with good and collected funds in the amount required by Bank if, after settlement has been made by Bank, a debit Entry is rejected or if any adjustment memorandum that relates to any such debit Entry is received by Bank. Such reimbursement will be made on the date such rejection or memorandum is received by Bank. Company agrees that Bank may, without prior notice or demand, set off against funds in the Settlement Account or against any other amount it or any affiliate of Bank owes to Company, in order to obtain payment of Company's obligations under this Subpart. Bank shall have the right to reject Entries initiated by Company without notice if Bank has reason to believe that there will be insufficient collected funds on the relevant Settlement Date.
- 13.** On Us Entries. Except as provided in Section 14 below and in the case of same day Entries, for an On Us Entry, Bank shall credit the Receiver's account in the amount of such Entry on the Settlement Date contained in such Entry, provided that the requirements set forth in Sections 0 and 0 are met. If any of those requirements are not met, Bank shall use reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next Business Day following such Effective Entry Date.
- 14.** Erroneous Entry; Cancellation or Amendment of Entries by Company.
- 14.1 Company shall notify the Receiver of any reversing Entry initiated to correct an Entry it has initiated in error, including without limitation duplicate entries. The notification to the Receiver must include the reason for the reversal and be made no later than the Settlement Date of the reversing Entry as permitted by the NACHA Rules. Bank will use its best efforts on behalf of Company, consistent with the NACHA Rules, to correct the Entry.

- 14.2 Company shall have no right to cancel or amend any Entry after its receipt by Bank. However, except in the case of a same day Entry, if such request complies with the Security Procedures for the cancellation of Entries, Bank shall use reasonable efforts to act on a request by Company for the cancellation of an Entry prior to transmitting it to the ACH or, in the case of an On Us Entry, prior to crediting a Receiver's account, but shall have no liability if such cancellation is not effected. Company shall reimburse Bank for any expenses, losses or damages Bank may incur in effecting or attempting to affect Company's request for the reversal of an entry.
15. Receiver. Company shall notify the Receiver of any reversing Entry initiated to correct an Entry it has initiated in error, including without limitation duplicate entries. The notification to the Receiver must include the reason for the reversal and be made no later than the Settlement Date of the reversing Entry as permitted by the NACHA Rules. Bank will use its best efforts on behalf of Company, consistent with the NACHA Rules, to correct the Entry. In any such cases, it shall be the responsibility of Company to notify its affected Receivers that an Entry has been made which is at variance with the Authorization or is otherwise erroneous. Company shall reimburse Bank for any expenses, losses or damages Bank may incur in effecting or attempting to affect Company's request for the reversal of an Entry.
- 15.1 Company shall have no right to cancel or amend any Entry after its receipt by Bank. However, except in the case of a same day Entry, if such request complies with the Security Procedures for the cancellation of Entries, Bank shall use reasonable efforts to act on a request by Company for the cancellation of an Entry prior to transmitting it to the ACH or, in the case of an On Us Entry, prior to crediting a Receiver's account, but shall have no liability if such cancellation is not effected. Company shall reimburse Bank for any expenses, losses or damages Bank may incur in effecting or attempting to affect Company's request for the reversal of an entry.
16. Rejected or Returned Entry. Bank may reject any Entry which (i) does not comply with the requirements of Sections 6 or 0 of this Subpart; or (ii) except in the case of a same day Entry, contains an Effective Entry Date more than two Business Days after the Business Day such Entry is received by the ACH in the case of a credit Entry, and more than one Business Day after the Business Day such entry is received by the ACH in the case of debit Entry; or (iii) there are insufficient collected funds in the Settlement Account on the Effective Entry Date or the Settlement Account is subject to a lien, hold, dispute, or legal Process which prevents funds withdrawal; or (iv) in the case of a same day Entry, is for an amount in excess of \$25,000 or is coded IAT or ENR. Bank may reject an On Us Entry for any reason for which an Entry may be returned under the NACHA Rules. Bank may reject any Entry if Company has failed to comply with its Account balance obligations under Section 0 above, or has failed to comply with the Security Procedures. Bank shall notify Company by telephone or electronic transmission of the rejection of an Entry from the ACH no later than the Business Day such Entry would otherwise have been transmitted by Bank to the ACH, or in the case of an On Us Entry, its Effective Entry Date. Notices of rejection shall be effective when given. In the event any Entries are rejected or returned by the ACH for any reason whatsoever, it shall be the responsibility of Company to remake and resubmit such Entries or otherwise to solve the rejection or return in accordance with the NACHA Rules. Bank shall have no liability to Company by reason of rejection of any such Entry or the fact that a notice of rejection is not given at an earlier time than that provided for herein. However, Bank shall remake such Entries in any case where rejection by the ACH was due to mishandling of such Entries by Bank and sufficient data is available to Bank to permit it to remake such Entries. Company shall retain and provide Bank on request all information necessary to remake any file of Entries for five days after midnight

of the Business Day Entries are made to the Receiver's account. In all other instances, Bank's responsibility will be to receive rejected and returned Entries from the ACH, perform necessary processing, control and settlement functions, and to forward such Entries to Company.

**17. Notice of Returned Entries and Notifications of Change.**

- 17.1 Bank shall notify Company by telephone, by mail, by use of Online Banking, or by electronic transmission of the receipt of a returned Entry from the ACH Operator no later than one Business Day after the Business Day of such receipt. Except for an Entry remade by Company in accordance with the requirements of this Subpart, Bank shall have no obligation to retransmit a returned Entry.
- 17.2 Bank shall provide Company all information, as required by the NACHA Rules, with respect to each Notification of Change (NOC) Entry or Corrected Notification of Change (Corrected NOC) Entry received by Bank, relating to Entries transmitted by Company. Bank must provide such information to Company within two Business Days of the Settlement Date of each NOC or Corrected NOC Entry.
- 17.3 Where Company is acting as a Third Party Sender with respect to the original Entry, Company shall notify the Originator by telephone or electronic transmission of receipt of each return Entry no later than two Business Days after the Business Day of receiving such notification from Bank.

**18. Reversing Entries.** Company shall notify the Receiver that a reversing entry has been transmitted to the Receiver's account no later than the Settlement Date of the reversing entry. This notification may be made by Company's method of choice (mail or telephone).

**19. International Transactions.** Initiation of IAT Entries requires preapproval by Bank. If approved, Company may initiate IAT debit Entries. IAT credit Entries will be accepted by Bank only under the following terms and conditions:

- 19.1 IAT Entries must have been originated using the IAT Standard Entry Class Code;
- 19.2 Company acknowledges that the time periods for return of an IAT Entry are determined by the payment system rules of the receiving foreign country and may exceed the time periods specified by NACHA Rules;
- 19.3 Dishonored and contested dishonored return Entries will not be permitted for use with IAT Entries; and
- 19.4 Formatting of IAT Entries must include the information required by the "Travel Rule" of the Bank Secrecy Act.

**20. Foreign Exchange Conversion Risk.** Company shall be entitled to the benefit of any gains and shall bear the risk of any losses arising out of fluctuations in foreign currency conversion realized in connection with an IAT Entry. In addition to its indemnification obligations set forth in Section 21 below, Company shall bear the risk of loss and shall indemnify and hold Bank harmless from and against any loss, liability or expense suffered or incurred by it arising out of fluctuations in currency conversion rates in connection with IAT Entries initiated by Company.

**21. Company Representations and Warranties; Indemnification.**

- 21.1 With respect to each and every Entry initiated by Company, whether as an Originator or as a Third Party Sender, Company represents and warrants to Bank

and agrees that (a) each person shown as the Receiver on an Entry received by Bank from Company has authorized the initiation 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 Company are limited to those types of credit and debit Entries set forth in Section 2 above, (d) Company has complied with all aspects of each Entry required by this Subpart and by the NACHA Rules, (e) each Entry shall in no way violate any Applicable Laws and Company shall perform its obligations under this Subpart in accordance with all Applicable Laws, and (f) Company shall be bound by and comply with the NACHA Rules as in effect from time to time, including without limitation the provision thereof making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry; and specifically acknowledges that it has received notice of that Rule and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Company shall not be deemed to have paid the Receiver the amount of the Entry. Company further represents and warrants that each IAT Entry that it originates is in compliance with the laws and payment system rules of the receiving country. Company shall indemnify Bank against any loss, liability or expense (including attorney's fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or warranties. It shall further be the responsibility of Company to obtain information regarding OFAC enforced sanctions. This information may be obtained directly from the OFAC Compliance Hotline at (800-540-OFAC.)

- 21.2 With respect to each Entry transmitted by Company to Bank as a Third Party Sender, Company represents and warrants to Bank and agrees that (a) each person shown as the Receiver on an Entry received by Bank from Company has authorized the initiation 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 or debiting by Bank as provided herein, (c) Entries transmitted to Bank by Company are limited to those types of credit and debit Entries set forth in Section 2 above, (d) Company shall perform its obligations under this Subpart in accordance with all Applicable Laws, and (e) Company shall be bound by and comply with the provision of the NACHA Rules (among other provisions of the NACHA Rules) making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry. Company agrees to provide notice of this NACHA Rule to the Originator. Further, Company represents that Company has executed an ACH agreement with each Originator and represents that such agreement binds the Originator to the NACHA Rules.
- 21.3 In the event of any damage for which Bank or Company may be liable to the other or to a Third Party arising from or in connection with the ACH Services, Bank and Company will undertake reasonable efforts to cooperate with each other, as permitted by Applicable Law, in performing loss recovery efforts or in connection with any actions Bank or Company may be obligated to defend or elect to pursue against a Third Party.
- 21.4 Company shall indemnify Bank against any loss, liability or expense (including reasonable attorney's fees, court costs and expenses) resulting from or arising out of any breach of any of the foregoing representations, warranties or agreements, including without limitation the failure of the Originator to perform its obligations as an Originator under the NACHA Rules or any other violation of the NACHA Rules or any Applicable Laws by Company.

**22. Responsibilities of Bank; Limitations on Liability.**

- 22.1 In the performance of the ACH Services required by this Subpart, Bank shall be entitled to rely solely on the information, representations, and warranties provided by Company pursuant to this Subpart, and shall not be responsible for the accuracy or completeness thereof. Bank shall be responsible only for performing the ACH Services expressly provided for in this Subpart, and shall be liable only for its negligence or willful misconduct in performing those ACH Services. Bank shall not be responsible for Company's acts or omissions including without limitation: (a) the failure of Company to follow the Security Procedures, including without limitation use of the recommended computer hardware and anti-fraud software (such as anti-spy software) which is designed to prevent the theft or unauthorized use of Company's password, codes and security devices; and (b) the amount, accuracy, timeliness of transmittal or due authorization of any Entry received from Company or those of any other person, including without limitation any Federal Reserve Bank or transmission or communications facility, any Receiver or RDFI (including without limitation the return of an Entry by such Receiver or RDFI), and no such person shall be deemed Bank's agent. Company agrees to indemnify Bank against any loss, liability or expense (including attorney's fees and expenses) resulting from or arising out of any claim of any person that Bank is responsible for any act or omission of Company or any other person described in this Section 22.
- 22.2 In addition to and not in derogation of the limitations of liability set forth in the Master Agreement, Bank shall be liable only for Company's actual damages arising solely from Bank's obligations to Company with respect to Entries transmitted pursuant to this Subpart; Bank shall not be liable for any damages or other losses to Company due to claims made by any Originator in connection with any arrangement or agreement under which Company transmits Entries pursuant to this Subpart.
- 23. Consumer Rights to Refund for Unauthorized Debit Entries.** Bank will notify Company by mail of the receipt of a returned debit Entry by the request of the Receiver due to an alleged error or a debit Entry sent after the Receiver has revoked the Authorization. Company will promptly provide immediately available funds to indemnify Bank if any debit Entry is rejected after Bank has permitted Company to withdraw immediately Available Funds in the amount thereof or if any adjustment memorandum that relates to any such Entry is received by Bank. Company acknowledges the rights of a Receiver who is a Consumer under Regulation E to obtain a provisional credit of the funds debited from such Receiver's account. Company will comply with Regulation E involving alleged errors on Consumer Accounts.
- 24. Receiver.** A Receiver may, in some cases, have the right to have an unauthorized or erroneous debit Entry credited to its account. Company agrees that Bank may deduct the amount owing to the Receiver from Company's Account upon Bank's receipt of proper notice from the Receiver's bank. Bank may charge back against Company any debit Entry that is returned or reversed by the RDFI.
- 25. Account Reconciliation.** The periodic statement issued by Bank for Company's Settlement Account will reflect Entries credited and debited to such Account. Company agrees to notify Bank promptly, but in any case within 30 days of receipt of its periodic statement, of any discrepancy between Company's records and the information shown on any periodic statement. If Company fails to notify Bank of any discrepancy within thirty (30) days of receipt of a periodic statement containing such information, Company agrees that Bank shall not be liable for any other losses resulting from Company's failure to give

such notice or any loss of interest or any interest equivalent with respect to an Entry shown on such periodic statement.

- 26. Provisional Credit.** Company acknowledges that the NACHA Rules make provisional any credit given for an Entry until Bank, acting as ODFI, crediting the Account specified in the Entry receives final settlement. If Bank, acting as ODFI, does not receive final settlement, it is entitled to a refund from the Receiver and the Originator of the Entry shall not be deemed to have paid the party.
- 27. Inconsistency of Name and Account Number.** Company acknowledges and agrees that if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry 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 Company even if it identifies a person different from the named Receiver, and that Company's obligation to pay the amount of the Entry to Bank is not excused in such circumstances.
- 28. Records.** All files, Entries, Security Procedures, and related records used by Bank in rendering the ACH Services hereunder, shall be and remain its property. Bank may in its sole discretion and at Company's request make available to Company information contained in such records then on hand. Any expenses incurred by Bank in doing so will be paid by Company.
- 29. Data Retention.**

  - 29.1** Company shall retain data on file adequate to permit remaking of Entries for thirty (30) days following the date of their transmittal by Bank as provided herein, and shall provide such data to Bank upon its request. Without limiting the generality of the foregoing provision, Company specifically agrees to be bound by and comply with all applicable provisions of the NACHA Rules regarding the retention of documents or any record, including without limitation, Company's responsibilities to retain all items, source documents, and records of authorization, in accordance with the NACHA Rules.
- 30. Unauthorized Debits.** An "Unauthorized Debit" is a debit Entry in which: (i) the authorization requirements have not been followed in accordance with the NACHA Rules; (ii) a debit Entry was initiated in an amount greater than that authorized by the Receiver; or (iii) a debit Entry was initiated for settlement earlier than authorized by the Receiver. Debit Entries to business Accounts that are returned by the RDFI as unauthorized debits will bear Return Code R29 (Corporate Company Advises Not Authorized) and must be received by the RDFI's ACH operator by its deposit deadline for the return Entry to be made available to the ODFI no later than the opening of business on the second Business Day following the Settlement Date of the original Entry.
- 31. Overdrafts.** Upon transmission of a Funds Transfer request to Bank, Company authorizes Bank to charge the Settlement Account designated on the Application for the amount indicated. If Company's Settlement Account does not have sufficient Available Funds, Bank may reject the Funds Transfer. Bank's allowance of any overdraft will not obligate Bank to honor future overdrafts at a later time, and Bank may refuse to do so without cause or prior notice. Bank may charge a fee for each payment or Funds Transfer request presented against insufficient Available Funds.
- 32. Audit.** In order to permit Bank to meet its audit obligations under the NACHA Rules, Company agrees to cooperate with Bank by providing it with transaction records, copies of authorizations, identity verifications, and other records or documentation of its compliance with the NACHA Rules, as Bank may request from time to time. Further, Company



acknowledges that the NACHA Rules require that it conduct an annual audit of its compliance with the NACHA Rules as an Originator or a Third Party Sender and that the audit requirements under the NACHA Rules for an Originator may be different than those for a Third Party Sender. Company agrees to provide Bank with a copy of Company's audit results upon request, but no more than once per year. Upon reasonable advance notice, not to exceed 10 Business Days, Bank shall have the right to conduct an audit of Company during normal business hours for its compliance with the NACHA Rules, at Bank's expense, but no more often than once per year, unless Bank deems it necessary under prudent business practices.

- 33. Obligations of Company as Third Party Sender Under the NACHA Rules.** In addition to any other duties, responsibilities, warranties, representations, and liabilities under this Subpart, for each and every Entry transmitted by Company to Bank as a Third Party Sender and not as an Originator, Company represents and warrants to Bank and agrees that it shall: (i) perform all of the duties of a Third Party Sender in accordance with the NACHA Rules, including without limitation the duty to identify Originators; (ii) assume all of the responsibilities of a Third Party Sender in accordance with the NACHA Rules, including without limitation the responsibilities of ODFIs and Originators; (iii) make all of the warranties of a Third Party Sender in accordance with the NACHA Rules, including without limitation, the warranties of ODFIs and the warranty that Originators have agreed to assume the responsibilities of Originators under the NACHA Rules; (iv) make all of the representations of a Third Party Sender in accordance with the NACHA Rules; and (v) assume all of the liabilities of a Third Party Sender in accordance with the NACHA Rules, including without limitation liability for indemnification for the failure of an Originator.
- 34. Evidence of Authorization; Identification.** When acting as a Third Party Sender hereunder, Company must utilize a commercially reasonable method to establish the identity of any Originator, or person acting on behalf of an Originator, that uses a secured electronic network with Company for the origination of Entries. In addition, Company shall retain all consents and Authorizations for two years after they expire.
- 35. Same Day Entries.**
- 35.1 If Bank has approved Company in the Application for same day Entry ACH Services, Company may initiate same day Entries with an Effective Entry Date of the current date of Entry submission, and submit those Entries to Bank per the processing schedule deadlines as set forth in the User Guide for same day settlement. Company agrees to pay the additional fees assessed for same day Entries, as communicated by Bank from time to time. Further, Company also agrees to pay additional fees and costs if Company requires any modifications to the reporting provided by Bank.
- 35.2 Each ACH file initiated by Company shall be initiated through a secure server or through Bank's Online Banking subject to the cutoff times in the User Guide. All ACH files with same day Credit Entries must be received by the ACH cut-off time established by the NACHA Rules, and must use the Effective Entry Date as the date of the Entry.
- 35.3 Upon receipt of the file, Bank will determine the availability of collected funds in Company's Settlement Account and will attempt to determine if sufficient funds are available, and if so determined will debit Company's Settlement Account in the amount of such same day Entry. If in Bank's sole determination the Settlement Account balance at that time has insufficient collected funds on deposit to cover the total amount of the same day Entry, the Entry will be rejected.

- 35.4 Company understands that Entries coded with SEC Codes IAT and ENR, and Entries in excess of \$25,000 are not eligible to be sent as same day debit or credit Entries, and will not be processed.
- 35.5 If for any reason, Company decides to cancel the ACH file and if the ACH file has not been released to the Federal Reserve for settlement, Bank will recredit the Settlement Account, provided Bank has received written confirmation of cancellation from Company within sufficient time to process a cancellation under the NACHA Rules prior to the settlement of the Entry.
- 35.6 Company must ensure that any Entry it submits has the correct Effective Date, and that sufficient funds are available in its Account for settlement of same day transactions. Bank is entitled to presume it is Company's intent to initiate a same day Entry if the stated Settlement Date is the same as the date the Entry is submitted. If Company also utilizes Bank's ACH Positive Pay or ACH Block Services, Company acknowledges that same day Entries will not be eligible for these Services. Bank reserves the right, but shall not be obligated, to obtain verification from Company as to its intent to initiate a same day Entry before processing. No modification or waiver of any provision of this Subpart will be established by conduct, custom or course of dealing; and no modification, waiver or consent will in any event be effective unless the same is in writing and specifically refers to same day Entry Services, and then such waiver or consent will be effective only in the specific instance and for the purpose for which it is given.
- 36. WEB Entry Requirements.** If Company has been approved by Bank to initiate WEB Entries, the following additional provisions apply. WEB Entries are Entries transmitted to a Consumer Receiver's account, and are debit Entries where the Internet or mobile devices are used to initiate the payment. Debit WEB Entries may be both recurring and non-recurring. Debit WEB Entries may be initiated by Company based on an Authorization that is communicated, other than by an oral communication, from the Receiver to the Originator via the Internet or a wireless network. As a condition to transmitting debit WEB Entries, the NACHA Rules require that Bank and Company agree to the additional procedures and practices, rights and liabilities, as more fully set forth in this Section and in the Security Procedures.
- 36.1 **Authorization.** As an Originator of debit WEB Entries, Company is obligated to obtain the Receiver's Authorization for each debit WEB Entry it initiates prior to its initiation. Such authorization must at a minimum be in a writing that is signed or similarly authenticated by the Receiver via the Internet or a wireless network, and must clearly state that it is for an ACH debit, state the terms of the Authorization, and (for recurring payments) provide a method to modify or cancel the Authorization by notifying Company. Company shall retain a record of a Receiver's Authorization for two years after the expiration, cancellation or revocation of the Authorization. Company shall provide a copy of these records to Bank upon its request, for its own use or to forward to the RDFI. Where required by the NACHA Rules, Company must be able to demonstrate proof of a Receiver's Authorization by providing documentation that provides transaction details including Receiver information and sales documentation.
- 36.2 **Enhanced Risk Management Requirements.** With respect to each Debit WEB Entry initiated by Company, Company represents and warrants to Bank (i) that it has employed commercially reasonable methods of authentication to verify the identity of the Receiver; (ii) that it employs fraudulent transaction detection systems; (iii) that it makes use of a methodology to establish a secure Internet

session; and (iv) that it employs procedures to verify the validity of the RDFI's routing number.

36.3 **Data Security Audits.** In accordance with the NACHA Rules, Company is required to conduct, or cause to be conducted, no less frequently than annually, a data security audit to ensure that the financial information that Company obtains from Receivers is protected by security practices that include adequate levels of: (i) physical security to protect against theft, tampering, or damage; (ii) personnel and access controls to protect against unauthorized access and use; and (iii) network security to ensure secure capture, transmission, distribution, and storage until destruction of financial information. More specific details of the audit requirements are set forth in the User Guide.

36.4 **Reporting Duties.** Company will provide Bank with a certification of the completion of its data security audit at least once per year, in form and content acceptable to Bank, and more frequently if requested by Bank in its reasonable discretion. At the request of Bank, Company will provide a copy of the Receiver's Authorization for a WEB Entry.

36.5 **Supplemental Representations and Warranties, Limitation of Liability, and Indemnity.** Each time Company initiates a WEB Entry, (i) it warrants that it has obtained the appropriate Authorization from each Receiver, and (ii) it makes to Bank the same warranties as Bank as ODFI makes with respect to WEB Entries under the NACHA Rules. Except where a loss is due to the gross negligence or willful misconduct of Bank, Bank will have no liability for unauthorized or fraudulent WEB Entries, and Company accepts as Originator all liability corresponding to the representations and warranties Bank as ODFI makes under the NACHA Rules regarding WEB Entries. Company agrees to indemnify Bank from all loss, expense and costs arising out of an unauthorized or fraudulent WEB Entry.

37. **TEL Entries.** If Company has been approved by Bank to initiate TEL Entries, the following additional provisions apply. TEL Entries are debit Entries transmitted to a Consumer Receiver's account that are initiated by telephone and use the TEL Entry Standard Entry Class (SEC) Codes. Company may not utilize TEL Entries to transmit credit Entries to the Consumer Receiver's account, unless those Entries are credits to reverse erroneous debits. TEL Entries may be both recurring and non-recurring. TEL Entries may be initiated by Company based on an Authorization that is orally communicated by telephone by Company. In addition to the obligations of Company set forth in this Subpart, as a condition to transmitting TEL Entries, the Rules require that Bank and Company agree to the additional procedures and practices, rights and liabilities, as more fully set forth herein and in the Rules, as well as in the Security Procedures applicable to TEL Entries.

37.1 **Transactions Eligible for TEL Entries.** A TEL Entry may be transmitted by Company as Originator only where (i) there is an existing relationship between Company and the Receiver, or (ii) there is not an existing relationship between the Receiver and Company, but the Receiver has initiated the telephone call to Company. If there is no existing relationship between Company and the Receiver, and Company has originated the telephone call, Company may not initiate a TEL Entry. A pre-existing relationship between the Receiver and an affiliate of Company does not constitute a pre-existing relationship with Company.

37.2 **Authorization.** As an Originator of TEL Entries, Company is obligated to obtain the Receiver's prior oral authorization for each TEL Entry it initiates. An oral authorization is one which is spoken by the Receiver or is captured by an automated response system, also orally spoken, including by means of a voice

response unit. For recurring TEL Entries, Company is required to provide the Receiver with a written copy of the Receiver's oral authorization. Such authorization must comply with the security procedures requirements of the NACHA Rules. For recurring TEL Entries, Company shall also comply with the writing and signature requirements of Regulation E for preauthorized transfers, including compliance with the federal Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), 15 USC Section 96.

- 37.3 Record Retention. For single entry TEL Entries, Company shall retain either the original, copy or other accurate record of the Consumer's oral authorization or a copy of the written notice confirming the Consumer's oral authorization for two years from the date of the authorization. For recurring TEL Entries, Company must retain for two years from the termination or revocation of the authorization (i) the original or a copy of the oral authorization, and (ii) evidence that a copy of the authorization was provided to the Receiver in compliance with EFTA. Company shall provide a copy of these records to Bank upon its request, for its own use or to forward to the RDFI. Upon request of Bank and where required by the NACHA Rules, Company must be able to demonstrate proof of a Receiver's authorization by providing documentation that provides transaction details including Receiver information and sales documentation.
- 37.4 Enhanced Risk Management Requirements. With respect to each debit TEL Entry initiated by Company, Company represents and warrants to Bank (i) that it has employed commercially reasonable methods of authentication to verify the identity of the Receiver; and (ii) that it employs procedures to verify the validity of the RDFI's routing number.
- 37.5 Supplemental Representations and Warranties, Limitation of Liability, and Indemnity. Each time Company initiates a TEL Entry, (i) it warrants that it has obtained the appropriate authorization from each Receiver, and (ii) it makes to Bank the same warranties as an ODFI makes to the RDFI with respect to TEL Entries under the NACHA Rules. Except where a loss is due to the gross negligence or willful misconduct of Bank, Bank will have no liability for unauthorized or fraudulent TEL Entries, and Company accepts as Originator all liability corresponding to the representations and warranties Bank as ODFI makes under the Rules regarding TEL Entries. Company agrees to indemnify Bank from all loss, expense and costs arising out of an unauthorized or fraudulent TEL Entry.

## **B. ACH BLOCK AND ACH POSITIVE PAY SERVICES.**

- 1. Definitions. In addition to the defined terms in Part I above, the following terms will have the following meanings as used in this Subpart. Capitalized terms used in this Subpart and not otherwise defined in these Terms will have the meanings given them in the NACHA Rules.
  - 1.1 **"Authorized ACH Entries"** (i) those types of incoming ACH Transactions specific to an originating Customer ID or SEC Code and authorized by Company for posting to its Account, or (ii) a dollar threshold with respect to incoming ACH credit or debit ACH Transactions designated by Company as authorized for posting to its Account.
  - 1.2 **"ACH Block"** means Bank's fraud detection system of limiting or blocking the posting of ACH debit Entries to Company's Accounts based on specifications by Company in its Application.

- 1.3 **“ACH Positive Pay”** means Bank’s fraud system of electronically matching incoming ACH Transactions to Authorized ACH Entries and ACH Blocks created by Company, based on specifications by Company in its Application.
  - 1.4 **“ACH Transaction”** means a debit or credit Entry to or from Company’s Account(s) made by means of an ACH.
  - 1.5 **“Exception Item”** means an ACH Transaction that is not an Authorized ACH Entry.
  - 1.6 **“Exception List”** means a list supplied to Bank by Company of Exception Items.
2. The Services. If requested by Company and agreed to by Bank, Bank will provide to Company ACH Block and ACH Positive Pay Services in connection with Company’s ACH Services. The provisions in this Subpart apply to ACH Block and ACH Positive Pay Services:
- 2.1 Company hereby agrees to comply with and be bound by the NACHA Rules as they relate to the ACH Block and ACH Positive Pay Services.
  - 2.2 Bank either will block incoming ACH debit or credit Entries or will provide daily filtering or screening for debit Authorized ACH Entries, based upon the criteria for applying the ACH Block and/or ACH Positive Pay Services provided by Company in its Application, and in accordance with the procedures set forth in the User Guide and the Security Procedures. Company hereby authorizes Bank to apply an ACH Block to ACH debit Entries that are outside the objective parameters established by Company and agreed to by Bank. Respecting ACH Positive Pay, Company hereby authorizes Bank to not process and to notify Company of ACH debit Entries accepted by Bank that are outside the objective parameters established by Company and agreed to by Bank. All Entries so blocked or identified will be Exception Items. Each Business Day for which there are Exception Items, Bank will provide Company with an Exception List, and Company must affirmatively notify Bank by the deadline established in the User Guide as to which of the Exception Items it approves and authorizes for processing. Company may view and issue pay or return instructions with respect to the Exception List by use of Online Banking. Bank will return all Exception Items for which it does not receive an authorization to process the debit Entry by the aforementioned deadline, consistent with the NACHA Rules.
  - 2.3 For the sake of clarity, ACH Block and ACH Positive Pay Services are a limited fraud mitigation option offered by Bank to mitigate Company’s risk for certain fraudulent, unauthorized or mistaken ACH Entries that the Bank has accepted as Payment Orders authenticated under the ACH Service’s terms and conditions, and that the same requires Company’s diligence and prompt attention upon receipt of notifications.
3. Limitation of Liability.
- 3.1 Bank shall not be liable for returning Entries based upon Company’s instructions as set forth herein, and Company will indemnify and hold Bank, its officers, directors and employees, harmless from any loss, liability, or expense (including attorneys’ fees and costs) resulting from or arising out of any claim of any person arising out of the ACH Block Services, except for the gross negligence or willful misconduct of Bank. Further, Bank shall have no responsibility for any liability, loss or damage, fees or charges resulting from: (i) payment in accordance with this Subpart of any Exception Item that is unauthorized in accordance with

this Subpart and Company's instructions; (ii) the return of any Exception Item to the Originator in accordance with this Subpart and Company's instructions; (iii) Company's failure to meet Bank's established deadlines, including with respect to Exception Items of which Bank has given Company notice on a day Company is not open for business; or (iv) any insufficient or inaccurate information supplied by Company.

- 3.2 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 violates 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.
- 3.3 Subject to the foregoing limitations, Bank's liability for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average Federal Funds rate for the period involved.

## C. CONTROLLED DISBURSEMENT SERVICES.

- 1. Definitions. In addition to the defined terms in Part I above, the following terms will have the following meanings as used in this Subpart.
  - 1.1 **"Controlled Disbursement Account"** means Company's Account designated as the Controlled Disbursement Account in Company's Application, which uses a distinct routing and transit number assigned by the Federal Reserve Bank Check Clearing System to Bank for purposes of identifying Company.
  - 1.2 **"Dollar Limit"** means a daily dollar limit, defined by the Bank, where the Bank shall have no obligation to pay disbursement checks and ACH Transactions in excess of the Dollar Limit.
  - 1.3 **"Federal Reserve Bank Check Clearing System"** means the check clearing services made available by the Federal Reserve Bank and utilized by Bank for clearing checks drawn on Company's Accounts with Bank.
  - 1.4 **"Funding Account"** means Company's Account designated as the Funding Account in Company's Application.
  - 1.5 **"Items"** means disbursement checks and ACH Transactions.
  - 1.6 **"Process"** means any process, summons, order, injunction execution, levy, lien, garnishment, or adverse claim notice (either by a governmental authority or Third Party).
  - 1.7 **"Total Clearings"** means the total aggregate amount of all presented disbursement checks, and ACH Transactions posted in the early morning ACH window, net of the prior day adjustment and other changes to the Controlled Disbursement Account.
- 2. The Services. If requested by Company and agreed to by Bank, Company will maintain with Bank a Controlled Disbursement Account and a Funding Account, identified as such on the Application. Company hereby authorizes and directs Bank to act on its behalf as its agent, as Bank in its sole discretion deems necessary or advisable, in performing any of the Controlled Disbursement Account Services as more fully described in this Section 2.

Company understands and agrees that it must be enrolled in Online Banking in order to receive the Services described in this Subpart.

3. **Funding Procedures.** On each Business Day before 10:00 AM EST, Bank shall electronically provide Company with a report of the total aggregate amount of all presented disbursement checks, and ACH Transactions posted in the early morning ACH window, net of the prior day adjustment and other charges to the Controlled Disbursement Account (the "Total Clearings"). Company agrees to maintain sufficient collected balances in the Funding Account (as reflected in Company's Application) by the established deadline to fund the Total Clearings. Bank is hereby authorized to debit the Funding Account in an amount equal to the actual or estimated Total Clearings and to transfer funds in said amount for credit to the Controlled Disbursement Account.
4. **Adjustments.** Bank will compare the report of electronic presentments to the checks presented against the Controlled Disbursement Account. If the total dollar amount of checks electronically reported is less than the total dollar amount of checks presented, Bank will credit the Controlled Disbursement Account for the difference. Bank will add this difference to Company's Total Clearings the next Business Day.
5. **Daily Dollar Limit.** A daily Dollar Limit may be established from time to time by Bank with respect to the Controlled Disbursement Account in Bank's sole discretion. Bank shall have no obligation to pay disbursement checks and ACH Transactions (collectively, as used in this Subpart, "Items") in excess of the Dollar Limit. Bank may, at any time, either verbally or in writing (but shall not be deemed obligated to) notify Company of any change made by Bank in the Dollar Limit. Establishment of the Dollar Limit should not be interpreted or construed by Company as any commitment or agreement by Bank to provide any credit or loans to Company, nor as an agreement or commitment to debit the Funding Account when doing so would create a negative balance therein.
6. **Special Circumstances.** Company acknowledges that Bank, under some circumstances beyond its control, may at times be unable to provide a report of the total amount of its Total Clearings early enough for Company to make a complete and acceptable funding of the Accounts. Company nevertheless agrees to fund the Funding Account completely by using an estimate of the Total Clearings.
7. **Action Affecting Accounts.** Should Bank receive any process, summons, order, injunction, execution, levy, lien, garnishment, or adverse claim notice (either by a governmental authority or Third Party) (hereinafter referred to as "Process"), which Bank reasonably believes will adversely affect the Funding Account or Controlled Disbursement Account, Bank may, at its option and without liability, refuse to honor orders to pay or withdraw sums from any Controlled Disbursement Account and may either hold the Funding Account balance herein until such Process is disposed of to the satisfaction of Bank or pay the balance over to the source of the Process in accordance with Applicable Law.
8. **Return of Items Unpaid.** Bank reserves the right, in Bank's sole discretion, to return unpaid any or all Items presented for payment against the Controlled Disbursement Account in the event that: (i) there are insufficient collected and available balances on deposit in the Funding Account by the established deadline to fund the Total Clearings; (ii) debits cannot be posted because the Controlled Disbursement Account or Funding Account is frozen, blocked, closed or because of any other condition; or (iii) any communications failure or other condition prevents Bank from monitoring Company's Dollar Limit and/or the Items presented for payment.

9. Stop Payment Orders. Company may issue stop payment orders on Items drawn on the Controlled Disbursement Account in accordance with Bank's procedures outlined in the Commercial Online Banking User Guide.
10. Services Interruption. Company acknowledges that service interruptions in banking, telecommunications and computer industries are frequently caused by circumstances beyond Bank's control and are difficult to assess as to the cause or resulting damages. Bank's goal will be to respond to service requests for the Services within one Business Day notification. Company agrees that Bank will not be liable for any actual or direct loss arising out of mistakes, omissions, interruption, delays, errors, or defects in transmissions of data or other uses of Controlled Disbursement Services. Bank shall not be liable for any act or omission of any other entity furnishing equipment, products or services to Company, nor shall Bank be liable for damages or losses due to the fault or negligence of Company or its agents, affiliates, subscribers or customers.

**D. COURIER SERVICES.**

1. The Services. If requested by Company and agreed to by Bank, Bank will provide certain courier services through a trusted third party as are necessary to the conduct of Company's business, specifically the transport of bank deposits of cash and/or checks ("Deposit") from Company to Bank (the "Courier Services"). Bank hereby accepts, undertakes and agrees to make available the Courier Services and to comply with the provisions of this Subpart. Bank and Company will mutually agree to a pickup schedule within a three-hour window, with 3:00 p.m. pickup as the last time for same day deposit. Company agrees not to include more than \$1,000 cash in any Deposit to be picked up. In the event the cash amount is in excess of \$1,000, Company agrees that Bank shall have no liability for any amount in excess of \$1,000 per pickup. Priority and/or special pickups outside of the regularly established pickup schedule may be mutually arranged by Company with Bank.
2. Independent Contractor; No Business Relationship. Bank shall have sole control of the means and the manner of pursuing and accomplishing the provision of the Courier Services. Bank shall, in its performance of this Subpart, be engaged in operating its own activities, on its own account and for its own expense, and Company shall not control directly Bank's activities. Neither Bank nor any of its employees shall be deemed to be, or are, employees of Company for any purpose whatsoever in the performance of this Subpart, nor are Bank and Company a partnership or joint venture for any purpose whatsoever; but Bank is an independent contractor of Company and nothing herein shall be deemed to constitute a contract of employment. It is understood and agreed by Company that Bank may engage a trusted third party to perform the Courier Services and that any such persons or entities shall also be considered independent contractors and not employees of Company or Bank. Independent contractors of Bank shall be subject to their otherwise customary professional standards.
3. Claims. Company shall promptly give notice and file claims in writing to Bank of any Loss or Damage under this Subpart. Any such notice shall be accompanied by documentation and records to support the amount of the claim and that the Deposit was tendered to Bank. Notice shall be given within twenty-four (24) hours after discovery, but in no event more than ten (10) days after alleged Loss, as defined below. Failure to give prompt notice as required herein shall constitute a waiver of such Loss.
4. Compensation for Administrative Services. As compensation for the Courier Services provided for by Bank hereunder, Company shall pay such fees and charges as are more fully set forth on the Fee Schedule. So long as this Subpart is in effect, Company agrees to maintain an Account with Bank with sufficient funds at all times to cover Bank's charges



for the Courier Services. Company authorizes Bank to debit the Account designated in its Application on the fifteenth (15th) day of each month for the previous month's fee total.

- 4.1 **Loss or Damage.** Bank shall, upon timely notice, reimburse Company for Loss sustained as a result of Bank's negligence or misconduct in performing Courier Services under this Subpart, provided, however, Bank shall not reimburse customer for Loss arising out of negligence or misconduct by Company. As used herein, "Loss" will mean the inability to replace through reasonable diligence a Deposit delivered to Bank by Company. The parties agree that Bank's entire liability for Loss shall be limited to an amount no greater than the face amount of the actual Deposit.

## **E. ELECTRONIC DATA IMAGING SERVICES**

1. **Definitions.** In addition to the defined terms in Part I above, the following terms will have the following meanings as used in this Subpart.
  - 1.1 **"EDI"** means electronic data imaging.
  - 1.2 **"EDI Data"** means documents containing payment-related and remittance-related information.
2. **The EDI Data Services.** If requested by Company and agreed to by Bank, Bank will permit Company to originate or receive data transmissions of EDI Data to or from Company's trading partners, by sending EDI Data electronically or by paper to Bank. The EDI Data Services also permit Company to access EDI Data in format mutually agreed to between Company and its trading partners, as set forth in the EDI trading partner contracts between Company and its trading partners. EDI Data will always accompany an ACH Entry.
3. **Sending Payments and Related Information.** To use the EDI Data Services, Company may originate payments to its trading partners by sending EDI Data to Bank in a data file in the format and by the Cut-Off Time. Upon receipt, Bank may edit and reformat the EDI Data, and will send it through using the ACH Services. On the specified date, payments will be made in accordance with the instructions contained in the EDI Data file. Such payment requests originated via the EDI Data Services will be subject to the terms and conditions for the ACH Services as well as the Security Procedures.
4. **Receiving Remittance EDI Data.** If Company is approved for the EDI Data Services, Company may originate or receive data transmissions that consist of documents and payment instructions. This Subpart applies only to the EDI Services that Bank provides to Company. The legal relationships, and the terms and conditions relating thereto, between Company and its trading partners will be governed by the terms of the trading partners' EDI contracts, and will not be binding on Bank.

## **F. LOCKBOX SERVICES.**

1. **Definitions.** In addition to the defined terms in Part I above, the following terms will have the following meanings as used in this Subpart.
  - 1.1 **"Items"** means checks, drafts or other orders for the payment of money.
  - 1.2 **"Lockbox"** means the post office box at the U.S. Post Office address designated by Bank.

- 1.3 **“Image Review Services”** means the Service provided to view and review images of checks, remittance information, and specifically related reports.
- 1.4 **“Equipment”** means the appropriate computer and related equipment required in order to use a Service.
2. The Services. If requested by Company and agreed to by Bank, Bank to provide Lockbox processing services (“Lockbox Services”) as more fully described below for Company. Company hereby authorizes Bank to act as the agent for Company and to have exclusive and unrestricted access to Company’s incoming mail for the purpose of processing the remittances therein. Unless otherwise required by Bank, Company may advise its customers to remit Items to the Lockbox.
3. Bank’s Duties. As the agent for Company in performing the Lockbox Services, Bank will perform the following listed duties. Other optional duties may be available for an additional charge upon request, as noted on Company’s Application.
- 3.1 The Lockbox will be established to be used as the address of Company’s billing remittances. The annual cost of the Lockbox will be included in the monthly remittance billing during the anniversary month Bank receives the post office box renewal notice from the Postal Service.
- 3.2 Bank personnel will retrieve Company’s remittances daily from the post office. Bank staff will then balance all negotiable payments and deposit them to the Account that Company specifies. All nonnegotiable items and correspondence will be returned to you along with reporting as set forth in section 3.5.
- 3.3 Each Item processed will be filmed, endorsed and assigned proper tracing and identification numbers to ensure proper audit trail and to expedite item retrieval and reconstruction. All check endorsements will reference “Central Bank Lock Box Dept, Lexington, KY, >042100146<”.
- 3.4 All checks returned for insufficient or uncollected funds will be rerun once, but upon second return will be charged back to the designated depository Account. This type of activity will be subject to normal Account analysis charges.
- 3.5 Bank will provide a standard daily report listing of remittances received including Company name, check number, invoice or account number, and payment amount reflected in the Application. Payment documentation, envelopes, and other correspondence may be scanned or returned based on instructions of Company.
- 3.6 Upon completion of the Application, and designation of the Accounts that Company and Bank agree are to be covered by this Subpart, Bank agrees to permit access to persons authorized by Company to view and review images of Items, remittance information, and the above described reports, all associated with the Lockbox Services described above (“Image Review Services”). Bank grants Authorized Representative viewing access to these images for the purposes described herein, and for no other purpose, for the term of the Subpart.
- 3.7 With respect to the Image Review Services, Company has received instructions from Bank advising Company as to the appropriate computer and related equipment (referred to collectively as “Equipment”) required in order to use the Image Review Services. It is Company’s responsibility to obtain and maintain the required Equipment. Bank will not be responsible for improper use of the Image Review Services for any so called “computer viruses”, or for any results caused by

interaction with any other software, including, but not limited to web internet browser access.

- 3.8 Company represents and warrants to Bank that in its use of the Lockbox Services, including the Image Review Services, Company will establish Access Credentials and other Security Procedures as described in the Security Procedures Supplement. Company acknowledges and agrees that Security Procedures are commercially reasonable and are consistent with commercially acceptable practices and meet all standards for adequate security. Bank strongly advises Company to use all Security Procedures. Company is fully liable for all activities and consequential damages and other losses arising from any authorized or unauthorized use of Access Credentials. Company agrees to monitor its Account activity and its users' activity and to notify Bank immediately by telephone of the possibility that unauthorized transactions(s) and/or use have occurred.

## **G. ONLINE BANKING AND MOBILE BANKING INCLUDING BILL PAYMENT SERVICES.**

1. General Provisions. All of our Services are provided under and subject to the Deposit Account Rules and Regulations governing your Account(s), as well as any regulatory disclosures provided to you when you opened your Account(s) (collectively the "Deposit Account Agreement"), which are in effect between you and the Bank. In the event a conflict between these Terms and the Deposit Account Agreement, these Terms will control. Certain Services offered by Bank require Company to accept, use and enroll in the Commercial Online Bank Service described herein.
2. Definitions. In addition to the defined terms in Part I above, the following terms will have the following meanings as used in this Subpart.
  - 2.1 **"Bill Payment Services"** means those Services offered through Commercial Online Banking for payments to companies or individuals.
  - 2.2 **"Consumer"** means a natural person.
  - 2.3 **"Consumer Account"** means an Account that is maintained at the Bank for personal, family or household purposes.
  - 2.4 **"Payee"** means anyone, an individual or Company, including Bank, that you designate to pay and the Bank accepts as a payee.
  - 2.5 **"Your Loan Accounts"** means your line of credit Accounts and all other loan Accounts maintained with us that are designated in your Application and are approved by us as Accounts accessible through Online Banking or Mobile Banking.
3. The Services.
  - 3.1 If requested by the Company and agreed by the Bank, Bank will provide Online Banking, Mobile Banking and Bill Payment Services subject to the relevant provisions in this Subpart.
  - 3.2 Online Banking, generally, is a Service permitting Company to use electronic means, namely connectivity over the internet, to view certain Bank created records (such as Company's Account(s) balances and certain Account activity history, for example) and communicate with Bank in connection with other Bank provided Services (such as initiating transfers between Company Accounts and

communicating instructions to Bank, for example) if and as permitted under the terms of any Service agreed to by Company and Bank. A full description of the online banking services is set forth in the Commercial Online Banking User Guide. Company shall enroll in Online Banking by accessing Bank's website or by downloading the mobile banking application, and after completing, to Bank's satisfaction, the Treasury Management Application and upon binding agreement to comply with the terms and conditions for Online Banking set forth in the Master Treasury Management Agreement and Related Agreements. In consideration of payment of the fees as disclosed by Bank to Company from time to time, Bank grants Company access to use the Online Banking Services.

- 3.3 When enrolling in Online Banking, Company may also enroll in the Mobile Banking application ("app") offered as an optional means to access Online Banking, which may or may not include the Company's use of the Bill Payment Service, within the Mobile Banking application.
  - 3.4 Bill Payment Service, as more specifically described herein, requires that Company enroll in and maintain the Online Banking Service.
4. Equipment. Company has been advised as to the appropriate computer and related equipment necessary to access Online Banking and any Service Company has selected to access through Online Banking, including software, telephones, terminals, modems, internet service provider connections and computers (collectively, as used in this Subpart, the "Equipment"). Company consents to the Bank's requirements and agrees to at all times use and maintain the Equipment as necessary to access any Service. Company is solely responsible for obtaining, using and maintaining the required Equipment and the costs related to the same.
5. Company's Responsibility For Computer Systems/Network and its employees/representatives.
  - 5.1 Bank will not be responsible for Company's, or its agents or employees' improper use of the Online Banking Services or Equipment failures or malfunctions. Company is solely responsible for providing, maintaining and updating any Equipment necessary for its access to and use of the Services. Bank assumes no responsibility for defects, vulnerabilities or incompatibility of any Equipment that Company uses in connection with the Services, even if the Bank has previously been notified of or approved its use. Bank is not responsible for any loss, injury or damages, whether direct, indirect, special or consequential, caused by failure, inadequacy or disruptions to any Services caused in whole or in part by Company's computer assets or network, by Company's internet service provider or software vendor's products, or by any employee of Company or third-party who intrudes upon or breaches the Company's facilities, network connectivity or computer systems to view or misappropriate Company's information or to communicate with or send Payment Order instructions to Bank. Company understands and agrees it is solely responsible for safeguarding, maintaining and updating the security and privacy of its computer system, network and communication methods (including email and SMS or MMS messaging) and Equipment. Company will at all times install, maintain and upgrade, on as needed basis, all commercially reasonable computer security features and defenses on Company's Equipment, including, but not limited, to the installation of effective and current firewalls, anti-virus, anti-spyware software and patches. Company also agrees it is solely responsible for the training of its employees, including the Administrator and Authorized Representatives, on current cyber security practices and safeguards.

Without limiting the foregoing, Company shall at all times, while using the Online Banking Services, implement the following in regard to the Company's computer systems:

- Reliable, current (up-to-date) and fully patched security suites including, at minimum, anti-virus, anti-malware; anti-botnet, and anti-spyware
- Hardware and software firewalls
- Hardware and VPN Encryption
- Process to patch systems in a timely manner
- Written security procedures designed to detect intrusion and protect Company's network from infection and data breach
- Time restrictions/Screen-savers with password required for re-entry
- Regular employee training on both the Security Procedures and cybersecurity relating to Company's computer resources.

In the event Company computer system, network or connectivity is compromised or breach, Company hereby accepts any and all liability from any type of loss or infringement or damages to the Company in connection with Services may have prevented; and Company will hold Bank harmless for any and all liability.

- 5.2 Company is solely responsible for the fidelity and trustworthiness of all employees, former employees, Administrator, Authorized Representative, agents and representatives who access or use the Services, whether with Company's knowledge or consent or without Company's knowledge or consent through access gained improperly or in excess of their authority. Bank is not responsible for any loss, injury or damages caused by Company's employee, representative or agent's negligent, fraudulent or dishonest use of the Service(s), or caused by the same persons' failure to faithfully or competently act in Company's best financial or reputational interests in any way associated with the Service(s) or Company's Equipment.

**6. Online Banking Security Procedures.**

- 6.1 Company and Bank shall comply with the Security Procedures Supplement with respect to any Online Banking activities, including as it relates to any instruction communicated to Bank relating to any Payment Order.

- 6.2 The occurrence of unauthorized access will not affect any transfers made in good faith by Bank prior to receipt of such notification and within a reasonable time period to prevent unauthorized transfers.

- 7. Changes to and Interruption of the Services.** Bank may on a regular or as needed basis perform maintenance with respect to the system on which the Online Banking Services are made available which may result in interrupted service or errors in the Online Banking Services. Bank also may need to change the scope of the Online Banking Services from time to time. Bank will attempt to provide prior notice of such interruptions and changes, but cannot guarantee that such notice will be provided. If access to the Online Banking Services is interrupted or unavailable through use of Company's computer and modem, Company should call Bank for assistance in obtaining access. Bank has the right to change Equipment specifications.

- 8. Additional Services.** Subject to the provisions of these Terms and any applicable Ancillary Agreements, and if indicated in your Application, Additional Services modules can be used by Commercial Online Banking users to:

- 8.1 Give an order to us to make a bill payment instruction from an Account;
  - 8.2 Give an order to deposit a Check via your enrolled mobile device;
  - 8.3 Give an order to us to make a non-recurring or recurring transfer of funds by a wire transfer from an Account;
  - 8.4 Give an order to us to make a non-recurring or recurring transfer of funds via an ACH from an Account; or,
  - 8.5 Give an order to upload a properly formatted and balanced ACH Transaction file.
9. Limitations and other Terms and Conditions applicable to Online Banking and Mobile Banking. The following limitations and other terms and conditions apply to transfers of funds requested by orders that are given through Online Banking and Mobile Banking.
- 9.1 Transfer of funds or payments ordered through Online Banking or Mobile Banking may be refused if there are restrictions on your right to withdraw funds from the Account from which the transfer is to be made (for example, if two or more signatures are required on checks or withdrawals written on the Account).
  - 9.2 Any transfer of funds or payment ordered through Online Banking or Mobile Banking will be subject to the funds being collected and available for withdrawal in the Account from which the transfer or payment is to be made.
  - 9.3 When any order to us to make a transfer of funds or payment given through Online Banking or Mobile Banking exceeds the amount of money available for withdrawal from the Account, we can either (i) make the transfer or payment, in which case you will be liable for the excess, or (ii) refuse to make the transfer or payment. In either case, you will be liable for any fee applicable to the withdrawal or attempted withdrawal when funds are not available under your Deposit Account Rules and Regulations.
  - 9.4 For reasons of security, we can, at any time and without prior notice, refuse to honor any instruction to us to make a transfer of funds or payment given through Online Banking or Mobile Banking. For example, we can do so if, for reasons of security or we believe that it is advisable to limit the dollar amount or frequency of transfers of funds or payments ordered through Online Banking or Mobile Banking.
  - 9.5 We can, at any time and without prior notice, refuse to honor any instruction for a transfer of funds or payment through Online Banking or Mobile Banking if the instruction order reasonably appears to be fraudulent or erroneous. Bank, however, has and assumes no duty to examine any instruction communicated to us. Company agrees Bank is not chargeable with knowledge of any instruction's fraudulent intent or origination or an erroneous characteristic unless the Bank has actual knowledge of the same, as actual knowledge is identified under the UCC. No procedure for the detection of any such error has been agreed to by the Bank, unless expressly stated within the Agreement.
  - 9.6 When an order for a transfer of funds from any of your loan accounts given through Online Banking or Mobile Banking is to be charged against the Account, if the amount of the transfer exceeds the amount of credit available under the Account, we can either (i) make the transfer, in which case the amount of the transfer will

be considered to be credit extended under the Account, or (ii) refuse to make the transfer. In either case, you will be liable for any applicable fee.

**10. Limitations and other Terms and Conditions applicable to Online Banking and Mobile Banking and Additional Services transactions.** The following limitations and other terms and conditions apply to transfers of funds requested by orders that are given through Online Banking or Mobile Banking.

- 10.1 Any transfer of funds from any of your loan accounts ordered through Online Banking or Mobile Banking will be subject to collected funds being available in the Account when the order to transfer is to be charged against the Account.
- 10.2 When an order for a transfer of funds from any of your loan accounts given through Online Banking or Mobile Banking is to be charged against the Account, if the amount of the transfer exceeds the amount of credit available under the Account, we can either (i) make the transfer, in which case the amount of the transfer will be considered to be credit extended under the Account, or (ii) refuse to make the transfer. In either case, you will be liable for any applicable fee.
- 10.3 Any orders for funds transfers from or to external accounts or external loan accounts and, unless otherwise indicated by you, the transmission and issuance of data related to such transfer orders, shall be received pursuant to the Terms as well as the applicable Ancillary Agreement, Operating Rules of NACHA and any applicable automated clearing house ("Regional ACH") (collectively, the "ACH Terms and Conditions"). You and we agree to be bound by such ACH Terms and Conditions as in effect from time to time. In accordance with such ACH Terms and Conditions, any credit to your internal Account or external Account shall be provisional until such credit has been finally settled by us or the third party institution which holds your external Account, as the case may be. You acknowledge that you have received notice of this requirement and of the fact that if we do not receive final settlement for a transfer for any reason, we shall charge back the amount of such transfer to the Account to or from which the transfer was ordered (as applicable), to any of your other accounts, or claim a refund from you. For recurring ACH Transfers, a release with a token is nonetheless required to be executed by you for each recurring transfer.
- 10.4 Any ACH funds transfer may take up to three (3) Business Days to complete. Funds may not be available for use in the account specified for deposit until the third Business Day after the scheduled transfer date. If the scheduled transfer is on a recurring basis, the transfer will continue until either the specified end date or for the specified number of occurrences. If at the time of the specified transfer, funds are not available in the specified account(s), the scheduled transfer may not be completed and fees for insufficient funds or overdraft may be applied.
- 10.5 For your internal Accounts that are savings or money market Accounts, there can be no more than six transfers of funds during any monthly period from the Account that are (i) transfer of funds to any other of your internal Accounts ordered through Online Banking, (ii) a transfer of funds ordered through Additional Services, (iii) any other computer transfer of funds to any other internal Account or any external account or to a third party, (iv) a preauthorized, automatic or telephonic transfer of funds to any other internal Account or any external account or to a third party, (v) a transfer of funds to a third party via electronic banking card (for example, a transfer of funds to pay the purchase price of goods and services), (vi) a transfer of funds via check, draft or any other order payable to a third party, or (vii) a transfer of funds using mobile banking.

- 11. Authorization and appointment of agent.** You authorize us and appoint us as your agent to take on your behalf any action we believe necessary or appropriate to implement any order described in Sections 9 or 10 that is given through Online Banking or Mobile Banking, or to correct any error in crediting or charging any account in connection with any order described in Sections 9 or 10 that is given through Online Banking or Mobile Banking. For example, you authorize us and appoint us as your agent to do the following with respect to actions taken through Online Banking or Mobile Banking.
- 11.1 Withdraw money from any of your Accounts and deposit the money in any other of your Accounts or external Accounts in order to implement any order to us to transfer funds from the first account to the other account;
  - 11.2 Withdraw money from any of your Accounts or external Accounts and use the money to make any payment under any of your internal or external loan accounts in order to implement any order to us to transfer funds from the internal or external Account to the internal or external loan account;
  - 11.3 Obtain an advance under any of your Accounts or external accounts and deposit the proceeds of the advance in any of your Accounts or Your Loan Accounts in order to implement any order to us to transfer funds from the internal or external account to the internal deposit or loan Account;
  - 11.4 Withdraw money from any of your Accounts in order to implement any order to us to transfer funds from the Account by a wire transfer given through Online Banking or Mobile Banking Wire Modules; and
  - 11.5 Withdraw money from any of your Accounts in order to implement any order to us to transfer funds from the Account via ACH given through Commercial Online Banking ACH Modules Additional Services to an external Account.
  - 11.6 Our withdrawal of money from any of your Accounts or our obtaining of an advance under any of your loan accounts under the authority given and the appointment as your agent will be as effective as though you had signed a check withdrawal form or other document to make the withdrawal of to obtain the credit.
- 12. Execution of Payment Orders or Transfers through Online Banking.** If we receive an order for a funds transfer or a payment through Online Banking that has been verified according to Security Procedures, you authorize and direct us to debit your account(s) as listed on the Application and transfer the funds. We may handle transfer requests or requests for payment received from you and other customers in any order selected by us, subject to our processing order applicable to your Account, and we may use any means, intermediaries or funds transfer systems which may have operating Terms governing the execution of payment orders or funds transfers to affect the transfer as we, in our sole discretion, shall determine.
- 13. Use of Identifying Numbers.** In the event an order for a funds transfer or a payment through Online Banking identifies a Payee, Payee's bank or intermediary bank inconsistently by name and an identifying number (such as account number, S.W.I.F.T. address, ABA routing number or universal identification number), payment may be made by the intermediary or Payee bank on the basis of the identifying number, even if the identifying number identifies a person or entity different from the named Payee in your funds transfer or payment order and your obligation to pay the payment order shall not be excused by your error. We will rely on the identifying number as proper identification of a Payee.



**14. Consumer Accounts.** Consumers accessing Consumer Accounts using Online Banking or Mobile Banking.

14.1 **Consumer's Liability for Unauthorized Transfers.** Tell us AT ONCE if you believe your PIN/Password/User ID has been lost or stolen. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your Account to which you have access to Online Banking Services, plus your maximum overdraft limit or the balance in any other Account connected to your Account for overdraft protection. In case of errors or questions about Online Banking transactions, promptly call us at 1-800-637-6884.

14.1.1 Also, if your statement shows transfers that you did not make, including those by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

14.2 For more information on your rights and obligations concerning unauthorized or erroneous transactions, please refer to Central Bank & Trust's Electronic Fund Transfer Disclosures and Agreement (EFT Agreement), which is an Account disclosure, provided to you when you opened your Consumer Account. If you need another EFT Agreement, call us at 1-800-637-6884.

14.3 **Limitation of Services.** By your accessing Online Banking for your Consumer Account, you acknowledge that your online banking services are limited, and subsequent disclosures issued by us, including but not limited to periodic statements and notices, including any change in terms, will be delivered to you by U.S. Mail including, but not limited to, a paper statement. Any Account fees associated with paper statements, as disclosed in your Account disclosures, will apply. You may also be limited in the use of other Services generally available on our consumer online banking platform.

14.4 **Consumer Information Privacy.** The Central Bank & Trust Privacy and Security policies explain how we collect and protect personal information and how and why in certain limited cases we may share such information. Please review such disclosures, found at [www.centralbank.com/privacy-security](http://www.centralbank.com/privacy-security).

**15. Notice of loss, theft, unauthorized use or error.** If you believe, or any individual acting on your behalf in connection with Online Banking and the Additional Services believes, that any of your Access Credentials have been lost or stolen, that any transaction involving any of your Accounts or any of Your Loan Accounts may have been or may be made without your authorization or that we may have made an error with respect to any of your Accounts or any of Your Loan Accounts, you or that individual must contact us immediately. You or that individual should contact us as follows:

Telephone:  
1-800-637-6884

Or write to:  
Central Bank  
Attention: Commercial Online Banking  
P.O. Box 1360  
Lexington, KY 40588-6884

centralnet@centralbank.com

If you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement, telephone us at the number in this section and ask for Customer Service or write to us at the address listed in this section as soon as you can. We must hear from you no later than 30 days after we sent you the first statement on which the problem appeared.

- Tell us your name and address.
- Tell us the dollar amount of the suspected error.
- Describe the error or the transfer you are unsure about, and explain why you believe it is an error or why you need more information.

**16. Bill Payment Service.** If Company has elected, and Bank has agreed, to the online Bill Payment Service, Company will use the Service to direct Bank to make payments from your designated Account(s) to the Payees you choose in accordance with the Services. The terms and conditions of this agreement are in addition to the Account agreements, disclosures and other documents in effect from time to time governing your Account.

16.1 Service Fees: You must pay us each fee that we impose for the use of Bill Payment Services disclosed and imposed at the time of the Service.

16.2 Linked Accounts: The Bill Payment Service can schedule payments from your internal Accounts, including checking or money market Accounts.

16.3 Single Payments: A single payment is a one-time payment to your Payee as you direct and will be processed on the Business Day that you designate as the payment's processing date, provided the payment is submitted prior to 4:00 p.m. Eastern Standard Time.

16.3.1 A single payment submitted after the cut-off time on the designated processing date will be processed on the next Business Day. If you designate a non-Business Day as the payment's processing date, the payment will be processed on the first Business Day following the designated processing date.

16.4 Recurring Payments: A recurring payment may be established for those payments that do not fluctuate per frequency and amount. When a recurring payment is processed, it is automatically rescheduled by the Bill Payment Service. Based upon your selected frequency settings for the payment, a processing date is calculated for the next occurrence of the payment. If the calculated processing date is a non-Business Day, it is adjusted based upon the following rules;

16.4.1 If the recurring payment's "Pay Before" option is selected, the processing date for the new occurrence of the payment is adjusted to the first business date prior to the calculated processing date.

16.4.2 If the recurring payment's "Pay After" option is selected, the processing data for the new occurrence of the payment is adjusted to the first Business Day after the calculated processing date.

- 16.4.3 If the recurring payment's date specifies the 29th, 30th, or 31st of the month as the processing date, and that day does not exist, then the last calendar of the month is used to calculate the processing date.
- 16.5 Form of Payment: You authorize us to make payments in the manner we select from the following methods:
- 16.5.1 Electronic transmission. Most payments are made by electronic transmission. A payment by electronic transmission can be modified or canceled provided you access the Service prior to 4:00 p.m. Eastern Standard Time on the Business Day that the payment is going to be processed. Once an electronic transmission payment is in-process, it cannot be canceled or amended.
- 16.5.2 Corporate check. This is a check drawn on our account or the account of our vendor that will be created payable, and which will be delivered, to a Payee you identify. If a Payee on a corporate check fails to negotiate the check within ninety (90) days, we will stop payment on the check and re-credit your Account for the amount of the payment. If a corporate check is returned to you prior to the end of the ninety (90) day period, please inform us immediately so that we can stop payment on the check and re-credit your Account. If we have elected to deliver payment by corporate check, you may request that we place a stop payment on that check, which we shall make reasonable efforts to accomplish, provided that the corporate check has not yet been presented to us for collection or payment. In the event we honor your stop payment instruction regarding a corporate check, you agree to indemnify us for the face amount of the instrument and any consequential damages in the event a holder in due course of the same instrument demands payment under the corporate check.
- 16.6 Termination: We have the right to terminate your Online Bill Payment Services at any time. These Services may be terminated without prior notice. You remain obligated for those payments initiated on your behalf prior to termination.
- 16.7 Liability: You are solely responsible for controlling the safekeeping of, and access to, you Online Banking Access Credential, which are used to access the Bill Payment Service. You are liable for all transactions you make or that you authorize another person to make even if that person exceeds his or her authority. If you want to terminate another person's authority, you must notify us immediately. You will be responsible for any bill payment request you make that contains an error or is a duplicate of another bill payment. We are not responsible for a bill payment that is not made if you did not properly follow the instructions for making a bill payment. We are not liable for any failure to make a bill payment if you fail to promptly notify us after you learn that you have not received credit from a Payee for a bill payment. We are not responsible for your acts or omissions or those of any other person, including, without limitation, any transmission or communications facility, and no such party shall be deemed to be our agent. In any event, we will not be liable for any special, consequential, incidental, or punitive losses, damages, or expenses in connection with this Agreement or the service, even if we have knowledge of the possibility of them. We are not liable for any act, failure to act or delay in acting if it is caused, in whole or in part, by any cause beyond our reasonable control.

17. Mobile Remote Deposit Capture Service: The Mobile Remote Deposit Capture Service ("Mobile Deposit") allows Company to deposit certain Checks, being defined below as "Eligible Items", to Company's Accounts at Bank through means of a Company, or one of Company's Authorized Representative's, camera enabled mobile device(s) capable of capturing images and required visual information and then electronically delivering the Check's image and associated deposit information to the Bank or the Bank's designated processor. The mobile imaging device or cell phone must have the capability to (a) capture an image of the front and back of each check to be deposited in accordance with the Procedures; (b) read and capture the magnetic ink character recognition ("MICR") line on each check; and (c) read and capture all such other data and information as is required by this Agreement or Federal Reserve Regulations for the processing of these check images for payment. The Bank currently agrees to provide the benefits and convenience of the Services to Company at no cost. The Bank reserves the right to charge fees for Mobile Deposit in the future in our sole discretion. To use Mobile Deposit, Company must be an Account holder.

17.1 "Eligible Items": Company agrees to use the Service for Eligible Items only, which will be only Checks made payable to Company as the maker's listed Payee. Company agree that the image of the Check(s) transmitted to the Bank for deposit under the Service shall be deemed an "item" within the meaning of the UCC. The following are items that Company agrees it will not submit and that cannot be tendered to Bank for collection through the Mobile Deposit Service: a) Checks payable to any person or entity other than Company; b) Checks written on any account that Company owns or is an authorized signor upon; c) Checks containing any alteration of any term of which Company knows or should have known, or which Company believes or knows, or should have known, to be fraudulent or not authorized by the owner of the account on which the Check is drawn; d) any Checks that are not in original paper form bearing the maker's original signature, such as, for example, substitute checks or remotely created checks; e) Checks that are stale dated as defined by being made more than six (6) months prior to the date of deposit; f) Checks that are postdated and/or display a future date; g) Checks written on an account at a financial institution located outside the United States; h) Checks not payable in United States currency; i) Checks that are otherwise not acceptable for deposit or collection under the terms of Company's Account with Bank; and j) All other items that are not Checks. No Check may be presented through this Service, and is not an Eligible Item, if the face amount of the instrument is in an amount of \$5,000.00 or greater.

17.2 Any Check that Company attempts to deposit using the Mobile Deposit Service is subject to verification or rejection by Bank. Bank may reject an item tendered for deposit for any reason and will not be liable to Company for doing so. In case of a rejection of a Check under this Service, Company will need to deposit the item using other means, such as visiting one of Bank's banking centers. Items and Checks presented for negotiation or deposit at a banking center shall be handled by Bank under the terms and conditions of the Company's Deposit Account Rules and Regulations.

17.3 Image Quality: The image of an item transmitted to the Bank using the Mobile Deposit Service must be legible and contain images of the front and back of the Check and otherwise satisfactory to Bank in quality. The image quality of the represented Check must comply with the requirements established from time to time by the American National Standards Institute, the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearing house or association whose instrumentality is associated with a transaction. These requirements include, but are not limited to, ensuring the following information can

clearly be read and understood by sight review of the Check image: a) the amount of the Check (both written and numeric); b) the Payee; c) the signature of the drawer (maker); d) the date; e) the Check number; f) the information identifying the drawer; g) the paying financial institution that is preprinted on the Check including the MICR line; and, h) all other necessary information appears on the Check and is captured in the image of the Check presented to Bank (including all information necessary for the Bank's acceptance and negotiation for collection appearing on the front of the Check and a restrictive endorsement and Payee's endorsement applied to the back of the Check).

- 17.4 **Company's Responsibility:** Company is solely responsible for the quality, completeness, accuracy, validity and integrity of the Check and the image of the Check communicated to Bank. Company is solely responsible if Company, intentionally or unintentionally, submits fraudulent, incorrect, illegible or non-negotiable Checks to Bank. Company is liable for any act, error or omission of an Authorized Representative in connection with this Service, including but not limited to an Authorized Representative's breach of the terms of this Service.
- 17.5 **Endorsements and Procedures:** Company agrees to place on the backside of each Check processed for collection at the Bank through this Service a restrictively endorsement which reads "Mobile Deposit", or words to that effect as satisfactory to Bank. Endorsements must be made on the back of the Check within 1&1/2 inches from the top edge, although Bank may accept endorsements outside this space. Any loss Bank incurs from a delay or processing error resulting from an irregular endorsement or other markings by Company will be Company's responsibility. Bank may reject any Check payable to co-Payees, even if Company is one of the Payees listed on the face of the Check. Bank will consider, but is not obligated to accept, Check's listing Company as one of the co-Payees, provided a) the image of the Check presented to Bank under the Service contains the legible signature endorsement of all co-Payees to the instrument, including Company; and b) contains a restrictive endorsement above the co-Payees signatures which reads "Mobile Deposit to Account of \_\_\_\_\_ [Company's full name]". If Company is a sole proprietorship, Checks written as payable in the name of the individual owner of Company may be deposited to Company's Account at Bank through this Service so long Checks are presented in compliance with the Service's terms and conditions. Company agrees to comply with any and all other procedures and instructions for use of the Mobile Deposit Service as the Bank may establish from time to time, such as within any applicable Users Guide (the "**Procedures**").
- 17.6 **Cut off Times for Deposits:** Deposits made via Mobile Deposit must be made before 7:00 PM Eastern Standard Time on a Business Day in order to be considered deposited same day. Deposits made after 7:00 PM Eastern Standard Time on a Business Day will be considered deposited the next Business Day.
- 17.7 **Receipt of Items:** Bank reserves the right to reject any item transmitted through Mobile Deposit, at Bank's discretion, without liability to Company. Bank shall not be responsible for items Bank does not receive or for Check images that are dropped during transmission. An image of an item shall be deemed received when Company receives a confirmation from Bank that we have received the image. Receipt of such confirmation does not mean the transmission was error free or complete. Processing and/or transmission errors can occur after Bank acknowledges receipt that may impact transaction completion. Following receipt of such confirmation, the Bank will process the image by preparing a "substitute check" or clearing the item as an image.

- 17.8 Availability of Funds: Once deposited, subject to the cut-off time described above, our policy, in most cases, is to make funds from Company's Check deposits available to Company on the second Business Day after the day Bank receives the Check in compliance with this Service, unless a different or longer time period is required under Company's Account Rules and Regulations' Funds Availability Policy or should Bank decide to apply a longer hold period due to Company's history of repeated overdrafts or grounds that Bank reasonably believes affects the ultimate collectability of the Check. In all cases, Company will receive full availability of the funds memorialized in Checks accepted by Bank under this Service by the seventh Business Day after Bank accepts the Check for deposit. If Company's Account has been open 30 days or less, however, Company may not receive full availability until the ninth Business Day after the day of deposit.
- 17.9 Disposal of Transmitted Items: After Company receive confirmation that Bank has received and accepted an image of a Check under this Service, and once Company receive full credit for the Check as manifested in Company's Account balance as communicated by Bank, Company must and shall prominently marking the original Check "VOID" and then destroying that same Check by cross-cut shredding or another commercially acceptable means of destruction. Destroying the Check prevents it from being presented for deposit another time. After destruction of the original Check, the image will be the sole evidence of the original instrument. Company agree that Company will never re-present the original check, nor give the original Check to anyone else for any purpose other than its destruction.
- 17.10 Returned Deposits: Any credit to Company's Account for Checks deposited using Mobile Deposit Service is provisional. If original Checks deposited through Mobile Deposit are dishonored, rejected or otherwise returned unpaid by the drawee bank, or are rejected or returned by a clearing agent or collecting bank, for any reason, including, but not limited to, issues relating to the quality of the image, Company agree that an original check will not be returned to Company, but that Bank may charge back the amount of the original Check and provide Company with an image of the original Check, a paper reproduction of the original Check or a substitute check. Company will reimburse Bank for all loss, cost, damage or expense caused by or relating to the processing of the returned item including, but not limited to, any reasonable attorney fees incurred. Without Bank's prior written approval, Company shall not attempt to deposit or otherwise negotiate an original check if it has been charged back to Company.
- 17.11 Mobile Deposit Security. Company will complete each deposit promptly. If Company is unable to complete Company's deposit promptly, Company will ensure that Company's mobile device(s) remains securely in Company's possession until the deposit has been completed. It is Company's responsibility to establish and maintain procedures to safeguard against unauthorized deposits or use of the Service. Company will notify Bank immediately by telephone at 1-800-637-6884 and with written notice at Central Bank, if Company learn of any loss or theft of original Checks. Company will ensure the safety and integrity of original checks from the time of receipt until the time of destruction. Bank has the right, at its sole discretion, to audit and monitor Company, and Company agrees to cooperate in permitting such monitoring, to confirm that Company has satisfied its obligations under this Agreement.
- 17.12 Deposit Limits. Bank reserves the right to impose limits on the amount(s) and/or number of deposits that Company may transmit using Mobile Deposit, on a daily or other time limitation, and to modify such limits from time to time in Bank's sole

discretion with or without notice. Unless otherwise specified by the Bank, changes to such limits shall be effective immediately upon notice to Company via e-mail or the Bank's Web site. If Company attempt to initiate a deposit in excess of these limits, Bank has the right to reject Company's deposit in whole or in part. If Bank permits Company to make a deposit in excess of a limit, such deposit will still be subject to the Mobile Deposit terms, and Bank will not be obligated to allow such a deposit at other times.

- 17.13 User warranties and indemnification. Company makes to Bank, as the bank of deposit, all warranties and indemnifications as are stated in all Applicable Laws, including but not limited to Regulation CC. Company further warrants to the Bank that: a) Company will only transmit Eligible Items; b) Images will meet the image quality standards; c) Company will not transmit duplicate items; d) Company will communicate to Bank only any Check's image and will not communicate or otherwise convey the same image or electronic data to another financial institution or third-party; e) Company will not deposit or re-present or allow re-presentation of the original item; f) All information Company provide to the Bank is accurate and true; g) Company will comply with this Agreement and the Applicable Laws and regulations; and h) Company agree to indemnify and hold harmless the Bank from any loss or damages Bank may suffer as a result of a breach of this warranty provision. In addition to the foregoing, respecting any Check(s) deposited through this Service by Company, in the event any claim is asserted against a Check by a person or entity alleging to be a holder in due course of any Check(s) deposited by Company under this Service, then Company agrees that Bank is authorized to immediately debit from the Company's Account, originally credited with the deposit, the face value of the same Check(s) until all claims relating to the Check(s) are resolved to Bank's reasonable satisfaction; and further, Company shall be liable for and will pay to Bank damages in amounts up to the face amount of the instrument, accrued interest, the Bank's own costs and reasonable attorney fees, and all costs and attorney fees which may be awarded to or agreed upon in damages with any holder in due course.

## H. POSITIVE PAY SERVICES.

1. Definitions. In addition to the defined terms in Part I above, the following terms will have the following meaning as used in this Subpart. Capitalized terms used in this Subpart and not otherwise defined in these Terms will have the meanings given them in Articles 3 and 4 of the UCC.
  - 1.1 **"Available Funds"** means funds on deposit in an Account and available for withdrawal pursuant to Regulation CC, the Funds Availability Schedule and Bank's policies.
  - 1.2 **"Bank Check File"** means a file created and maintained by Bank containing the Check Data regarding each Check as set forth in each Company Issued File.
  - 1.3 **"Check Data"** means the number of the Account on which a Check is drawn and the serial number and dollar amount of the Check as that data appears in the appropriate fields of the MICR line of the Check.
  - 1.4 **"Company Issued File"** means a record, in a format mutually agreeable to Company and Bank, containing the Check Data for each of Company's Checks, which shall be provided by Company to Bank in accordance with the procedures described in the User Guide and uploaded or otherwise delivered by means of Online Banking.

- 1.5 **“Default Option”** means the option to either pay or return Exception Checks selected by Company in the Application.
  - 1.6 **“Exception Check”** means a Presented Check that does not match a check included in an Issued Check File.
  - 1.7 **“Exception Check Report”** means a record describing Exception Checks which is provided to Company by Bank.
  - 1.8 **“Issued Check File”** means an electronic file describing Checks drawn by Company on an Account, or data concerning individual Check(s) issued by Company, and uploaded by Company to Bank’s operating system pursuant to the User Guide.
  - 1.9 **“Pay Request”** means the instructions of Company ordering Bank to pay an Exception Check.
  - 1.10 **“Positive Pay Services”** means the positive pay Services as more fully described in Section 2 of this Subpart.
  - 1.11 **“Positive Pay System”** means accessing the website for Positive Pay Services
  - 1.12 **“Presented Check”** means a Check drawn on an Account and presented to Bank for payment through the check collection system or to a teller at any branch office of Bank.
  - 1.13 **“Return Request”** means the instructions transmitted by Company ordering Bank not to pay an Exception Check.
- 2. Positive Pay Services. Company maintains with Bank one or more Accounts identified on the Application. If requested by Company and agreed to by Bank, Bank will on a daily basis provide the Positive Pay Services for the Accounts in accordance with the terms and conditions of this Subpart and the User Guide. Related Agreements as may be in effect from time to time are incorporated herein by reference unless specifically inconsistent with or superseded by a provision of this Subpart.
  - 3. Internet Access. To use the Positive Pay Services, Company must maintain at least one Account with Bank and have access to Internet services and an email address. The Administrator may access the Positive Pay Services via the Internet.
  - 4. Procedures for the Services
    - 4.1 Issued Check File. To use the Positive Pay Services, Company shall submit Company Issued Check Files to Bank through the Positive Pay System on the same Business Day(s) that Company issues the Checks. Each Company Issued Check File shall accurately state the Check Data since the last Company Issued File was uploaded. Company shall upload the Issued Check File into the Positive Pay System in the format and medium, by the deadline(s), and in accordance with, the procedures in the User Guide.
    - 4.2 Payment of Presented Checks and Reporting of Exception Checks. Each Presented Check is compared by check number, amount and other data, against the aggregated Issued Check Files that have been incorporated into the Positive Pay System in accordance with the User Guide. On each Business Day:



- 4.2.1 Bank will pay and charge to the appropriate Account each Presented Check that matches by check number and amount a check shown in any Issued Check File;
  - 4.2.2 Bank will provide to Company an Exception Check Report that indicates whether Bank has received any Exception Checks and, if so, specifies the complete check number and amount of any such Exception Check;
  - 4.2.3 Bank will send the Exception Check Report in the format and medium as specified in the User Guide, by the Cut-Off Time and to the place specified by Company and agreed to by Bank; and
  - 4.2.4 If the Presented Check is presented for payment to a bank teller at one of Bank's branch offices, the Presented Check will be compared against the Issued Check Files that have been entered the Positive Pay System.
- 4.3 Payment and Dishonor of Exception Checks. Company will promptly review any Exception Check Report received by it. Bank will pay or return Exception Checks, as Company has designated in its Application in accordance with the following procedures:
- 4.3.1 Return Default Option. Where Company has selected the return default option a/k/a "Return All" to apply to an Account, Bank shall return to the depository bank any Exception Check drawn on that Account, unless Company instructs Bank to pay such check by issuance of a Pay Request in a timely manner, but in no event later than the Cut-Off Time.
    - 4.3.1.1 The Pay Request shall identify each Exception Check that Company desires to be paid by the check number and amount specified in the Exception Check Report and shall instruct Bank to pay such Exception Check.
    - 4.3.1.2 The Pay Request shall be sent to Bank in the format required by the User Guide, by the Cut-Off Time. Subject to Bank's Funds Availability Schedule and any relevant procedures, Bank shall finally pay and charge to the appropriate Account any Exception Check that Company directs Bank to pay as provided above.
    - 4.3.1.3 If the Exception Check has been presented to a Bank teller at a branch office of Bank, Bank will dishonor the Exception Check.
  - 4.3.2 Pay Default Option. Where Company has selected the pay default option to apply to an Exception Check, Bank may finally pay and charge to the appropriate Account any Exception Check, subject to Bank's Funds Availability Policy and any other relevant procedures, and provided that Company has not objected to such payment by issuing a Return Request in a timely manner, but in no event later than the Cut-Off Time.
    - 4.3.2.4 A Return Request shall identify each Exception Check that Company desires not to be paid by the complete check number and amount specified in the Exception Check Report and shall instruct Bank to return the Exception Check.
    - 4.3.2.5 The Return Request shall be sent to Bank in the format required by the User Guide, by the Cut-Off Time. Bank shall return to the

depository bank any Exception Check that Company instructs Bank to return as provided above.

- 4.3.2.6 If the Exception Check has been presented to a Bank teller at a branch office of Bank, unless Bank is able to contact the Administrator for instructions with respect to the Exception Check, subject to Bank's Funds Availability Policy and any other relevant procedures, it will pay the Exception Check.
- 4.4 Voided Checks and Stop Payment. Company acknowledges and agrees that it may only void a Check in an Issued Check File if such Check is not in circulation. To stop payment on a Check in circulation, Company must place a stop payment order on the Check. Company shall be solely responsible for any Check paid over-the-counter by Bank if Company fails to place a stop payment on the Check.
- 4.5 Reverse Positive Pay. If Company has elected to follow the procedures for Reverse Positive Pay, as more fully described in the User Guide, Bank shall have no liability for any action taken with respect to an Exception Check presented for payment to a Bank teller at the branch office of Bank.
- 4.6 Check Copies. Company acknowledges that Company is responsible for making decisions regarding payment of Exception Checks based on the Exception Check Report. If Company requests a copy or other image of a Presented Check from Bank, Bank has no obligation to provide Company with a copy of such and Bank shall not be liable if Company does not produce a copy or other image of such Presented Check prior to the time Company is required to deliver an Exception Check Instruction.
- 4.7 Company and Bank Communications.
  - 4.7.1 Bank shall be entitled to rely on any oral or written notice, response, or other communication believed by it to be genuine and to have been provided by the Administrator or an Authorized Representative using Access Credentials in accordance with the Security Procedures, and any such communication shall be deemed to have been provided by such person on behalf of Company.
  - 4.7.2 Any data or information received by Bank from or transmitted by Bank to a data processor selected by Company shall be deemed to have been received from or transmitted to Company, and such processor shall be deemed to be the agent of Company. Company may change such processor by written notice to Bank signed by the Administrator. Such notice shall be effective on the second Business Day following Bank's receipt thereof. Bank shall not be liable in any way for the acts or omissions, whether intentional or negligent, of such processor. Company's data processor, if any, is designated on its Application.
  - 4.7.3 Bank shall use only Company Issued Check Files that comply with the formatting and substantive requirements set forth in the User Guide and that have not been revoked in accordance with Bank's procedures.
  - 4.7.4 Bank shall not be obligated to comply with any Pay Request or Return Request received in a format or medium, after the Cut-Off Time, or at a place not permitted under this Subpart or the User Guide but may instead

treat such a Pay Request or Return Request as though it had not been received.

- 4.7.5 Bank is not responsible for detecting any Company error contained in any Company Issued Check File, Pay Request, or Return Request or other communication sent by Company to Bank.
- 4.7.6 Company agrees to be liable for losses resulting from the fraudulent issuance and communication of any Company Issued Check File, Pay Request or Return Request from Company to Bank.
- 4.7.7 Bank will be fully protected in relying on and may rely on the Access Credentials to the extent they are reflected in Bank's records from time to time.
- 4.7.8 Company or Bank, at its discretion, may each submit to the other party a revision of any written communication provided for under this Subpart. The revised communication must (i) be sent in its entirety and not in the form of a partial amendment to the communication originally sent, (ii) identify the original communication, and (iii) be sent in the format and medium, by the Cut-Off Time, and to the place established by the receiving party. A properly submitted revised communication serves to revoke the original communication.

## 5. Remedies.

- 5.1 UCC Liability. To the extent applicable, the liability provisions of UCC Articles 3 and 4 shall govern this Subpart, except as modified in this Section 5.
- 5.2 Wrongful Honor. It shall constitute wrongful honor by Bank if Bank pays an Exception Check listed in an Exception Check Report unless: (a) Company has issued a Pay Request, or (b) Company selected the pay default option and did not issue a Return Request. In the event that there is wrongful honor:
  - 5.2.1 Bank shall be liable to Company for the lesser of the amount of the wrongfully paid Exception Check or Company's actual damages resulting from Bank's payment of the Exception Check;
  - 5.2.2 Bank expressly waives any right it may have to assert that Company is liable for the amount of the wrongfully honored Exception Check on the grounds that the Exception Check was properly payable under UCC §4-401;
  - 5.2.3 Bank retains the right to assert Company's failure to exercise reasonable care under UCC §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 §3-406(b) and §4-406(e); and
  - 5.2.4 Bank retains the right to assert the defense that Company has sustained no actual damages because Bank's honor of the Exception Check discharged for value an indebtedness of Company.
- 5.3 Wrongful Dishonor. Except as provided below, it shall constitute wrongful dishonor by Bank if Bank dishonors an Exception Check listed in a timely Exception Check Report unless: (a) Company has issued a Return Request, or (b)

Company has selected the return default option and has not issued a Pay Request. In the event there is wrongful dishonor:

- 5.3.1 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.
- 5.3.2 Notwithstanding Section 5.3.1, Bank shall have no liability to Company for wrongful dishonor when Bank, acting in good faith, returns an Exception Check: (i) that it reasonably believed was not properly payable; or (ii) if there are insufficient Available Funds on deposit in the Account; or (iii) if required to do so by the service of legal Process on Bank or the instructions of regulatory or government authorities or courts.
- 5.4 Rightful Payment and Dishonor. Except as provided in Section 5.5 below:
  - 5.4.1 If Bank dishonors an Exception Check in accordance with a Return Request issued by Company, such dishonor shall be deemed rightful, and Company waives any right it may have to assert that the dishonor was wrongful under UCC §4-402.
  - 5.4.2 Company agrees that Bank exercises ordinary care whenever it rightfully pays or returns an Exception Check consistent with the provisions of this Subpart.
- 5.5 Faulty Information. Bank shall be liable solely for Company's actual damages that are proximately caused by Bank's honor of a Presented Check that was not properly payable, or its dishonor of a Presented Check that was properly payable, if the honor or dishonor occurred because Bank, in accordance with the provisions of Section 4 of this Subpart: (a) should have shown the Presented Check on an Exception Check Report, but failed to do so; or (b) showed the Presented Check on an Exception Check Report but referenced the wrong check number, unless Bank provided Company with timely information that disclosed the error.
- 5.6 Assignment. To the extent that Company suffers a loss under this Subpart, Bank assigns to Company 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 §4-207, §4-208, or §4-209.
- 5.7 Standard of Care. In performing the Positive Pay Services hereunder, Bank will be held to a standard of ordinary care. Bank shall not be liable for any actions of any Third Party. Bank shall be entitled to rely solely on the information, representations and warranties provided by Company pursuant to this Subpart and shall not be responsible for the accuracy or completeness thereof.

## **I. REMOTE DEPOSIT CAPTURE SERVICES.**

- 1. Definitions. In addition to the defined terms in Part I above, the following terms will have the following meanings as used in this Subpart. Capitalized terms used in this Subpart and not otherwise defined in these Terms will have the meanings given them in the UCC.
  - 1.1 **"Endpoint"** means any Federal Reserve Bank, financial institution, local clearing house, courier or other entity or location for the delivery of cash letters or other presentment of Imaged Items or Substitute Checks.

- 1.2 **"Imaged Item"** means the digitized image of a Check that is created by Company and transmitted to Bank using the Remote Deposit Capture Services.
- 1.3 **"Image Exchange Item"** means a digitized image of an Item cleared and settled directly with a Payor Financial Institution without conversion to a Substitute Check.
- 1.4 **"Item"**, as used in this Subpart, means a Check that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution, whether negotiable or not, and payable or endorsed to Company, and includes Checks, Substitute Checks and Image Exchange Items. Such term does not include Non-cash Items or Items payable in a medium other than United States currency.
- 1.5 **"Non-cash Item"** means an Item that would not otherwise be an Item, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice of payment or dishonor; (iii) it consists of more than a single thickness of paper, except an Item that qualifies for handling by automated check processing equipment; or (iv) it has not been preprinted or post-encoded in magnetic ink with the routing number of the Payor Financial Institution.
- 1.6 **"Non-qualifying Items"** has the meaning set forth in Section 3.3 of this Subpart.
- 1.7 **"Payor Financial Institution"** means the United States Financial Institution that is a payor bank for any Item.
- 1.8 **"Remote Deposit Capture Equipment"** means the scanning or other equipment and software as defined in Section 5.1.
- 1.9 **"Remote Deposit Capture Services"** means Bank's Remote Deposit Capture Services that enable the processing of Items digitally as Image Exchange Items through image exchange networks or through creation of Substitute Checks and presentment to established Endpoints.
- 1.10 **"Software"** means any software which may be offered or required by Bank for use in receiving, validating and packaging images and data from a bulk file to be forwarded to Bank for additional processing.
- 1.11 **"Third Party Checks"** means Checks payable to an entity other than the Company.
- 1.12 **"United States Financial Institution"** means (i) an entity that focuses on dealing with the financial transactions composed of such organizations such as banks, trust companies, insurance companies and investment dealers (ii) a Federal Reserve Bank; (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service, or a state or local government.
2. Remote Deposit Capture Services. If requested by Company and agreed to by Bank, Bank will agree to provide Services for the conversion of Checks to Substitute Checks or Image Exchange Items, which would enable Company to transmit paper Checks converted to Imaged Items to Bank for processing and deposit into an Account of Company. Bank and Company will comply with the terms and provisions of this Subpart with respect to the use of the Services. Unless otherwise provided, all ACH Transfers will be governed by Subpart A, and all Substitute Check and Image Exchange Item transactions will be governed by this Subpart.

### 3. Company Responsibilities.

- 3.1 Company shall maintain one or more Accounts at Bank for the receipt of deposits of Items. However, the primary Account for the Remote Deposit Capture Services must be a business checking Account at Bank.
- 3.2 After the initial installation and training by Bank, Company may be responsible for training its own employees in the use of the Services. Company will comply with and be bound by the operating procedures and other requirements for use of the Remote Deposit Capture Services as described in the User Guide. The duties of Company set forth in this Subpart are not intended to nor shall they in any way limit the requirements of the User Guide. Company agrees to make use of the training sessions made available in the User Guide.
- 3.3 Company will only submit Checks for processing under this Service to Bank that meet the definition of an original paper "Check" in Part I above and will ensure that the Checks scanned meet the standard Remote Deposit Capture for image quality required by Regulation CC, or other standard Remote Deposit Capture established by Bank or Applicable Law. Company will not process any Third Party Checks. Bank's processing of any Imaged Items that do not meet the requirements in this Section 3 (the "Non-qualifying Items") shall not constitute a waiver by Bank or obligate it to process such Non-qualifying Items in the future. Bank may discontinue processing of Non-qualifying Items at any time, without cause or prior notice.
- 3.4 Company will not attempt to scan and transmit to Bank any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substitute Check must be physically deposited with Bank. Notwithstanding the foregoing, Bank may redeposit any returned Substitute Check or Image Exchange Item consistent with the Deposit Account Rules and Regulations.
- 3.5 Company will (i) ensure that all Checks are properly endorsed or otherwise processed to permit only United States Financial Institutions to acquire rights of a Holder in due course in the collection process of Items, (ii) handle, process, maintain and destroy Checks as set forth in this Section 3 and in the User Guide, and (iii) ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser receives value or presentment or return of, or otherwise is charged for an Item more than once in any form.
- 3.6 Company shall be responsible for verifying Bank's receipt of Company's transmission(s) by verifying that deposits have been posted to the appropriate Accounts, in addition to cooperating in any investigation and resolving any unsuccessful or lost transmission with Bank.
- 3.7 At Bank's direction and instruction, Company shall be responsible for installing and implementing any changes and upgrades to the Remote Deposit Capture Services as required by Bank within a reasonable time following of notice from Bank to ensure compliance with changes or developments to the Applicable Law, or to protect the integrity and security of the Remote Deposit Capture Services. Company will ensure that the Remote Deposit Capture Equipment is clean and operating properly, and inspect and verify the quality of images and ensure that the digitized images of Items are legible for all posting and clearing purposes.
- 3.8 Company shall establish and maintain internal procedures necessary to safeguard against unauthorized transmissions and fraudulent activity, exercise due care in

preserving the confidentiality of any Access Credential provided by Bank or otherwise required for use of the Remote Deposit Capture Services, and prevent the use of the Remote Deposit Capture Services by unauthorized persons. Company assumes full responsibility for the consequences of any missing or unauthorized use of or access to the Remote Deposit Capture Services or disclosure of any Confidential Information or instructions by Company, its employees and agents.

- 3.9 Company will retain each Check in accordance with the User Guide. If not directed otherwise by Bank and except as provided in Section 3.5, Company will store Checks in a safe and secure environment for a period of fourteen (14) days after such Check has been digitized and processed. Company shall take appropriate security measures to ensure that: (a) only authorized personnel shall have access to Checks, and (b) that the information contained on such Checks or on any corresponding Imaged Items are not disclosed to any Third Party. Company will promptly (but in any event within five (5) Business Days) provide any retained Check (or, if the Check is no longer in existence, a sufficient copy of the front and back of the Check) to Bank as requested to aid in the clearing and collection process to resolve claims by any Third Party with respect to any Item or as Bank otherwise deems necessary. Company will use a commercially reasonable method which is consistent with any requirements of Regulation CC and approved by Bank to destroy Checks after Company's retention period has expired. Company agrees that Bank may perform on-site audits of its security procedures and compliance with the Applicable Laws at any time with proper advance notice (not to exceed five (5) Business Days).
- 3.10 Company understands and agrees that an Item that is not paid by a Payor Financial Institution, or is otherwise returned for any reason, will be returned to Company and Company's Account charged for the amount of the Item plus any associated fee as disclosed in Bank's then current Fee Schedule. Unless Bank and Company agree otherwise in writing, Bank's right to charge Company's Account will apply without regard to whether the Item is timely returned to Bank or whether there is any other claim or defense that the Item has been improperly returned to Bank.
- 3.11 Company will supervise and may periodically audit, at least once per calendar year, the use of the Remote Deposit Capture Services and Remote Deposit Capture Equipment by its Authorized Representatives and vendors.
- 3.12 Company shall maintain fully qualified, properly trained and experienced administrative staff and employees sufficient to perform its obligations under this Subpart.
- 3.13 Company will not engage in any activity directly or indirectly related to the use of the Remote Deposit Capture Services that is illegal or fraudulent.

#### 4. Remote Deposit Capture Service.

- 4.1 Company's Account will be credited upon Bank's acceptance of Imaged Items for deposit received by Bank from Company through the Remote Deposit Capture Services.
- 4.2 Company will create images of Checks at Company's location by use of the Remote Deposit Capture Equipment and Software. Company will enter any other required information correctly. Further, Checks issued by and drawn on an account

in the name of Company or an affiliate of Company may not be eligible for the Remote Deposit Capture Services, and Company agrees not to submit any such Checks for the Remote Deposit Capture Services upon request by Bank.

- 4.3 The Imaged Items will be transmitted by Company to Bank, or Bank's authorized processor, over the Internet through a web-based interface.
- 4.4 Bank will maintain the appropriate Account for Company to receive credit and provide other specific information required by Bank related to the Remote Deposit Capture Services. Company's Account will be provisionally credited upon Bank's acceptance of Checks and Imaged Items for deposit. All deposits received by Bank are accepted subject to Bank's verification and final inspection and may be rejected by Bank in Bank's sole discretion. All deposits are subject to the Deposit Account Rules and Regulations. Subject to Section 8.3 below, availability of credit from Checks processed under this Subpart will be subject to the Funds Availability Schedule, which may by Bank be amended without notice to Company.

## 5. Remote Deposit Capture Equipment.

- 5.1 Company is responsible for obtaining the equipment necessary for Company to utilize the Services as set forth in the User Guide (the "Remote Deposit Capture Equipment"). Company shall notify Bank by its selection in the Application whether Company has elected to: (i) purchase the Remote Deposit Capture Equipment from Bank at costs and fees and on such terms as communicated by Bank to Company from time to time; (ii) lease the Remote Deposit Capture Equipment from Bank at costs and fees and on such terms as communicated by Bank to Company from time to time and pursuant to the Equipment Rental Agreement set forth in Section 13 of this Subpart; or (iii) obtain the Remote Deposit Capture Equipment directly from a Third Party, which shall be subject to the approval of Bank. Company will use the Remote Deposit Capture Equipment and Remote Deposit Capture Services, including the entering, processing and transmittal of Imaged Items, in accordance with the User Guide and this Subpart and in no other fashion. In addition, Company will provide, at its own expense, an Internet connection, such as via a digital subscriber line ("DSL") or other connectivity having equivalent or greater bandwidth and all other computer hardware, software, including but not limited to a compatible Web browser, and other equipment and supplies required to use the Remote Deposit Capture Services, all of which must satisfy any minimum requirements set forth in the User Guide or as otherwise may be acceptable to Bank. Company will be responsible for the support and maintenance of the Remote Deposit Capture Equipment, the Internet connection, and all other computer hardware, software, and equipment required to use the Remote Deposit Capture Services, including without limitation troubleshooting Internet connectivity issues with Company's internet service provider ("ISP"). Company will maintain the Remote Deposit Capture Equipment in good working order and in accordance with Bank's requirements for the Remote Deposit Capture Services, with the necessary compatibility and format to interface with Bank's systems, including, without limitation, the ability to support the Security Procedures. Company will return to Bank any Remote Deposit Capture Equipment provided by Bank and in its possession to Bank within a reasonable period following the termination or expiration of this Subpart.
- 5.2 Bank reserves the right to service, repair, exchange, test, and perform reasonable and occasional quality assurance exams on all Equipment, if deemed necessary by Bank. Such exams shall not exceed a frequency of one (1) per month unless mutually agreed upon by both Bank and Company. Bank further reserves the right



to process test system inquiries on Company's behalf and at Company's expense in order to monitor network performance and quality assurance.

**EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SUBPART, BANK MAKES NO WARRANTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE Remote Deposit Capture EQUIPMENT, ANY OTHER EQUIPMENT, OR ANY THIRD PARTY CONTENT, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.**

6. Software. At any time during the term of this Subpart, Bank may, in its sole discretion, require the use of Software in connection with the Remote Deposit Capture Services. If Software is required, Bank will either (i) provide Company with a copy of the Software or (ii) provide Company with instructions on how to obtain the necessary Software from a Third Party.

- 6.1 To the extent Bank requires the use of Software in connection with the Remote Deposit Capture Services, Company will implement and use the Software, as set forth in the User Guide to transmit output files to Bank.
- 6.2 Company acknowledges that (i) its license to any Software that may be required for the Remote Deposit Capture Services is directly from the Software provider, pursuant to the license agreement that appears when any such Software is electronically accessed by Company or otherwise provided to Company, and (ii) Bank will provide support to Company with respect to the Software.
- 6.3 Company will use the Software solely for the purpose of transmitting output files to Bank consistent with this Subpart and not for communications with any other party. Company will not allow access to the Software or the use of the Remote Deposit Capture Services by any person other than Company, and will only process Items arising from a transaction or obligation between Company and the Payor Financial Institution. Company will apply prudent and reasonable controls to ensure that only authorized employees have access to the Software.
- 6.4 Company will capture digitized images of Checks using the Software and Remote Deposit Capture Equipment or other software and equipment acceptable to and approved by Bank, and will ensure that the output files are compatible with the Remote Deposit Capture Services and the Software. Company shall transmit its output files as provided in the User Guide.
- 6.5 Bank may, from time to time, require and change the Software required for this purpose, provided such change does not result in any additional license or maintenance fees payable by Company, Company will be responsible to install and implement any changes to the Software within a reasonable period of time following notice of such from Bank.

## 7. Bank Rights and Responsibilities.

- 7.1 For all Imaged Items processed by Company pursuant to this Subpart, either (i) Imaged Items will be converted to Substitute Checks and presented for payment to established Endpoints, or (ii) Image Exchange Items will be presented for payment through image exchange networks. Bank may in its sole discretion determine the manner of processing. All such processing and presentment shall be done in accordance with timeframes and deadlines set forth in the User Guide and as otherwise established by Bank from time to time.

- 7.2 Bank may select any means for the transmission of Checks and/or Check Images for presentment and payment that it considers suitable, including but not limited to ACH debits (where available and if selected by Company), electronic presentment and/or presentment of paper Substitute Checks. Bank may process such Checks directly, through an ACH, or through any other mechanism selected by Bank. When transmitted by ACH debit, Company's rights and obligations with respect to such entries are governed by Applicable Laws and the NACHA Rules. Company acknowledges and agrees that it shall be bound by and shall act in accordance with the NACHA Rules and Applicable Laws. A copy of the NACHA Rules is available to Company by contacting NACHA directly. Bank will also make a copy of the NACHA Rules available to Company upon request for a nominal fee.
- 7.3 Unless otherwise agreed by Company and Bank, Bank will process any returned Items in accordance with Applicable Laws and the Deposit Account Rules and Regulations.
- 7.4 Subject to Section 7.7 below, the availability of credit from Items processed under this Subpart will be subject to the Funds Availability Schedule.
- 7.5 Bank may at its sole option, at any time and from time to time, refuse to process any Imaged Items. Bank may from time to time establish exposure limitations and assign them to Company.
- 7.6 Bank may reject any Check which does not comply with the requirements or representations and warranties by Company under this Subpart, the User Guide, or any other agreement between Company and Bank. Bank may reject any Check if Company has failed to comply with its Account balance obligations under this Subpart. In the case of a rejected Check, Bank shall notify Company by telephone or electronic transmission of the rejection of the Check no later than one (1) Business Day following the Business Day such Check would otherwise have been transmitted by Bank. Notices of rejection shall be effective when given. In the case of a returned Check, Bank will notify Company by mail upon receipt of the returned Check. In the event any Checks are rejected or returned for any reason whatsoever, Bank will debit Company's Account for the amount of such Checks. If a deposited Check is returned as dishonored, Company will receive an image of the Check or a Substitute Check. Company agrees to pay to Bank fees for rejected or returned checks as are designated on the Fee Schedule or as may otherwise be communicated by Bank from time to time.
- 7.7 In addition to any other rights Bank may have with regard to the Accounts of Company, Bank may hold and use funds in any Account following termination of this Subpart for such time as Bank reasonably determines that any Item processed by Bank prior to termination may be returned, charged back or otherwise a cause for any loss, liability, cost, exposure or other action for which Bank may be responsible or to collect any unpaid fees. Company recognizes that under the Applicable Laws, including, without limitation, the UCC, and Regulation CC, Bank's representations and warranties regarding Image Exchange Items and Substitute Checks may expose Bank to claims for several years following processing of the Image Exchange Item or Substitute Check.
- 7.8 Bank may add, delete or change the features or functions of the Remote Deposit Capture Services, at any time in Bank's sole discretion. If Bank deems it reasonably practicable to do so and if the change adversely affects Company's usage of the Service, Bank will notify Company of the change in advance.

Otherwise, Bank will notify Company of the change as soon as reasonably practicable after it is implemented, which notice may be given electronically.

## **8. Processing Times.**

- 8.1 The Remote Deposit Capture Services are available for use during the times set forth in the User Guide, or such other hours as established by Bank from time to time. Transmissions processed after these hours on a Business Day, or on any day that is not a Business Day, are treated as occurring on the next Business Day.
- 8.2 Imaged Items processed for deposit through use of the Services will be deemed to have been received by Bank for deposit at the time the Imaged Items are actually received and accepted at Bank.
- 8.3 Items will be processed and ready for presentment by Bank after Bank receives all acceptable Imaged Items and associated data for any given transmission from Company. Bank will use commercially reasonable efforts to present Items for payment to the applicable Endpoint within a reasonable period of time following such receipt.
- 8.4 If an Imaged Item is not accepted for deposit for failure to comply with the Remote Deposit Capture Services requirements, Company may then submit the Check to Bank for processing or contact the maker to reissue the Check. If Company submits the Check for processing, Bank reserves the right to refuse to process the Check for deposit and presentment to the Payor Financial Institution and may instead require Company to have the maker reissue the Check.
- 8.5 It is Company's responsibility to understand and build into its transmission schedules the appropriate deadlines necessary to meet Bank's Funds Availability Schedule. Company is further responsible for understanding and building into its transmission schedule the changes in transmission windows required by time changes associated with Daylight Savings Time.

## **9. Security Procedures.**

- 9.1 Company will be solely responsible for establishing, maintaining and following such security protocols as deemed necessary to ensure that output files transmitted directly to Bank are intact, secure and confidential until received by Bank.
- 9.2 Company agrees to implement the Security Procedures that Bank may offer to verify the authenticity of any output files transmitted to Bank in the name of Company. Regardless of the Security Procedures implemented by Company, Company agrees that Bank may rely on and Company will be obligated on the output file, whether or not the output file was authorized by Company. Also, if an output file was authorized by Company, Company will be obligated on the output file even if Bank did not verify its authenticity using the Security Procedures and even if the Security Procedures would have prevented error. Company agrees that the Security Procedures are intended to verify authenticity and not to detect error.
- 9.3 At Bank's direction and instruction, Company shall be responsible for installing and implementing any changes and upgrades to the Remote Deposit Capture Services as required by Bank within five (5) days to ensure compliance with regulatory changes or developments, or to protect the integrity and security of the Remote Deposit Capture Services.

- 9.4 Bank may elect, at Bank's discretion, to verify the authenticity or content of any transmission by placing a call to any authorized signer on Company's Account or any other person designated by Company for that purpose in its Application. Bank may deny access to the Remote Deposit Capture Services without prior notice if unable to confirm any person's authority to the access the Remote Deposit Capture Services or if Bank believes such action is necessary for security reasons.
- 9.5 Company agrees that the Security Procedures that may be offered by Bank are intended to verify authenticity and are not to detect error. No security procedure for the detection of any such error has been agreed upon between Bank and Company. Company is responsible for ensuring that Imaged Items that are downloaded to and stored on Company's computers are kept secure and confidential from access by Third Parties, by installing and maintaining state-of-the-art firewall and security protections. If Company believes or suspects that any such information or instructions have been accessed by unauthorized persons or knows or suspects the confidentiality of the Access Credentials has been compromised in any way, Company agrees to notify Bank immediately followed by written confirmation, and to immediately change the Access Credentials. The occurrence of unauthorized access will not affect the provision of the Remote Deposit Capture Services made in good faith by Bank prior to receipt of such notification and within a reasonable time period thereafter. Company assumes full responsibility for the consequences of any missing or unauthorized use of or access to the Remote Deposit Capture Services or disclosure of any Confidential Information or instructions by Company, its employees and agents.
10. Company Representations and Warranties. Company makes the following representations and warranties with respect to this Subpart generally and each Item processed by Company pursuant to this Subpart:
- 10.1 The Imaged Item is a digitized image of the front and back of the Check and accurately represents all of the information on the front and back of the Check as of the time Company converted the Check to an Imaged Item, including, without limitation the payment instructions, information identifying the Drawer and the Payor Financial Institution, and clearly sets forth the following legend: (A) "This is a legal copy of your check. You can use it the same way you would use the original check."; (B) the Imaged Item displays a MICR line containing all the information appearing on the MICR line of the Check; (C) the Imaged Item conforms in paper stock, dimension and otherwise with generally applicable industry standard Remote Deposit Capture for Substitute Checks; and (D) the Imaged Item is suitable for automated processing in the same manner as the Check.
- 10.2 The Imaged Item is payable to Company, is not drawn on a Company financial institution account, and contains all endorsements applied by parties that previously handled the Check in any form for forward collection or return.
- 10.3 All signatures on each Check are authentic and authorized, and no Check has been altered.
- 10.4 The Imaged Item meets any other standard Remote Deposit Capture for image quality established by ANSI, Regulation CC, or any other applicable regulatory authority, clearinghouse, or association.
- 10.5 All encoding, transfer, presentment and other warranties as Bank is deemed to make under Applicable Laws, including without limitation those under the UCC, Regulation CC and the Rules.

- 10.6 There will be no duplicate presentment of a Check in any form, including as a digitized image, as a paper negotiable instrument or otherwise and Company assumes full responsibility for any such duplicate presentment of any Check.
- 10.7 Except as otherwise specifically disclosed in writing to Bank, Company is not now engaged, and will not while it is utilizing these Services, engage in any business that would result in Company being or becoming a “money service business” as defined in the Federal Bank Secrecy Act and its implementing regulations.

**11. Limitation of Liability.**

- 11.1 In the performance of the Remote Deposit Capture Services, Bank shall be entitled to rely solely on the information, representations, and warranties provided by Company pursuant to this Subpart, and shall not be responsible for the accuracy or completeness thereof.
- 11.2 Bank’s liability for errors or omissions with respect to the data transmitted or printed by Bank in connection with the Remote Deposit Capture Services will be limited to correcting the errors or omissions. Correction will be limited to reprocessing, reprinting and/or representing the Image Exchange Items or Substitute Checks to the Payor Financial Institution. In no event shall Bank’s liability under this Subpart exceed the total amount actually paid by Company to Bank for the Remote Deposit Capture Services during the twelve (12) months immediately preceding the month in which the claim first arose.

**12. Third Parties.** Company may be using special equipment, services or software provided by a Third Party relevant to its use of the Remote Deposit Capture Services. Company (i) agrees that any Third Party is acting as Company’s agent in the delivery of Items and Imaged Items to Bank, and (ii) agrees to assume full responsibility and liability for any failure of that Third Party to comply with Applicable Law or this Subpart. Bank will not be liable for any losses or additional costs incurred by Company as a result of any error by a Third Party or a malfunction of equipment provided by a Third Party. Company shall provide at least ten (10) days advance written notice to Bank in the event it uses any such Third Party. Company is solely responsible for maintaining compliance with the requirements of any Third Party, including obtaining any software updates. Bank shall not have any responsibility for any Item or Imaged Item handled by a Third Party until that point in time when Bank accepts and approves an Item or Imaged Item from such Third Party for processing.

**13. Remote deposit - equipment rental agreement.** Any equipment, to enable the scanning of checks for deposit, which the Bank has agreed to rent to Company and Company has agreed to rent from the Bank is set forth as follows (the “Equipment”):

- 13.1 Bank will deduct the amount of rental as part of each month’s deposit Account settlement according to the “Rent Frequency” listed above on the Application or as agreed to by the parties hereto.
- 13.2 Bank will provide, at Bank’s expense, reasonable service and maintenance for the Equipment at reasonable times during normal business hours. Should such service and maintenance be required because of Company’s misuse of, or damage to, the Equipment, Company will reimburse Bank for the cost of such service or maintenance.
- 13.3 Company will be solely responsible for loss, damage, destruction or theft of the equipment and will, at Company’s sole cost, repair or replace any equipment that

is lost, damaged, destroyed or stolen after it has been delivered to you. Company shall obtain and maintain for the period that this Agreement is in effect, at its own expense, property damage and liability insurance and insurance against loss or damage to the Equipment (including so-called extended coverage), as a result of theft and such other risks of loss as are normally maintained in equipment of the type leased hereunder by companies carrying on the business in which Company is engaged, in such amounts, in such form and with such insurers as shall be satisfactory to Bank.

- 13.4 In no event will Bank be liable to Company or Company's customers for any damages, including special, collateral, incidental or consequential damages arising out of the operation or failure of the Equipment. **BANK LEASES THE EQUIPMENT TO COMPANY AS IS, AND, NOT BEING THE MANUFACTURER OF THE EQUIPMENT, THE MANUFACTURER'S AGENT OR THE SELLER'S AGENT, MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN OR CONDITION OF THE EQUIPMENT. BANK SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE RESULTING FROM THE INSTALLATION, OPERATION OR OTHER USE, OR REINSTALLATION OF THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGE OR LOSS.**
- 13.5 Upon effective date of termination, Company, at Company's expense, will deliver all Equipment to Bank at Bank's principal place of business, in good condition, reasonable wear and tear excepted.

#### **J. INVESTMENT SWEEP SERVICES- REPURCHASE AGREEMENT**

If Company has selected the Investment Sweep - Repurchase Agreement Option for investment sweep services on its Application, Company agrees to participate in Bank's overnight sweep repurchase program, in accordance with the terms and conditions of this Subpart and the following Master Repurchase Agreement.

#### **K. MASTER REPURCHASE AGREEMENT**

##### **1. Definitions:**

- 1.1 **"Act of Insolvency"** means with respect to any party, (i) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (ii) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, or the filing against a party of an application for a protective decree under the Securities Investor Protection Act of 1970, which (A) is consented to or not timely contested by such party, (B) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (C) is not dismissed within 15 days, (iii) the making by such party of a general assignment for the benefit of creditors, or (iv) the admission in writing by such party of such party's inability to pay such party's debts as they become due;

- 1.2 **“Additional Purchased Securities”** means Securities provided by Seller to Buyer pursuant to Paragraph 4.1 hereof;
- 1.3 **“Buyer’s Margin Amount”** means with respect to any Transaction as of any date, the amount obtained by application of the Buyer’s Margin Percentage to the Repurchase Price for such Transaction as of such date;
- 1.4 **“Buyer’s Margin Percentage”** means with respect to any Transaction as of any date, a percentage (which may be equal to the Seller’s Margin Percentage) agreed to by Buyer and Seller or, in the absence of any such agreement, the percentage obtained by dividing the Market Value of the Purchased Securities on the Purchase Date by the Purchase Price on the Purchase Date for such Transaction;
- 1.5 **“Confirmation”** means a written confirmation of each Transaction;
- 1.6 **“Income”** means with respect to any Security at any time, any principal thereof and all interest, dividends or other distributions thereon;
- 1.7 **“Margin Deficit”** means the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Buyer is less than the aggregate Buyer’s Margin Amount for all such Transactions at such time;
- 1.8 **“Margin Excess”** means the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Seller exceeds the aggregate Seller’s Margin Amount for all such Transactions at such time;
- 1.9 **“Margin Notice Deadline”** means the time agreed to by the parties in the relevant Confirmation, Annex I hereto or otherwise as the deadline for giving notice requiring same-day satisfaction of margin maintenance obligations as provided in Paragraph 4 hereof (or, in the absence of any such agreement, the deadline for such purposes established in accordance with market practice);
- 1.10 **“Market Value”** means with respect to any Securities as of any date, the price for such Securities on such date from a generally recognized source agreed to by the parties or the most recent closing bid quotation from such a source, plus accrued Income to the extent not included therein (other than any Income credited or transferred to, or applied to the obligations of, Seller pursuant to Paragraph 5 hereof) as of such date (unless contrary to market practice for such Securities)
- 1.11 **“Price Differential”** means with respect to any Transaction as of any date, the aggregate amount obtained by daily application of the Pricing Rate for such Transaction to the Purchase Price for such Transaction on a 365-day-per-year basis for the actual number of days during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) the date of determination (reduced by any amount of such Price Differential previously paid by Seller to Buyer with respect to such Transaction);
- 1.12 **“Pricing Rate”** means the per annum percentage rate for determination of the Price Differential;
- 1.13 **“Prime Rate”** means the prime rate of U.S. commercial banks as published in The Wall Street Journal (or, if more than one such rate is published, the average of such rates);

- 1.14 **"Purchase Date"** means the date on which Purchased Securities are to be transferred by Seller to Buyer;
- 1.15 **"Purchase Price"** means (i) on the Purchase Date, the price at which Purchased Securities are transferred by Seller to Buyer, and (ii) thereafter, except where Buyer and Seller agree otherwise, such price increased by the amount of any cash transferred by Buyer to Seller pursuant to Paragraph 4.2 hereof and decreased by the amount of any cash transferred by Seller to Buyer pursuant to Paragraph 4.1 hereof or applied to reduce Seller's obligations under clause 5 of Paragraph 5 hereof;
- 1.16 **"Purchased Securities"** means the Securities transferred by Seller to Buyer in a Transaction hereunder, and any Securities substituted therefor in accordance with Paragraph 9 hereof. The term "Purchased Securities" with respect to any Transaction at any time also shall include Additional Purchased Securities delivered pursuant to Paragraph 4.1 hereof and shall exclude Securities returned pursuant to Paragraph 4.2 hereof;
- 1.17 **"Repurchase Date"** means the date on which Seller is to repurchase the Purchased Securities from Buyer, including any date determined by application of the provisions of Paragraph 3.3 or 11 hereof;
- 1.18 **"Repurchase Price"** means the price at which Purchased Securities are to be transferred from Buyer to Seller upon termination of a transaction, which will be determined in each case (including Transactions terminable upon demand) as the sum of the Purchase Price and the Price Differential as of the date of such determination;
- 1.19 **"Seller's Margin Amount"** means with respect to any Transaction as of any date, the amount obtained by application of the Seller's Margin Percentage to the Repurchase Price for such Transaction as of such date;
- 1.20 **"Seller's Margin Percentage"** means with respect to any Transaction as of any date, a percentage (which may be equal to the Buyer's Margin Percentage) agreed to by Buyer and Seller or, in the absence of any such agreement, the percentage obtained by dividing the Market Value of the Purchased Securities on the Purchase Date by the Purchase Price on the Purchase Date for such Transaction.
2. Applicability. From time to time the parties identified above may enter into transactions in which one party ("Seller") agrees to transfer to the other ("Buyer") securities or other assets ("Securities") against the transfer of funds by Buyer, with simultaneous agreement by Buyer to transfer to Seller such Securities at a date certain or on demand, against the transfer of funds by Seller. Each such transaction shall be referred to herein as a "Transaction" and, unless otherwise agreed in writing, shall be governed by this Agreement, including any supplemental terms or conditions identified herein or therein as applicable hereunder.
3. Initiation; Confirmation; Termination.
- 3.1 An Agreement to enter into a Transaction may be made orally or in writing at the initiation of either Buyer or Seller. On the Purchase Date for the Transaction, the Purchased Securities shall be transferred to Buyer as agent for Seller against the transfer of the Purchase Price to an account of Seller.



- 3.2 Upon agreeing to enter into a Transaction hereunder, Buyer or Seller (or both), as shall be agreed, shall promptly deliver to the other party a written confirmation of each Transaction (a "Confirmation"). The Confirmation shall describe the Purchased Securities (including CUSIP number, if any), identify Buyer and Seller and set forth (i) the Purchase Date, (ii) the Purchase Price, (iii) the Repurchase Date, unless the Transaction is to be terminable on demand, (iv) the Pricing Rate or Repurchase Price applicable to the Transaction, and (v) any additional terms or conditions of the Transaction not inconsistent with this Agreement. The Confirmation, together with this Agreement, shall constitute conclusive evidence of the terms agreed between Buyer and Seller with respect to the Transaction to which the Confirmation relates, unless with respect to the Confirmation specific objection is made promptly after receipt thereof. In the event of any conflict between the terms of such Confirmation and this Agreement, this Agreement shall prevail.
- 3.3 In the case of Transactions terminable upon demand, such demand shall be made by Buyer or Seller, no later than such time as is customary in accordance with market practice, by telephone or otherwise on or prior to the Business Day on which such termination will be effective. On the date specified in such demand, or on the date fixed for termination in the case of Transactions having a fixed term, termination of the Transaction will be effected by transfer to Seller or its agent of the Purchased Securities and any Income in respect thereof received by Buyer (and not previously credited or transferred to, or applied to the obligations of, Seller pursuant to Paragraph 5 hereof) against the transfer of the Repurchase Price to an account of Buyer.

#### 4. Margin Maintenance.

- 4.1 If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Buyer is less than the aggregate Buyer's Margin Amount for all such Transactions (a "Margin Deficit"), then Buyer may by notice to Seller require Seller in such Transactions, at Seller's option, to transfer to Buyer cash or additional Securities reasonably acceptable to Buyer ("Additional Purchased Securities"), so that the cash and aggregate Market Value of the Purchased Securities, including any such Additional Purchased Securities, will thereupon equal or exceed such aggregate Buyer's Margin Amount (decreased by the amount of any Margin Deficit as of such date arising from any Transactions in which such Buyer is acting as Seller).
- 4.2 If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Seller exceeds the aggregate Seller's Margin Amount for all such Transactions at such time (a "Margin Excess"), then Seller may by notice to Buyer require Buyer in such Transactions, at Buyer's option, to transfer cash or Purchased Securities to Seller, so that the aggregate Market Value of all Purchased Securities, after deduction of any such cash or any Purchased Securities so transferred, will there upon not exceed such aggregate Seller's Margin Amount (increased by the amount of any Margin Excess as of such date arising from any Transactions in which such Seller is acting as Buyer).
- 4.3 If any notice is given by Buyer or Seller under subparagraph (a) or (b) of this Paragraph at or before the Margin Notice Deadline on any Business Day, the party receiving such notice shall transfer cash or Additional Purchased Securities as provided in such subparagraph no later than the close of business in the relevant market on such day. If any such notice is given after the Margin Notice Deadline,

the party receiving such notice shall transfer such cash or Securities no later than the close of business in the relevant market on the next Business Day following such notice.

- 4.4 Any cash transferred pursuant to this Paragraph shall be attributed to such Transactions as shall be agreed upon by Buyer and Seller.
  - 4.5 Seller and Buyer may agree, with respect to any or all Transactions hereunder, that the respective rights of Buyer or Seller (or both) under subparagraphs 4.1 and 4.2 of this Paragraph may be exercised only where a Margin Deficit or a Margin Excess, as the case may be, exceeds a specified dollar amount or a specified percentage of the Repurchase Prices for such Transactions (which amount or percentage shall be agreed to by Buyer and Seller prior to entering into any such Transactions).
  - 4.6 Seller and Buyer may agree, with respect to any or all Transactions hereunder, that the respective rights of Buyer and Seller under subparagraphs 4.1 and 4.2 of this Paragraph to require the elimination of a Margin Deficit or a Margin Excess, as the case may be, may be exercised whenever such a Margin Deficit or a Margin Excess exists with respect to any single Transaction hereunder (calculated without regard to any other Transaction outstanding under this Agreement).
5. **Income Payments.** Unless otherwise agreed to in this Agreement or the Master Treasury Management Agreement, Seller shall be entitled to receive an amount equal to all Income paid or distributed on or in respect of the Securities that is not otherwise received by Seller, to the full extent it would be so entitled if the Securities had not been sold to Buyer. Buyer shall, as the parties may agree with respect to any Transaction (or, in the absence of any such agreement, as Buyer shall reasonably determine in its discretion), on the date such Income is paid or distributed either (i) transfer to or credit to the account of Seller such Income with respect to any Purchased Securities subject to such Transaction or (ii) with respect to Income paid in cash, apply the Income payment or payments to reduce the amount, if any, to be transferred to Buyer by Seller upon termination of such Transaction. Buyer shall not be obligated to take any action pursuant to the preceding sentence (A) to the extent that such action would result in the creation of a Margin Deficit, unless prior thereto or simultaneously therewith Seller transfers to Buyer cash or Additional Purchased Securities sufficient to eliminate such Margin Deficit, or (B) if an Event of Default with respect to Seller has occurred and is then continuing at the time such Income is paid or distributed.
6. **Security Interest.** Although the parties intend that all Transactions hereunder be sales and purchases and not loans, in the event any such Transactions are deemed to be loans, Seller shall be deemed to have pledged to Buyer as security for the performance by Seller of its obligations under each such Transaction, and shall be deemed to have granted to Buyer a security interest in, of all Purchased Securities with respect to all Transactions hereunder and all Income thereon and other proceeds thereof.
7. **Payment and Transfer.** Unless otherwise mutually agreed, all transfers of funds hereunder shall be in immediately Available Funds. All Securities transferred by one party hereto to the other party (i) shall be in suitable form for transfer or shall be accompanied by duly executed instruments of transfer or assignment in blank and such other documentation as the party receiving possession may reasonably request, (ii) shall be transferred on the book-entry system of a Federal Reserve Bank, or (iii) shall be transferred by any other method mutually acceptable to Seller and Buyer.

8. Segregation of Purchased Securities. To the extent required by Applicable Law, all Purchased Securities in the possession of Seller shall be segregated from other securities in its possession and shall be identified as subject to this Agreement. Segregation may be accomplished by appropriate identification on the books and records of the holder, including a financial or securities intermediary or a clearing corporation. All of Seller's interest in the Purchased Securities shall pass to Buyer on the Purchase Date and, unless otherwise agreed by Buyer and Seller, nothing in this Agreement shall preclude Buyer from engaging in repurchase transactions with the Purchased Securities or otherwise selling, transferring, pledging or hypothecating the Purchased Securities, but no such transaction shall relieve Buyer of its obligations to transfer Purchased Securities to Seller pursuant to sections titled "Initiation: Confirmation; Termination", "Margin Maintenance" and "Events of Default" hereof, or of Buyer's obligation to credit or pay Income to, or apply Income to the obligations of, Seller pursuant to section titled "Income Payments" hereof.

**Required Disclosure for Transactions in which the Seller Retains Custody of the Purchased Securities**

**Seller is not permitted to substitute other securities for those subject to this Agreement and therefore must keep Buyer's securities segregated at all times, unless in this Agreement Buyer grants Seller the right to substitute other Securities. If the Buyer grants the right to substitute, this means that the Buyer's securities will likely be commingled with the Seller's own securities during the trading day. The Buyer is advised that, during any trading day that the Buyer's securities are commingled with the Seller's securities, they may be subject to liens granted by the Seller to third parties and may be used by the Seller for deliveries on other securities transactions. Whenever the securities are commingled, the Seller's ability to re-segregate substitute securities for the Buyer will be subject to the Seller's ability to satisfy any lien or to obtain substitute securities.**

9. Substitution. Seller may not substitute other Securities for any Purchased Securities.
10. Representations. Each of Buyer and Seller represents and warrants to the other that (i) it is duly authorized to execute and deliver this Agreement, to enter into Transactions contemplated hereunder and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance, (ii) it will engage in such Transactions as principal (or, if agreed in writing, in the form of Annex I hereto or otherwise, in advance of any Transaction by the other party hereto, as agent for a disclosed principal), (iii) the person signing this Agreement on its behalf is duly authorized to do so on its behalf (or on behalf of any such disclosed principal), (iv) it has obtained all authorizations of any governmental body required in connection with this Agreement and the Transactions hereunder and such authorizations are in full force and effect and (v) the execution, delivery and performance of this Agreement and the Transactions hereunder will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected. On the Purchase Date for any Transaction Buyer and Seller shall each be deemed to repeat all the foregoing representations made by it.
11. Events of Default. In the event that (i) Seller fails to transfer or Buyer fails to purchase Purchased Securities upon the applicable Purchase Date, (ii) Seller fails to repurchase or

Buyer fails to transfer Purchased Securities upon the applicable Repurchase Date, (iii) Seller or Buyer fails to comply with Paragraph 4 hereof, (iv) Buyer fails, after one Business Day's notice, to comply with section titled "Income Payments" hereof, (v) an Act of Insolvency occurs with respect to Seller or Buyer, (vi) any representation made by Seller or Buyer shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, or (vii) Seller or Buyer shall admit to the other its inability to, or its intention not to, perform any of its obligations hereunder (each an "Event of Default"):

- 11.1 The non-defaulting party may, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), declare an Event of Default to have occurred hereunder and, upon the exercise or deemed exercise of such option, the Repurchase Date for each Transaction hereunder shall, if it has not already occurred, be deemed immediately to occur (except that, in the event that the Purchase Date for any Transaction has not yet occurred as of the date of such exercise or deemed exercise, such Transaction shall be deemed immediately canceled). The non-defaulting party shall (except upon the occurrence of an Act of Insolvency) give notice to the defaulting party of the exercise of such option as promptly as practicable.
- 11.2 In all Transactions in which the defaulting party is acting as Seller, if the non-defaulting party exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Paragraph, (i) the defaulting party's obligations in such Transactions to repurchase all Purchased Securities, at the Repurchase Price therefore on the Repurchase Date determined in accordance with subparagraph (a) of this Paragraph, shall thereupon become immediately due and payable, (ii) all Income paid after such exercise or deemed exercise shall be retained by the non-defaulting party and applied to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder, and (iii) the defaulting party shall immediately deliver to the non-defaulting party any Purchased Securities subject to such Transactions then in the defaulting party's possession or control
- 11.3 In all Transactions in which the defaulting party is acting as Buyer, upon tender by the non-defaulting party of payment of the aggregate Repurchase Prices for all such Transactions, all right title and interest in and entitlement to all Purchased Securities subject to such Transactions shall be deemed transferred to the non-defaulting party, and the defaulting party shall deliver all such Purchased Securities to the non-defaulting party.
- 11.4 If the non-defaulting party exercises or is deemed to have exercised the option referred to in subparagraph 11.1 of this Paragraph, the non-defaulting party, without prior notice to the defaulting party, may:
  - 11.4.1 as to Transactions in which the defaulting party is acting as Seller, (A) immediately sell, or instruct the defaulting party as its agent to sell, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the non-defaulting party may reasonably deem satisfactory, any or all Purchased Securities subject to such Transactions and apply the proceeds thereof to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Securities, to give the defaulting party credit for such Purchased Securities in an amount equal to the price therefore on such date, obtained from a generally recognized source or the most recent

closing bid quotation from such a source, against the aggregate unpaid Repurchase Prices and any other amount owing by the defaulting party hereunder; and

- 11.4.2 as to Transactions in which the defaulting party is acting as Buyer, (A) immediately purchase, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the non-defaulting party may reasonably deem satisfactory, securities ("Replacement Securities") of the same class and amount as any Purchased Securities that are not delivered by the defaulting party to the non-defaulting party as required hereunder or (B) in its sole discretion elect, in lieu of purchasing Replacement Securities, to be deemed to have purchased Replacement Securities at the price therefore on such date, obtained from a generally recognized source or the most recent closing offer quotation from such a source.

Unless otherwise provided in the Supplemental Terms and Conditions below, the parties acknowledge and agree that (1) the Securities subject to any Transaction hereunder are instruments traded in a recognized market, (2) in the absence of a generally recognized source for prices or bid or offer quotations for any Security, the non-defaulting party may establish the source therefore in its sole discretion and (3) all prices, bids and offers shall be determined together with accrued Income (except to the extent contrary to market practice with respect to the relevant Securities).

- 11.5 As to Transactions in which the defaulting party is acting as Buyer, the defaulting party shall be liable to the non-defaulting party for any excess of the price paid (or deemed paid) by the non-defaulting party for Replacement Securities over the Repurchase Price for the Purchased Securities replaced thereby and for any amounts payable by the defaulting party under section titled "Income Payments" hereof or otherwise hereunder.
- 11.6 For purposes of this section "Events of Default", the Repurchase Price for each Transaction hereunder in respect of which the defaulting party is acting as Buyer shall not increase above the amount of such Repurchase Price for such Transaction determined as of the date of the exercise or deemed exercised by the non-defaulting party of the option referred to in subparagraph (a) of this Paragraph.
- 11.7 The defaulting party shall be liable to the non-defaulting party for (i) the amount of all reasonable legal or other expenses incurred by the non-defaulting party in connection with or as a result of an Event of Default, (ii) damages in an amount equal to the cost (including all fees, expenses and commissions) of entering into replacement transactions an entering into or terminating hedge transactions in connection with or as a result of an Event of Default, and (iii) any other loss, damage, cost or expense directly arising or resulting from the occurrence of an Event of Default in respect of a Transaction.
- 11.8 To the extent permitted by Applicable Law, the defaulting party shall be liable to the non-defaulting party for interest on any amounts owing by the defaulting party hereunder, from the date the defaulting party becomes liable for such amounts hereunder until such amounts are (i) paid in full by the defaulting party or (ii) satisfied in full by the exercise of the non-defaulting party's rights hereunder. Interest on any sum payable by the defaulting party to the non-defaulting party

under this section titled "Events of Default" shall be at a rate equal to the greater of the Pricing Rate for the relevant Transaction or the Prime Rate.

11.9 The non-defaulting party shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or Applicable Law.

**12. Single Agreement.** Buyer and Seller acknowledge that, and have entered hereinto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and have been made in consideration of each other. Accordingly, each of Buyer and Seller agrees, (i) to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, (ii) that each of them shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transactions hereunder and (iii) that payments, deliveries and other transfers made by either of them in respect of any Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Transactions hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

**13. Notices and Other Communications.** Any and all notices, confirmations, statements, demands or other communications hereunder may be given by a party to the other by U.S. mail, facsimile, telegraph, messenger, or otherwise to the Company's address as reflected in the records of the Bank, or so sent to such party at any other place specified in a notice of change of address hereafter received by the other. At Bank's option, all notices, demands and requests hereunder may be made orally, to be confirmed promptly in writing, or by other communication as specified in the preceding sentence. Company may consent to receive the following communications from Bank via the internet to an email address designated by Company on Annex II hereto, by checking the box indicating consent. Company also confirms that it meets the hardware and software requirements set forth on Annex II and is able to access and retain electronic communications from Bank. Company can elect to withdraw its consent to electronic communications at any time by contacting Bank during business hours. The legal validity and enforceability of prior electronic communications will not be affected by Company's withdrawal of consent at a later date. However, upon request of Company, Bank will provide paper copies of the confirmations by delivering them to Company by U.S. mail at the address noted on Annex II hereto.

**14. Entire Agreement; Severability.** This Agreement shall supersede any existing agreements between the parties containing general terms and conditions for repurchase transactions. Each provision and agreement herein shall be treated as separate and independent from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

**15. Non-assignability; Termination.**

15.1 The rights and obligations of the parties under this Agreement and under any Transaction shall not be assigned by either party without the prior written consent of the other party, and any such assignment without the prior written consent of the other party shall be null and void. Subject to the foregoing, this Agreement and any Transactions shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement may be terminated by either party upon giving written notice to the other, except that this Agreement shall, notwithstanding such notice, remain applicable to any Transaction then outstanding.

15.2 Subparagraph (a) of this section shall not preclude a party from assigning, charging or otherwise dealing with all or any part of its interest in any sum payable to it under section titled "Events of Default" hereof.

**16. No Waivers, Etc.** No express or implied waiver of any Event of Default by either party shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by any party shall constitute a waiver of its right to exercise any other remedy hereunder. No modification or waiver of any provision of this Agreement and no consent by any party to a departure here from shall be effective unless and until such shall be in writing and duly executed by both of the parties hereto. Without limitation on any of the foregoing, the failure to give a notice pursuant to section titled "Margin Maintenance" hereof will not constitute a waiver of any right to do so at a later date.

**17. Use of Employee Plan Assets.**

17.1 If assets of an employee benefit plan subject to any provision of the Employee Retirement Income Security Act of 1974 ("ERISA") are intended to be used by either party hereto (the "Plan Party") in a Transaction, the Plan Party shall so notify the other party prior to the Transaction. The Plan Party shall represent in writing to the other party that the Transaction does not constitute a prohibited transaction under ERISA or is otherwise exempt therefrom, and the other party may proceed in reliance thereon but shall not be required so to proceed.

17.2 Subject to the last sentence of subparagraph (a) of this Paragraph, any such Transaction shall proceed only if Seller furnishes or has furnished to Buyer its most recent available audited statement of its financial condition and its most recent subsequent unaudited statement of its financial condition.

17.3 By entering into a Transaction pursuant to this Paragraph, Seller shall be deemed (i) to represent to Buyer that since the date of Seller's latest such financial statements, there has been no material adverse change in Seller's financial condition which Seller has not disclosed to Buyer, and (ii) to agree to provide Buyer with future audited and unaudited statements of its financial condition as they are issued, so long as it is a Seller in any outstanding Transaction involving a Plan Party.

**18. Intent.**

18.1 The parties recognize that each Transaction is a "repurchase agreement" as that term is defined in Section 101 of Title 11 of the United States Code, as amended (except insofar as the type of Securities subject to such Transaction or the term of such Transaction would render such definition inapplicable), and a "securities contract" as that term is defined in Section 741 of Title 11 of the United States Code, as amended (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).

18.2 It is understood that either party's right to liquidate Securities delivered to it in connection with Transactions hereunder or to exercise any other remedies pursuant to Paragraph 11 hereof is a contractual right to liquidate such Transaction as described in Sections 555 and 559 of Title 11 of the United States code, as amended.

18.3 The parties agree and acknowledge that the Bank indicated above is an "insured depository institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Transaction hereunder is a "qualified

financial contract”, as that term is defined in FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).

- 18.4 It is understood that this Agreement constitutes a “netting contract” as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICA”) and each payment entitlement and payment obligation under any Transaction hereunder shall constitute a “covered contractual payment entitlement” or “covered contractual payment obligation”, respectively, as defined in and subject to FDICIA (except insofar as one or both parties is not a “financial institution” as that term is defined in FDICIA).

**19. Disclosure Relating to Certain Federal Protections.** The parties acknowledge that they have been advised that:

- 19.1 Funds held by Bank pursuant to a Transaction hereunder are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation
- 19.2 In the case of Transactions in which one of the parties is a broker or dealer registered with the Securities and Exchange Commission (“SEC”) under Section 15 of the Securities Exchange Act of 1934 (“1934 Act”), the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 (“SIPA”) do not protect the other party with respect to any Transaction hereunder.
- 19.3 In the case of Transactions in which one of the parties is a government securities broker or a government securities dealer registered with the SEC under Section 125C of the 1934 Act, SIPA will not provide protection to the other party with respect to any Transaction hereunder.

**Investment Sweep Services - Repurchase Agreement – Terms and Conditions**

The Investment Sweep Services– Repurchase Agreement are provided subject to the following additional terms and conditions:

1. **FDIC DISCLOSURE: FUNDS HELD BY BANK IN THE REPO ACCOUNT ARE NOT A DEPOSIT AND THEREFORE ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION. INVESTMENTS MADE UNDER THIS AGREEMENT ARE NOT OBLIGATIONS OF AND ARE NOT GUARANTEED BY BANK OR BY THE UNITED STATES GOVERNMENT OR ANY AGENCY THEREOF. SUCH FUNDS ARE SUBJECT TO INVESTMENT RISKS, INCLUDING POSSIBLE LOSS OF THE PRINCIPAL AMOUNT INVESTED. IN THE EVENT OF BANK FAILURE, YOU WOULD BE A SECURED CREDITOR OF THE BANK WITH A RIGHT TO INSTRUCT THE BANK’S RECEIVER TO SELL THE SECURITIES. IF THE MARKET VALUE OF THE SECURITIES IS LESS THAN THE PRINCIPAL AMOUNT INVESTED, YOU WOULD BE A GENERAL UNSECURED CREDITOR OF THE BANK, BUT ONLY WITH RESPECT TO ANY SUCH SHORTFALL.**
2. Company has an Account (“DDA”) with Bank, and desires to invest excess funds in short term repurchase agreements, and the Bank desires to provide a means of accomplishing such investment:
- 2.1 Following the posting of all debits and credits to Company’s DDA on any day when Bank shall be open for the transaction of substantially all business which it normally transacts (a “Banking Day”), Bank is



authorized to transfer to another account in Company's name (the "Repo Account") such an amount in as is required to cause the collected balance remaining in the DDA to be not less than the specified Target Balance. Such Target Balance may be modified by agreement between the parties from time to time and such modified amount shall thereafter be deemed to be the Target Balance. Bank agrees to sell, and Company agrees to purchase, on each Banking Day in which a collected balance exists in the Repo Account (after effecting the transfers authorized above and the retransfers authorized in Paragraph 2), certain direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States Government or any agency thereof ("Securities"), in the amount of such collected balance, and at the close of business on the ensuing Banking Day, Company will sell and Bank will repurchase the Securities (or any securities that may have been substituted therefore), at the same price at which they were sold to Company, payable immediately; plus interest, payable as described in Paragraph 3, all in accordance with the terms and conditions set forth herein. The market value of the Securities shall at the time of purchase be at least equal to the purchase price. The principal amount (which may be netted against purchases of Securities which would otherwise be made by the Company on that day) arising from Bank's repurchase shall be immediately credited to the Repo Account. Company shall have no right to withdraw from or add to the Repo Account, it being understood that all transfers to and from such Account shall be affected automatically by Bank pursuant to this Agreement.

- 2.2 On any Banking Day when after completion of posting to the DDA the collected balance therein shall be less than the Target Balance, Bank is authorized to transfer from the Repo Account to the DDA such an amount as is required to cause the collected balance in the DDA to equal or exceed the Target Balance. Such transfer shall be made after taking into account collected balances remaining in the Repo Account after crediting the net proceeds arising from the transactions contemplated in Paragraph 1.
- 2.3 Notwithstanding any statement to the contrary in the Master Repurchase Agreement, Bank will accrue interest for each calendar day, calculated on the basis of actual days and a year of 365 days, on the purchase price of the Securities which are sold to Company and repurchased by Bank under each repurchase agreement. The obligation to pay interest is that of Bank, bears no relationship to the interest rate on the Securities, and is in lieu of such interest. Interest on the Securities accrues to and remains at all times the property of the Bank. If Company shall at any time acquire or exercise control over such interest, it shall be deemed to be held in trust for Bank. Bank will provide a daily confirmation notice of collected balance, purchased securities, interest rate and interest earned for that day's Repo activity. A monthly statement will advise Company of collected balances and total interest paid in the Repo Account for the preceding calendar month at the time the statement of the DDA is transmitted. Interest shall be deemed to be earned on any repurchase agreement beginning on the date Securities are sold by Bank to Company, but no interest shall be payable for the date Securities are repurchased by Bank. Interest earned during any calendar month will be credited to the DDA on the last Banking Day of the month.
- 2.4 If for any reason the amount eligible for investment shall not change for two or more Banking Days, the repurchase agreement shall be deemed to

be renewed from Banking Day to Banking Day until a transfer to or from the Repo Account is required by this Agreement, provided, however, that no repurchase agreement shall ever extend for a period exceeding 85 days.

- 2.5 Company warrants and represents to Bank that this agreement has been executed and delivered by a duly Authorized Representative of Company pursuant to full and sufficient authority of its governing body.
- 2.6 This Agreement may be terminated by either party on written notice of the other party, effective on the Banking Day next following receipt of notice. Upon any termination, Bank shall immediately repurchase all Securities, credit the principal payment therefore to the Repo Account, and transfer the entire balance therein as well as interest earned during the month of termination to the DDA.

#### **L. INVESTMENT SWEEP SERVICES – BUSINESS MONEY MARKET.**

- 1. The Service. The Business Money Market Sweep is a sweep-based product that provides a non-interest bearing base checking Account that automatically moves collected balances into a linked Business Money Market Account.
- 2. Funding of Accounts. When the collected balance in the checking Account exceeds the minimum investment balance, the funds automatically sweep into the linked Business Money Market Account. When the checking Account balance falls below zero (\$0), funds from the linked Business Money Market Account sweep back into the checking Account, in \$.01 increments, to cover the daily withdrawal activity.
- 3. Limitation of Withdrawals. These transfers (limited to six transfers or withdrawals per month) will appear on the combined checking & money market Account monthly statement. When the Business Money Market Account reaches the sixth withdrawal per month, all funds in the Business Money Market Account are returned to the checking Account and further transfer activity is suspended until the next statement cycle begins and funds are swept back into the Business Money Market Account.
- 4. Interest Paid. Interest accrues daily and is paid monthly on the average collected balance in the Business Money Market Account.

#### **M. LINE OF CREDIT/SWEEP SERVICES.**

- 1. Definitions. In addition to the defined terms in Part I above, the following terms will have the following meanings as used in this Subpart.
  - 1.1 “**Banking Day**” means the Business Day of a bank.
  - 1.2 “**Revolving Line of Credit**” means any loan arrangement which is designated as a revolving line of credit and which Bank has agreed will be accessible by use of the LOC Sweep Services.
  - 1.3 “**Loan Documents**” means any loan agreement, promissory note, guaranty, or other agreement, instrument or document which evidences, secures, or guarantees the Line of Credit.
  - 1.4 “**LOC Sweep Services**” means the Account sweep services provided pursuant to this Subpart.

**FDIC DISCLOSURE**

**IF YOU SELECTED THE LINE OF CREDIT SWEEP SERVICES, FUNDS MAINTAINED IN THE ACCOUNT PRIOR TO SWEEP TO THE LINE OF CREDIT ACCOUNT ARE DEPOSITS INSURED BY THE FDIC UP TO THE MAXIMUM PERMITTED BY LAW. IN THE EVENT OF BANK FAILURE, THE FDIC WOULD TREAT THE SWEEP TRANSACTION FOR THAT DAY AS HAVING BEEN COMPLETED. IF FUNDS WERE SWEEPED FROM YOUR ACCOUNT TO YOUR LOAN ACCOUNT, THE FDIC WOULD RECOGNIZE THE SWEEP FOR THAT DAY AS HAVING BEEN COMPLETED AND THE CREDIT TO REDUCE THE AMOUNT OF YOUR LOAN.**

The Company has a demand deposit Account with Bank identified in the Application for use with these LOC Sweep Services and a revolving line of credit in the maximum amount, as listed in the Application, and evidenced by a promissory note executed by Company on or about the date, as reflected in the Application. (the “**Revolving Line**”);

All checks written on the Account shall be used by the Company exclusively for the purposes of business expenses.

The Company desires to authorize Bank to make certain automatic transfers between the Account and the Revolving Line pursuant to Company’s instructions contained in this Subpart and its Application.

2. **Target Balance.** For purposes of this Agreement, the “Target Balance” shall mean a collected balance in the Account, of which the amount shall be listed on the Application, after the posting of all debits and credits to Company’s Account at the end of any Banking Day. The Target Balance may be modified by subsequent agreement between the parties from time to time and such modified amount shall thereafter be deemed to be the Target Balance.
3. **Authorized Automatic Transfers.** Company hereby authorizes Bank to make transfers on behalf of Company between the Account and the Revolving Line during the term of this Agreement as follows:
  - 3.1 If, at the end of any Banking Day after completion of posting of all debits and credits to the Account, the collected balance therein shall be:
  - 3.2 Less than the Target Balance, then Bank is hereby authorized and directed to make an advance under the Revolving Line and transfer to the Account such funds as are required to cause the collected balance in the Account to equal the Target Balance; or
  - 3.3 In excess of the Target Balance, then Bank is hereby authorized and directed to transfer from the Account such funds as are required to cause the collected balance in the Account to equal the Target Balance and to apply such transferred funds to reduce the outstanding principal balance of the Revolving Line.
  - 3.4 Company acknowledges and agrees that any advance shall be limited to the maximum amount of credit available to the Company under the Revolving Line.

**N. WIRE TRANSFER SERVICES.**

1. **Definitions.** In addition to the defined terms in Part I above, the following terms will have the following meanings as used in this Subpart.

- 1.1 **“Operator Password”** means an Access Credential, used as a security code under the Security Procedures, in connection with the authentication of Payment Orders.
  - 1.2 **“Payment Order”** means an instruction, as defined in KRS 355.4A-103(a)(a), communicated to Bank under this Subpart, including those relating to a Funds Transfer.
  - 1.3 **“Wire Transfer Request Form”** means a written Payment Order document requesting and/or containing the information required by Bank pursuant to this Subpart to make a funds transfer.
  - 1.4 **“Wire Transfer Services”** means the use of a wire transfer network, of which Bank is a member or is affiliated, to initiate or receive Payment Order instructions relating to domestic and international funds transfers.
2. Utilization of Wire Services or Funds Transfer Orders.
  - 2.1 Company requests Bank to provide Wire Transfer Services for Company’s selected Account(s) as disclosed in the Application and its Schedules.
  - 2.2 Through this Service, Company is authorized to initiate funds transfers through the Online Banking Wire Services, which shall be governed by the terms of this Subpart. Company may continue to request, outside of Online Banking, wire transfer payments be made on its behalf by Bank, provided Company complies with all authentication requirements demanded by Bank and that the Payment Order is otherwise received in compliance with Bank’s Funds Transfer Policy.
  - 2.3 Company may not initiate, and Bank shall have no obligation to honor, a Payment Order until Bank has accepted Company’s Application and the Application attached Schedule relating to wire funds transfer services; that Bank has received documentation that Company’s Authorized Representative(s) involved with any wire Payment Order is and are empowered to act for the Company as provided for in this Agreement; and Company has delivered a corporate resolution affirming its acceptance of this Service to Bank’s satisfaction.
3. Security Procedures. Bank and Company have agreed upon Security Procedures, including as set forth and described in the Security Procedures Supplement, and as may be described herein, for authenticating instructions relating to any Payment Order, including instruction relating to Funds Transfer to be completed by wire transfer. Payment Order instructions communicated to Bank via the Online Banking Services are subject to the terms of the Agreement, this Subpart and the Related Agreements.
4. Funds Transfer Risk. By giving Authorized Representative(s) the ability to communicate Payment Order instructions, Company assumes risks and responsibilities with respect to he acts, errors and omissions of the individual(s). Company warrants and agrees that no individual(s) shall be allowed to access the Service or to initiate Payment Orders except pursuant to the supervisions and the safeguards that Company deems adequate for its own needs. Company assumes full responsibility for and shall be bound by all Payment Orders originated by instructions given to the Bank by Authorized Representative(s). Company agrees to regularly and promptly review all Payment Order instructions communicated by its Authorized Representatives. Company reviews shall be conducted by persons other than Authorized Representative(s).

Bank's obligation hereunder shall be to exercise ordinary care in performing the Services described in this Subpart. Substantial compliance by the Bank with its standard procedures for providing the Wire Transfer Services shall be deemed to be the exercise of ordinary care.

**5. Initiating Transfers and/or Funds Transfer Orders.**

- 5.1 Company's Authorized Representative(s), listed in the Application and its attached Schedules, as authorized agents of Company, may initiate Payment Order instructions to Bank directing that a Funds Transfer be made from a Company Account by wire transfer to a beneficiary's account at Bank or another financial institution.
- 5.2 Payment Orders, amendments and cancellations, properly initiated under the terms of this Subpart, will be accepted during the normal business hours of the Bank's wire transfer department, excluding Federal Reserve or Bank holidays which are subject to change. Upon Bank's receipt of a request by Company's Authorized Representative(s) to amend or cancel a Payment Order(s), Bank agrees: 1) if the Payment Order is in Bank's possession and Bank has sufficient time to act, Bank will amend or cancel provided said amendment or cancellation in accordance with this Subpart; or 2) Bank agrees to use commercial best efforts to amend, recall or reverse a Payment Order(s) if previously transmitted.
- 5.3 In unusual situations, Bank may agree to accept a Payment Order after its normal Cut-off Time or same-day execution. Company agrees that Bank's willingness to accept such a Payment Order in no way obligates Bank to do so on a regular basis and in no way alters the business hours of Bank's wire transfer department.

**6. Repetitive Payment Orders.**

- 6.1 A Payment Order by wire transfer is repetitive when made routinely by Company with instructions remaining relatively constant for a specified beneficiary, except for the date of transmission and the dollar amount. Instructions for repetitive payment order(s) shall be specified by Company in the Application, which may be amended from time to time as approved by Bank. A Repetitive Wire's Wire Transfer Request Form or Template may also be created, stored and originated by Company from within Commercial Online Banking. In all cases in which Online Banking is used for wire transfer Payment Orders, including repetitive Payment Orders, Company shall comply with the terms of this Subpart.
- 6.2 Outside of Online Banking, to initiate a repetitive Payment Order orally or by facsimile transmission, Company's Authorized Representative shall comply with Bank's Funds Transfer Policy and shall provide Bank with the following information: 1) caller name; 2) Company name; 3) sender's address; 4) amount to be transferred; and 5) Company's Access Credentials. For purpose of confirmation, in the case of an orally initiated Payment Order, Bank will orally repeat the aforementioned items to the Authorized Representative. In the case of a facsimile transmission, Company's Authorized Representative shall submit the above-described information in a signed wire transfer request form. Company agrees that the procedures described herein above are satisfactory procedures, under its needs and circumstances, for authenticating these types of Payment Orders. There shall be no requirement that Bank call back to verify repetitive Payment Orders.

## 7. Non-repetitive Payment Orders.

- 7.1 A non-repetitive Payment Order is one directing a wire transfer that is not repetitive Payment Order instruction as described above. In all cases in which Online Banking is used for wire transfer Payment Orders, including repetitive Payment Orders, Company shall comply with the terms of Subpart.

To initiate a non-repetitive Payment Order, outside of Online Banking, orally or by facsimile transmission, Company shall comply with Bank's Funds Transfer Policy and Company's Authorized Representative shall provide Bank with the following information: 1) caller name; 2) beneficiary name; 3) Company's Account number from which the funds are to be withdrawn; 4) Company's address; 5) dollar amount to be transferred; 6) the name, city and state of beneficiary's financial institution; 7) beneficiary's financial institution's ABA number, SWIFT code or that financial institution's identification number, as may be requested by Bank; 8) beneficiary's name and beneficiary's account number; 9) beneficiary's address; and 10) Company's Access Credentials and compliance with this Subpart, including the Securities Procedures. In the case of a facsimile transmission, Company's Authorized Representative shall submit the above-described information in a wire transfer request form properly executed by an authorized representative of Company as Company's agent. Bank may perform a verification call-back for non-repetitive wire transfers in excess of \$10,000.00.

## 8. Honoring Payment Orders.

- 8.1 Bank will only authenticate instructions received if transmitted by Company in compliance with this Subpart, including the Security Procedures. Bank will be under no obligation to accept, either in whole or part, even if authenticated under this Subpart, any Payment Order instructions which: 1) exceeds Company's collected and Available Funds on deposit with Bank or any pre-established credit limit; 2) Bank has actual knowledge that the individual(s) communicating an instruction is not be authorized by Company to initiate such instructions (Company agrees that Bank shall have no duty to investigation authority, except as expressly mandated in this Subpart); 3) Bank in its sole judgment is unable to carry out because it involves funds subject to a hold, dispute or legal process, or because of Applicable Law or regulation or other governmental guidelines preventing withdrawal; 4) it is incomplete or ambiguous; or 5) if in Bank's sole judgment Company's financial condition is impaired.
- 8.2 If Bank overdraws Company's Account in order to complete a Payment Order, Company agrees to repay Bank immediately upon demand, that Bank may offset the overdraft from an Account of Company and Bank may charge the Account a service charge for the overdraft. However, Bank is under no obligation to complete a Payment Order instruction that would overdraw Company's Account(s) for any purpose.
- 8.3 If Company initiates a Payment Order identifying an intermediary bank or beneficiary's bank only by identifying number, Bank may rely on the number as proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies the correct bank.
- 8.4 If a Payment Order identifies an intermediary bank or beneficiary's bank both by name and identifying number, and the name and number identify different banks, Bank may rely on the number as proper identification.

- 8.5 Company understands and agrees financial institutions, like Bank, banks are lawfully permitted to rely solely on the account number listed for the wire transfer's beneficiary in transmitting and accepting wire transfers, that it is not incumbent upon a sender bank or beneficiary's bank to determine if the identified beneficiary is associated with the account number, and that banks accept and credit wire transfer payments to the account number listed in the received wired transfer's Payment Order. Therefore, if Company executes a Payment Order identifying the beneficiary by both name and account number, and if the name and account number identify different persons, then the following applies: if beneficiary's bank accepts the Payment Order and the Payment Order is inconsistent as to the beneficiary's name and number and the beneficiary's bank subsequently pays the person identified by the number, Company as the originator is obliged to pay its order. The Bank may rely, without liability to Company, on such account number without the need to obtain independent verification or examine the owner of the account identified by number. Similarly, Bank may rely on the account number as the correct and sole identification of the beneficiary on Payment Orders accepted by Bank.

**9. Executing Payment and/or Funds Transfer Orders.**

- 9.1 Except as otherwise set forth in this Subpart, Bank will execute Payment Order(s) on the day that the Payment Order(s) is received, provided that the order(s) is received prior to the Bank's wire transfer department's Cutoff Time, and provided that the day of receipt is a Business Day for Bank and for the Federal Reserve Bank and for the receiving bank.
- 9.2 Bank may record any Payment Order(s) initiated by telephone. The decision to record any telephone conversation shall be solely within Bank's discretion, and Bank assumes no liability for failure to do so. Further, Company acknowledges and agrees that telephone conversations may be monitored and recorded.
- 9.3 In attempting to execute any Payment Order(s) Bank shall use its best efforts to utilize the means of transmission specified in Company's request, but in no way shall Bank be limited to such means of transmission, and may utilize such funds transfer system as is reasonably selected by the Bank.
- 9.4 Bank will notify Company if it cannot execute a Payment Order due to a funds transfer system problem beyond Bank's reasonable control, Bank shall make best effort to execute at the earliest opportunity once the same problem is resolved to Bank's knowledge and Bank shall not be liable to company for any loss, damage or injury, even if Company had earlier informed Bank of the possibility of a loss, damage or injury.
- 9.5 In the event beneficiary's Bank is not able to receive or accept Payment Orders via Fedwire, Company authorizes Bank to send the Payment Order to an intermediary Bank for further credit to beneficiary's Bank. In the event Company does not designate an intermediary Bank, Bank will select an intermediary bank using the current Fed directory and/or McFadden books.
- 9.6 Bank shall use the ABA number furnished by Company. In the event that Company furnishes an incorrect ABA number, Bank is not responsible for the incorrect routing of funds.

**10. Incoming Payment Orders.** Bank's receipt and acceptance of incoming wire transfer Payment Orders identifying Company as beneficiary shall be subject to the Deposit Account Rules and Regulations and Applicable Laws. Bank assumes no liability except as set forth in the deposit terms and conditions for accepting incoming Payment Orders, and Company agrees to indemnify and hold Bank harmless from and against any claim arising from or in connection with the receipt of an incoming Payment Order.

**11. Notification.**

11.1 Bank will mail periodic statements on the Company's Account at the address maintained by Bank.

11.2 Bank may agree to notify Company the same day of incoming Payment Orders. Notification shall be via the email address Company has supplied to Bank, at the times agreed by Bank and Company.

11.3 Bank will endeavor to notify Company by telephone, electronic transmission or other means as to any Payment Order that it rejects for payment and the reason for such rejection. Bank shall have no liability to you or to any third party by reason of such rejection.

**12. Authorization to Charge Account.** Upon execution of the Master Agreement and the Application, Company authorizes Bank to charge Company's Accounts in the amount of Payment Orders.

**13. Account Reconciliation.** Completed outgoing or incoming Payment Orders will be reflected on Company's periodic statement. Company agrees to promptly examine its periodic statements, Payment Order confirmations, and other notices that the Bank sends or makes available to Company. Further, Company shall immediately notify Bank of any discrepancy between Company's Payment Order and any advice notification, periodic Account statement or other Bank detail Account activity listing. Unless any other agreements, laws or Deposit Account Rules or Regulations provide for a shorter period, if Company fails to notify Bank of any such discrepancy within fourteen (14) days following Bank's transmission thereof, Company agrees that Bank will not be liable for any losses which result from Company's failure to give Bank such notice or which might be prevented by the giving of such notice. If Company provides oral notification to the Bank, Company shall promptly provide with written confirmation.

**14. Compensation.**

14.1 If Company suffers any loss of interest as a result of Bank's error in executing or failing to execute a Payment Order in accordance with the terms and conditions of this Subpart, Bank will reimburse Company for that loss as stated in this Subpart, provided that Company complied with the terms and conditions of this Subpart and provided further that such error was in Bank's reasonable control and did not arise from any act or failure to act by Company or its agents or employees.

14.2 Compensation shall be limited to the interest lost for a period not exceeding fourteen (14) days following Bank's transmission of the confirmation advice, terminal printout, or periodic Account statement (whichever is transmitted first), and shall be calculated using a rate equal to the average federal funds rate at the time, on a 360 day year basis. Compensation will be paid either by credit to Company's Account with Bank or by wire. Compensation requests must be made in writing and delivered to Bank.



15. International Funds Transfers. In the event Company has elected to originate international funds transfers, the following applies:

15.1 For Non-repetitive Payment Order: In addition to the information required above in the section titled "Non-Repetitive Payment Orders", Company shall furnish Bank with requested currency, country where funds are to be transferred and SWIFT code. Company may initiate a non-repetitive international Payment Order via Commercial Online Banking, email or facsimile machine. Company agrees that Bank shall not be liable for any loss or damage due to any act, error, or omission of any international correspondent, domestic receiving Bank or agent, including the failure of the international correspondent, domestic receiving Bank or agent to locate the named Payee, or error in identifying the named Payee, or failure to effect payment, or due to any other cause whatever beyond Bank's control, including the demise or failure of the international correspondent, domestic receiving Bank or agent.

16. International funds transfer requests for payment or refund.

16.1 When Payment Order requests are expressed in U.S. dollars, it is understood that payment is to be made in the currency of the country where the order is made payable at the buying rate of exchange of Bank's correspondent or agent.

16.2 In the case of international wire transfers, Company shall pay Bank at exchange rates mutually agreed upon by Company and Bank from time to time.

16.3 When payment is not effected abroad, refund will be made only after Bank receives confirmation of effective cancellation of the order and Bank is in free possession of the funds debited or earmarked in connection with the order, and if the order is payable in foreign currency, Bank shall in no event be liable for a sum in excess of the market value of the order at the time of such refund. Whether a refund is made or not, Company is liable for Bank's expenses.

#### **O. ZERO BALANCE ACCOUNT (ZBA) SERVICES.**

1. Definitions. In addition to the defined terms in Part I above, the following terms will have the following meanings as used in this Subpart.

1.1 "**ZBA**" means the Account identified as Company's zero balance Account in the Application, and treated by Company as a concentration or disbursement Account.

1.2 "**ZBA Services**" means the Account sweep services described in Section 3 below.

2. Company Obligations. If requested by Company and agreed to by Bank, Company hereby authorizes Bank to initiate transfers to and from the ZBA in order to provide ZBA Services. Company maintains with Bank the ZBA, which is an Account on which Company may write checks even though the balance in the Account is maintained at a zero balance. This Subpart establishes procedures by which the ZBA operates as a concentration and/or disbursement Account.

3. Transfer Directions. Bank will review Bank's ledger balance for the ZBA at the end of each Business Day, after the posting of all applicable charges and credits thereto, in order to determine the amount of the Final Ledger Balance then held in the ZBA. Bank will then transfer the Final Ledger Balance as directed by Company on the Application.