

## I. TREASURY MANAGEMENT MASTER AGREEMENT INTRODUCTION

Thank you for choosing Midland States Bank to assist you in meeting your Treasury Management needs. This document provides descriptions of the Treasury Management Services currently available, along with the proper disclosures and contract terms. Other documents may become part of the Agreement based on the Services selected. By executing the Enrollment and Execution Form provided herewith, Customer and Bank agree as follows:

1) **Definitions.** The following terms used in this Agreement have the meanings set forth below. Additional capitalized terms may be defined in connection with disclosures provided for specific Services. Where appropriate, terms defined in the singular are deemed to include plural and those defined plural are deemed to include the singular.

- a) "ACH" means Automated Clearing House, the funds transfer system that Bank uses to clear electronic Entries for Customer and other banks.
- b) "Account" means each of Customer's deposit accounts at Bank that is used to access a Service.
- c) "Account Agreement" means the terms and conditions for Bank deposit accounts as provided at account opening and as it may be modified from time to time.
- d) "Agent" means the person(s) appointed by resolution to execute or authorize this Agreement, who will have the authority provided in this Agreement.
- e) "Agreement" means this Treasury Management Master Agreement and any amendments, supplements and addenda hereto, as well as all other documents incorporated herein by reference.
- f) "Applicable Law" means any federal and state law (to the extent not considered to have been preempted by federal law) that applies to a party or a Service and the applicable rules and regulations promulgated by the FDIC, Federal Reserve and any money transfer system, network or clearing house used by Bank in providing Services. This includes, but is not limited to, as applicable, the sanctions laws, regulations and orders administered by OFAC; laws, regulations, and orders administered by the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), including the Bank Secrecy Act, the U.S.A. PATRIOT Act and the requirements for customer identification required thereby; to the extent applicable to business accounts, the Electronic Funds Transfer Act and Regulation E promulgated thereunder; Articles 3, 4 and 4A of the Uniform Commercial Code as enacted in the State of Illinois; Check 21 and Regulation CC promulgated thereunder; and restrictions imposed under the Unlawful Internet Gambling Enforcement Act of 2006.
- g) "Authorized Signer" means the person(s) designated by Customer on the Signature Card for the Account who may execute non-Digital Banking Services.
- h) "Beneficiary" means the person or entity designated by Customer to receive the proceeds of a Wire Transfer.
- i) "Business Day" means any day during which Bank is open to the public for conducting all banking functions. None

of Saturdays, Sundays, federal or state holidays or any day recognized by a Federal Reserve Bank as a holiday are considered Business Days, even if Bank's offices are open.

- j) "Check" means a draft, payable on demand and drawn on or payable through or at an office of a bank, whether or not negotiable, that is handled for forward collection.
- k) "Check Image" means a digitized image of the front and back of a Check and associated MICR-information provided to Bank in lieu of the original Check.
- l) "Check Issue File" means a record describing Checks drawn on Customer's Account, provided by Customer to Bank in the format described in the Service Documentation.
- m) "Check Register Information" means the Serial number, issue date and amount of a Check.
- n) "Confidential Service Information" means all Account numbers, identification data, and Login Credentials provided to or used by Customer in connection with any Service as well as information concerning access to any Service or to Customer's Account, including the Security Protocol.
- o) "Customer" means the business customer entering into this Agreement and any individual that Customer has authorized to use the System or Services according to the rules and procedures described herein.
- p) "Cut-off" means the deadline for delivery of certain information, Entries or Orders through the System. Cut-off times are posted on the Digital Banking website or otherwise made available by Bank.
- q) "DDA" means demand deposit account, Customer's Checking Account.
- r) "Digital Banking" means the Internet banking platform provided by Bank that enables Users to view Account information and perform transactions in Accounts.
- s) "EDI" means Electronic Data Interchange, an electronic communication method that transmits formatted data.
- t) "Electronic Transmission" means the means by which Customer may elect to send or receive instructions or reports from Bank related to Services, including, without limitation, facsimile transmission, voice mail, secured email, pager or other electronic or telephonic methods.
- u) "Entry" means, with regard to ACH, an order or request complying with the requirements of the Nacha Rules (i) for the transfer of money to the account of a Receiver (a "Credit Entry"), (ii) for the withdrawal of money from the transaction account or general ledger account of a Receiver (a "Debit Entry"), (iii) a zero dollar Entry, (iv) a DNE (Death Notice Entry), or (v) an ENR (Automated Enrollment Entry); or means the data received from Customer from which Bank prepares an Entry.
- v) "Equipment" means any hardware, communications devices or other Equipment required to use a Service.
- w) "Exception" means an Exception Check or Exception Item or Exception Entry that does not match the requirements established by Customer or by the applicable Service.
- x) "Exception File" means a record describing Exceptions that is provided by Bank to Customer as described in the applicable Implementation Document.

y) "FDIC" means Federal Deposit Insurance Corporation, which insures the deposits held by Bank up to \$250,000 per type of account holding.

z) "Federal Reserve" means the Board of Governors of the Federal Reserve System, a federal bank regulator responsible for rulemaking under parts of Applicable Law.

aa) "Fedwire" means the funds transfer system owned and operated by the Federal Reserve Banks that is used primarily for the transmission and settlement of Wire Transfers governed by the Fedwire Regulation.

bb) "Fedwire Regulation" means Subpart B of Regulation J of the Federal Reserve System, as amended from time to time.

cc) "Implementation Documents" means the enrollment and set-up materials and any supplement thereto required by Bank to implement a specific Service.

dd) "Internal Transfer" means a transfer of funds from a Customer Account to another Customer Account at Bank.

ee) "Internet Service" means any Service that is or may be offered by Bank that is accessed on the Internet, including via Digital Banking.

ff) "Item" means a Check, money order, travelers' check and cashier's check and, unless otherwise noted in a Service Terms, excludes any Item drawn on foreign institutions outside of the United States or Territories of the United States.

gg) "Lockbox" means a post office box designated by Bank in the Implementation Document for Lockbox Services.

hh) "Login Credentials" means company and User IDs, personal identification numbers ("PINs"), passwords, digital certificates/signatures, private keys or other security devices required by Bank to log into Digital Banking and execute certain transactions in Accounts.

ii) "MICR Data" means Magnetic Ink Character Recognition, the line of numbers and letters on the bottom of the front of a Check that facilitates processing.

jj) "Mobile Device" means a smart phone or tablet enrolled in Digital Banking for access to Mobile Services.

kk) "Mobile Service" means a Service that accesses Accounts via a Mobile Device.

ll) "Nacha" means the National Automated Clearing House Association - the Electronic Payments Association, which operates the ACH system.

mm) "Nacha Rules" means the operating rules, regulations, and guidelines of Nacha.

nn) "OFAC" means the US Treasury Department's Office of Foreign Asset Control, which issues the list of Specially Designated Nationals and Blocked Persons. OFAC information may be obtained directly from the OFAC Compliance Hotline at 1-800-540-OFAC or at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

oo) "Order" means any instruction issued by a User or Authorized Signer in connection with a Service.

pp) "Out-of-Band Authentication" means a Security Protocol employed in certain Services, which involves authentication or validation of a payment transaction by

utilizing two different signals from two different networks or channels.

qq) "Payment Order" means an instruction by Customer to Bank or directly to a funds-transfer system for a Fedwire or electronic transfer of funds to a specified account or Beneficiary.

rr) "Primary Administrator" means the representative or Customer employee named by Customer to be responsible for coordinating and monitoring Services accessed through Digital Banking.

ss) "Security Device" means any of the devices Bank requires in connection with the Security Protocol.

tt) "Security Protocol" means the use of Login Credentials and additional procedures, including challenge questions, Out-of-Band Authentication, Tokens (tangible or electronic), call-back confirmations, dual control, encryption and other systems and software that Bank utilizes from time to time to protect Customer's information and mitigate against fraud.

uu) "Service Documentation" means collectively: (i) the Service Terms; (ii) all applicable Implementation Documents; and (iii) any Quick Start and User Guides, questionnaires and instruction manuals for Services.

vv) "Service Provider" means any third party providing services to Bank in connection with Treasury Management Services.

ww) "Service Terms" means those additional terms and conditions applicable to a particular Service included in this Agreement in Article IV.

xx) "Services" means the Treasury Management Services provided pursuant to this Agreement, the specific terms and conditions of which are set forth in Article IV of this Agreement.

yy) "SFTP" means Secure File Transfer Protocol used to access certain Internet Services.

zz) "System" means the software, systems and other applications that comprise the Digital Banking suite of Services.

aaa) "Token" means an electronic device that will permit Users to generate a one-time use numeric code to provide authentication to effect transactions in connection with certain Services. Tokens may be "hard" (tangible) or "Soft" (electronic on a User's device).

bbb) "User" means those representatives and Customer employees designated to access one or more Accounts through one or more Services. Any Agent, Authorized Signer or Primary Administrator, if set up in the Implementation Document or online, may be a User. This Agreement acts as Customer's authorization to allow the Users to access and process transactions, which may directly affect the Accounts and Customer's liability to Bank.

ccc) "Vendor" means a third-party service provider Customer appoints to provide a Service on its behalf. Each Vendor will require separate Login Credentials in order to access a Customer Account.

ddd) "Wire Transfer" means the process of electronically transferring funds to a Beneficiary.

2) **Other Agreements, Laws and Regulations.** The Services are provided to Customer subject to the following other agreements, laws and regulations, which are hereby incorporated into and made part of this Agreement: (a) the Service Documentation; (b) the most current fee and availability schedule and other disclosures provided to Customer, including periodic Account statements; (c) the provisions of the then current Account Agreement and accompanying disclosures, which govern standard deposit accounts and other depository services; and (d) Applicable Law.

If there is any conflict between any term or provision of the Service Terms and the terms and provisions of the Agreement, the Service Terms will control to the extent of such conflict.

**3) Representative Persons of Customer.**

a) **Agents.** In order to enter into this Agreement and access any Service, Customer must have provided to Bank (or there must be on file with Bank) a signed and completed company resolution in the form provided by Bank or other form acceptable to Bank. The resolution must evidence the proper authority of the named Agents(s) to execute or authorize this Agreement, the applicable Implementation Forms and any authorization forms. Agents may act on behalf of Customer under this Agreement, including, without limitation, selecting Services for the benefit of Customer, appointing the Primary Administrator for Digital Banking, signing additional documentation that may be necessary to implement Services and giving Customer's instructions with regard to any Service, including, without limitation, Wire Transfers, ACH Entries and other electronic or paper transfers from or to any Account Customer maintains with Bank.

b) **Authorized Signers.** Customer agrees that Authorized Signers shall be authorized to enter into all transactions contemplated in this Agreement that are not executed via Digital Banking

c) **Bank Rights.** Bank is entitled to rely on such authorizations according to their terms until Bank receives properly authorized written notice in the form provided by Bank or other form acceptable to Bank that the existing authorization is changed or terminated and Bank has a reasonable opportunity to act on such notice. If Customer instead chooses to communicate changes to Bank by some other means Bank is entitled (but not obligated) to rely on such communications and the changes as having been duly authorized by Customer if Bank in good faith believes the communications came from someone authorized by Customer to deliver it to Bank. Bank will not be responsible for losses if Customer fails to timely and properly notify Bank of changes in authorization and/or contact information.

**4) Applicability, No Third-Party Beneficiaries/Third-Party Claims.** This Agreement shall apply to all Services described herein. Services provided by Bank are for the sole and exclusive benefit of Customer, and no other persons or organizations shall have any of the rights and remedies arising under this Agreement.

**5) Change of Terms/Amendments to Agreement.** From time to time, Bank may amend any of the terms and conditions contained in this Agreement. Such amendments shall become effective upon the date stated in Bank's notice to Customer. Bank reserves the right to notify Customer of changes electronically, by Internet

posting, mailing or other means permitted by law. Using the Service following the effective date of the amendment shall be deemed evidence of Customer's acceptance of and agreement to the amendment. If Customer does not agree to the changes as set forth in the amendment, Customer may choose to terminate the Service prior to the effective date of the amendment by discontinuing further use of the Service and following the procedures set forth in Termination Section. This Agreement may not be amended or modified by Customer unless agreed to in writing by Bank.

a) In the event performance of the Services in accordance with the terms of this Agreement would result in violation of any present statute, regulation or government policy to which Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank shall incur no liability to Customer as a result of such violation or amendment.

b) No course of dealing between Bank and Customer will constitute a modification of this Agreement or constitute an agreement between Bank and Customer regardless of whatever practices and procedures Bank and Customer may use.

**6) Transferable Record.** The Agreement and the Implementation Documents are each a "transferable record" as defined under Applicable Law relating to electronic transactions. Bank may create an electronic image of this Agreement and any Implementation Document that will be an authoritative copy as defined under such law. Bank may store the authoritative copy of this Agreement and the Implementation Documents and then destroy the paper originals as part of Bank's normal business practices. Bank may control and transfer any authoritative copy as permitted by law.

**7) Foreign Account Tax Compliance Act.** If a payment made by either party under this Agreement is or could become subject to the U.S. Federal withholding tax imposed by Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended ("FATCA"), then each party shall provide to the other party such information, and shall disclose to the applicable governmental authorities such information, as may be required in order for such party to comply with all applicable requirements of FATCA and to determine that the other party has complied with FATCA; and a party that fails to comply with FATCA shall indemnify the other party for all costs, damages, and liabilities arising out of such party's failure to comply with FATCA.

**8) Representations and Warranties.** Customer and Bank each represent and warrant to the other, as of the date this Agreement is entered into and at the time any Service is used or performed, that: (a) it is validly existing and in good standing under the laws of the jurisdiction of its organization; (b) it has all requisite power and authority to execute and deliver, and to perform its obligations under, this Agreement and each Service used or performed by it; (c) this Agreement has been duly authorized and executed by it and constitutes its legal, valid and binding obligation; and (d) any consent or authorization of any governmental authority or third party required to be obtained by it in connection with this Agreement or any Service used or

performed by it has been obtained.

**9) Financial Review.** Bank's willingness to provide Services to Customer is dependent on Customer's financial condition. Customer's financial condition is subject to review by Bank from time to time, and such reviews must be satisfactory to Bank in its sole discretion and opinion. Bank may from time to time request information to evaluate a continuation of the Agreement and/or adjustment of any limits. Customer shall, upon request, immediately provide to Bank any such information as Bank may require to perform any such review. Customer understands and agrees that time is of the essence in regard to any such request made by Bank. Customer's failure to meet such standards in a timely fashion or provide such information or assistance when requested shall constitute a breach of this Agreement and shall permit Bank to cease providing Services upon written notice to Customer. Customer agrees that Customer shall promptly furnish to Bank such information respecting Customer's business and financial condition, in such form and manner, as Bank may reasonably request from time to time, which information shall be true, complete, and correct in all material respects.

## **II. TERMS APPLICABLE TO ALL TREASURY MANAGEMENT SERVICES**

**1) Services.** Bank may provide Services that are not specifically included in the Service Terms in Article IV of this Agreement. By accepting and using any Service, Customer agrees that the Service will be governed by this Agreement and any other conditions communicated to Customer by Bank. Certain Services included in this Agreement may not be available or may not be provided in certain market areas. The Services are only available for commercial Treasury Management banking purposes initiated in the United States and may not be used for personal or consumer banking purposes of any kind. By completing and signing an Implementation Document for a particular Service, Customer selects that Service and agrees to the terms and conditions of the related Service Terms, including any Service Documentation.

a) **Changes in Services.** Bank may from time to time add to, discontinue or modify the Services and may update or make changes to the Service Documentation relating to a Service. Bank will give Customer notice of any material change, and such change will be effective as of the date specified in the notice sent to Customer. Bank may notify Customer of changes and updates by Electronic Transmission or other means permitted by law.

b) **New Services.** Customer may add Services by submitting to Bank an executed copy of an Implementation Document for the new Service.

**2) Fees and Charges.** Unless otherwise agreed by Bank in writing, Customer shall pay Bank the fees, charges and assessments set forth for the Services stated in the most current fee schedules and other fee disclosures provided to Customer (including periodic Account statements), plus additional fees and expenses for any extraordinary Services. The fee schedule for each Service shall be deemed accepted by Customer upon provision of the Service to Customer. In addition, Customer shall pay Bank the amount of any taxes levied or leased on fees charged pursuant to this Agreement, including, without limitation, federal, state, or local privilege excise or sales taxes based on gross revenue, any taxes or

amount in lieu thereof paid or payable by Bank, excluding Bank's income taxes and any assessments charged to Bank directly as a result of providing the Services. Bank may change the amount or type of service charges from time to time. Customer authorizes Bank to debit Customer's Account(s) with Bank for any and all fees, expenses or other charges owed by Customer to Bank under this Agreement.

**3) Transactions in Deposit Accounts.** Most Services require that Customer maintain one or more deposit Accounts with Bank. All Checks, Wire Transfers, ACH Entries and other Items deposited into such Accounts are provisionally credited and taken subject to later verification by Bank and Bank's receipt of final settlement. Deposited Items that are deposited and later returned unpaid will be charged against the Account without prior notice. Customer agrees to pay Bank for any overdraft or overpayment in any of Customer's Accounts. Bank will first attempt to recover such amounts from the Account associated with the debt. If the available balance of such Account is insufficient to compensate Bank, Customer authorizes Bank to charge any account Customer maintains with Bank for any amount remaining due under this Section. Customer's Accounts will remain subject to the applicable deposit Account Agreement and Customer's use of the Services will also be governed by such Account Agreement. Except as expressly set forth herein, if there is any conflict between the Account Agreement and this Agreement, then this Agreement controls.

**4) Security Interest.** Customer grants to Bank a consensual possessory first priority security interest in all deposit accounts now or in the future maintained by Customer with Bank and the funds held therein to secure payment of all of Customer's obligations under this Agreement. In accordance with the terms of the Account Agreement, in addition to Bank's rights under the Agreement, Bank and each of its affiliates may exercise the right of set-off against any or all of Customer's Accounts and deposits.

**5) Accuracy and Timeliness of Information.** Bank will use reasonable efforts to provide the information requested through the Services in a prompt fashion, but shall not be liable for temporary failure to provide timely information. In such event, Customer shall be responsible for carrying out banking business through alternative delivery channels. Bank shall not be liable for any inaccurate or incomplete information with respect to transactions which have not been completely processed or posted to Bank's systems prior to being made available.

**6) Security Protocol.** Bank and Customer shall agree to Security Protocols that must be used in connection with authorized Service(s). The specific Security Protocol for each Service is described in the Digital Banking Terms or the applicable Service Terms in Article IV of this Agreement. Customer acknowledges and agrees that it has been informed of and understands Bank's Security Protocol and that such Security Protocol is commercially reasonable. Customer agrees to be bound by any Payment Order, transaction or service change Order that is acted upon by Bank in accordance with such Security Protocol.

a) Bank reserves the right to issue new Security Protocol requirements and/or to cancel or change any Security Protocol by giving verbal (followed up by written) or written notice to Customer.

b) Bank also reserves the right to periodically audit Customer's information technology processes, and to mandate controls or suspend Services until Customer complies with such Security Protocol as determined by Bank in its sole discretion.

**7) Acceptance of Security Protocol.** Customer should carefully review the Security Protocol in light of the size, amount and frequency of Customer's transactions. Customer's use of the Service indicates Customer's agreement that the Security Protocol is commercially reasonable.

a) If Customer selects a security procedure to use in connection with a Service and the selected procedure provides less protection against unauthorized transactions or activity than the Security Protocol offered by Bank in connection with such Service, the security procedures selected by Customer shall be deemed commercially reasonable to the same extent as the Security Protocol offered by Bank that provides greater protection.

b) Customer represents and warrants to Bank that Customer has in place and will maintain and enforce effective policies and procedures to prevent unauthorized access to Customer's Account and the Services, including unauthorized and erroneous transmission of Orders and other communications to Bank. Customer agrees to take all steps necessary to ensure the security, accuracy, authenticity, confidentiality and legitimacy of all communications to Bank and all access to the Services. Customer understands that any hack, unauthorized access or related problems or other unknown hazards that originates from Customer that may be associated with using email or the Internet to deliver or receive Services is at Customer's risk.

**8) Security Protocol Limitations.** Customer acknowledges that the Security Protocol is designed to attempt to verify the authenticity of, but not to detect errors in any Order Customer transmits. From time to time Bank may at Bank's option use additional procedures to verify or authenticate Orders. The Security Protocol does not verify the actual identity of the users of the Services and does not monitor the actions of the users to determine whether their Orders exceed the scope of their authority.

**9) Confidentiality.**

a) **Data Security.** Bank shall maintain physical, electronic, and procedural safeguards to keep Customer's Confidential Service Information secure. Customer acknowledges that certain Services may involve the handling of confidential consumer information that may be subject to privacy laws and regulations of the United States of America, including unauthorized access or breach notification regulations.

b) **Proprietary Information.** Customer acknowledges that this Agreement, all related documentation and computer programs and systems used in providing Services, and all information related thereto constitute proprietary property of Bank or its Service Provider that is of great commercial value. Customer agrees that it shall not acquire any proprietary interest or rights therein as a result of its use of the Services and shall keep all such proprietary information strictly confidential. Customer shall not duplicate, sell, or use in any

manner such programs or documentation without the prior written consent of Bank.

c) **Confidential Service Information.** Customer agrees that it is Customer's responsibility to maintain the security and strict confidentiality of all Confidential Service information. Customer may disclose the Confidential Service Information only to Customer's authorized individuals who need to know such information in order to carry out their responsibilities to Customer with respect to the Services. Customer also agrees to maintain the confidentiality of all Quick Start Guides, User Guides, Service Terms, software and other proprietary information regarding the Service which Bank provides to Customer.

d) **Use of Confidential Service Information.** All uses of the Services in accordance with the Security Protocols will be deemed to be authorized by and binding on Customer. Customer's failure to protect Login Credentials and Confidential Service Information may allow an unauthorized party to (i) use the Service(s); (ii) access Customer's electronic communications and financial data; (iii) send Orders and transfer funds from Accounts; or (iv) receive confidential information from Bank.

**10) Data Security Breach Notice.** If Customer has reason to believe that a Security Protocol or Login Credentials have been or may become known by unauthorized persons (whether or not employed by Customer) or if Customer believes its network or computer systems have been compromised or its computers infected, **Customer shall immediately notify Bank by calling 855-696-4352 and confirming such verbal notification in writing to Bank within 24 hours.** If Customer believes there has been a security breach or that someone has transferred or may transfer money from Customer's Account without Customer's permission, Bank will replace the Login Credentials in accordance with Bank's procedure. Bank may also deny Customer access to the System in its sole discretion in order to protect Accounts. Customer shall be solely responsible for funds transfers or instructions and other communications or transactions initiated before Bank received Customer's notice and had a reasonable time to act on such notice. Customer agrees to defend and indemnify Bank against any claims, losses, damages, costs, expenses, fines and other liabilities arising out of Customer's failure to maintain the security and confidentiality of the Login Credentials or arising out of the unlawful use of any website or portal by Customer or any person who obtains access to a website or portal using the Login Credentials.

IF CUSTOMER'S PRIMARY ADMINISTRATOR OR A USER DISCLOSES CUSTOMER'S LOGIN CREDENTIALS OR THE SECURITY PROTOCOL TO ANYONE, AND/OR IF CUSTOMER ALLOWS SOMEONE TO USE SECURITY DEVICES TO GAIN ACCESS TO ACCOUNTS, CUSTOMER HAS AUTHORIZED THEM TO ACT ON CUSTOMER'S BEHALF AND WILL BE RESPONSIBLE FOR ANY USE OF THE SERVICE BY THEM.

**11) Fraud Prevention Measures.** Customer acknowledges that there is a growing risk of losses resulting from unauthorized Items. Bank offers Services that provide effective means for controlling the risk from unauthorized Items.

a) These Services include Check Positive Pay, ACH Positive Pay, and Account Reconciliation.

b) In addition, Bank may recommend that Customer use certain fraud prevention practices to reduce Customer's exposure to online fraud. Each of these practices is an industry "best practice." An example of a best practice is dual control, which requires a payment or user transaction initiated by one User to be approved by a second User on a different computer or Mobile Device before it takes effect.

c) Customer will be treated as having assumed the risk of any loss that could have been prevented by its use of any fraud prevention Service or best practice Bank has recommended to Customer, if Customer: (i) declines to enroll in the fraud prevention Service(s); (ii) enrolls in the fraud prevention Service but fails to use it in accordance with the Service Documentation applicable to it; (iii) fails to adopt and follow a best practice.

**12) Compliance.** Bank and Customer will each comply with all Applicable Law in connection with Services. Unlawful Internet Gambling Notice: Restricted transactions as defined in Federal Reserve Regulation GG are prohibited from being processed through the Account(s). Restricted transactions generally include, but are not limited to, those in which credit, electronic funds transfers, Checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by others in unlawful Internet gambling.

**13) Computer Equipment and Software.** Many Services require the use of computer hardware and software or other Equipment. Customer is responsible for maintaining its computer and Equipment (including those provided by or through Bank for use with Services) in good working order. Customer shall ensure that computers and other Equipment have the necessary compatibility and format to interface with Bank's systems, including, without limitation, the ability to support Bank's Security Protocol. Customer agrees to install upgrades including software patches and other system enhancements within ten (10) Business Days of being requested to do so by Bank. License agreements for necessary software shall either be embedded in the software or separately documented in the Service Documentation. Customer agrees to comply with all applicable software license agreements. Customer has no rights or ownership in any software provided by or through Bank and shall not transfer, copy, alter, modify, reverse engineer, reproduce, or convey in any manner, in whole or in part, any such software. Customer shall return all software and User Guides associated with any software upon request. BANK MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY EQUIPMENT OR SOFTWARE PROVIDED BY BANK.

**14) Transactions on Non-Business Days/Cut-off Times.** Transactions, deposits, Payment Orders, Entries or other requests by Customer received by Bank on a non-Business Day or after established Cut-off may be treated by Bank as received on the next Business Day unless otherwise required by Applicable Law. Bank may change any Cut-off time or other deadline at any time.

**15) Instructions and Communications.**

a) For some Services, Customer may authorize Bank to honor Customer's request to give Bank oral or written instructions regarding the Service. Bank may in good faith rely on such oral or written instructions or call-back verifications

that purport to come from an Authorized Signer or User without independent verification by Bank.

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

c) Customer may have Accounts that require multiple signers to execute transactions. Customer agrees that Bank is authorized to complete each transaction initiated electronically by one User using the Security Protocol, including but not limited to, transfer of funds, credit payments and issuances of Checks or electronic payments.

d) Bank may provide Customer the option of entering into this Agreement or any Implementation Documents with a digital signature. Customer hereby agrees that Customer's use of such digital signature shall bind Customer to the terms and conditions of the applicable agreement, addendum or form.

e) In addition, in order for Bank to service the Account, mitigate fraud or to collect any amounts owed to Bank, Bank or its Service Provider may from time to time make calls and/or send text messages to Customer at any telephone number(s) associated with the Account, including wireless telephone numbers that could result in charges to Customer. The manner in which these calls or text messages are made may include, but is not limited to, the use of prerecorded/artificial voice messages and/or an automatic telephone dialing system.

**16) Customer-initiated Transactions and Instructions.** Bank will honor Customer's transactions and instructions (including adjustments, amendments and cancellations) only when Customer has complied with this Agreement and related policies and procedures. Bank will be under no obligation to honor, either in whole or in part, any transaction or instruction that: (a) exceeds Customer's collected or available funds on deposit with Bank; (b) Bank has reason to believe the transaction may not be authorized by Customer; (c) involves funds subject to a hold, dispute or legal process preventing their withdrawal; (d) violates any provision of any applicable regulation of the Federal Reserve Bank or any other federal, state or local regulatory authority; or (e) Bank has reasonable cause not to honor, for the protection of either Bank or Customer.

**17) Monitoring and Recording Communications.** Customer acknowledges and agrees that Bank, and anyone acting on Bank's behalf, may monitor and/or record any communications between Customer, or its User, and Bank, or anyone acting on Bank's behalf, for quality control and other purposes. Customer also acknowledges and agrees that this monitoring or recording may be

done without any further notice to Customer or its User. The communication that may be monitored or recorded includes telephone calls, cellular or mobile phone calls, electronic messages, text messages, instant or live chat, or any other communications in any form.

**18) Inconsistent Name and Account Number.** If Customer or third party acting on Customer's instruction initiates a fund transfer instruction or Payment Order to Bank that describes the Beneficiary to receive the proceeds of such fund transfer instruction or Payment Order, the Beneficiary's bank, or an intermediary bank by name and an account or other identifying number, Bank and subsequent parties to the fund transfer instruction or Payment Order may rely on and act solely on the basis of such number, even though the name and number do not agree and even though Bank and subsequent parties know or have reason to know of the inconsistency. Customer's obligation to pay the amount of the fund transfer instruction or Payment Order to Bank is not excused in such circumstances.

**19) Intercompany Services/Authority to Transfer or Commingle Funds.** In the event that Customer requests Bank to provide Services to a parent company, subsidiary, affiliate, or other commonly owned company, Customer agrees that it shall be jointly and severally liable for such company's obligations under this Agreement. Customer hereby represents and warrants to Bank that any and all transfers and commingling of funds required or permitted by any Service or requested by Customer, and all other aspects of the performance hereby by Bank and Customer, have been duly authorized by all necessary parties, including, without limitation, the account holder of each account, and that Customer has obtained and shall maintain in its regular business records and make available to Bank upon reasonable demand, for a period of two years after termination of the Service, adequate documentary evidence of such authorization from the account holder of each account, executed by the duly authorized officer(s) of each such account holder in accordance with that account holder's bylaws and/or board resolutions. Customer further represents and warrants that each transfer or commingling of funds authorized hereunder is not in violation of any agreement, bylaw or board resolution of Customer or any of its affiliates or subsidiaries, nor is it in violation of any applicable federal, state, local law, regulation, of any decree, judgment, order of any judicial or administrative authority. Each representation and warranty contained herein shall be continuing and shall be deemed to be repeated upon Bank's effecting each transfer and commingling of funds authorized hereunder.

**20) Account Communications and Review Period.** Customer agrees to regularly and promptly review and verify all periodic statements, reports, Check payment records, Wire Transfer instructions, confirmations, adjustments, charges, and other transactions. Customer may receive or access these communications electronically, including without limitation, delivery by posting to a password protected website or database. At Customer's election, Bank will either provide to Customer electronically through Digital Banking or by mail at Customer's current address in Bank's files, periodic statements, notices and other information regarding the Account and Account activity, including any activity resulting from Services (as provided in connection with the Service option Customer selects). In either case, Bank may assess charges for such Service as determined by

Bank from time to time. Customer acknowledges that Account communications provided by Bank through Electronic Transmission constitutes good and effective delivery when posted by Bank, regardless of whether Customer actually or timely receives or accesses the Account communications.

a) Customer acknowledges that it is in the best position to discover erroneous charges, payments, missing or incorrect deposits, credits or debits or other Entries to Customer's Account or other Account problems. Customer agrees to promptly examine each periodic statement, record, notice, canceled Check and other Items provided or made available to Customer (whether originals, images, copies or in other formats) and to promptly notify Bank of any error or Account problem. Customer's failure to provide reasonably prompt notice to Bank may affect any rights Customer may have against Bank with respect to the Error or Account problem.

b) Unless a different review period is specified elsewhere in this Agreement, Customer shall, within a reasonable time, which in no event shall be greater than thirty (30) calendar days following the day Bank first mails, electronically transmits or otherwise makes data available to Customer, notify Bank of any Error or discrepancy between Customer's records and any Bank notice or periodic statement, or any transaction or transfer Customer believes was not authorized. Such notifications are to be made by calling Bank or writing to Bank at the telephone number or address listed on Customer's periodic statement. However, Bank encourages Customer to review periodic statements on a regular basis and recommends that Customer report any inconsistencies with respect to such periodic statements within fifteen (15) calendar days of discovery.

c) If Customer fails to notify Bank of such unauthorized transaction within the review period, Customer agrees that the failure to report any such errors or unauthorized transactions shall relieve Bank of any liability for the unreported erroneous or unauthorized transaction and Bank will not be obligated to re-credit or refund the amount of the error or Account problem.

d) In accordance with Nacha Rules, Customer must report an unauthorized ACH Debit Entry to Customer's Account by the established Cut-off on the Business Day following the Settlement Date of the unauthorized Entry. Otherwise, Customer's sole recourse is to the Originator of the transaction.

**21) Disclaimer of Warranties.** BANK MAKES NO WARRANTIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND OF MERCHANTABILITY, EITHER TO CUSTOMER OR TO ANY OTHER PARTY, WITH RESPECT TO THE SERVICES PROVIDED BY BANK OR ITS SERVICE PROVIDERS OR WITH RESPECT TO SOFTWARE PRODUCTS PROVIDED OR MADE AVAILABLE TO CUSTOMER FOR ITS USE BY BANK IN CONNECTION WITH THIS AGREEMENT AND ANY SERVICE.

**22) Standard of Care.** Bank will use commercially reasonable care and will exercise good faith in providing the Services to Customer. Bank's care is to be evaluated based on reasonable commercial banking standards prevailing in Bank's industry and location for similarly situated commercial banks and Applicable Law.

Occasional unintentional deviations by Bank from the procedures set forth in this Agreement shall not be deemed a failure to exercise reasonable care in respect to the transactions in which the deviations occur. Clerical errors or mistakes in judgment shall not constitute failure to exercise reasonable care. Further, reliance on any oral, telephonic, electronic, written or other communication believed in good faith to have been given by or on behalf of Customer will in no event constitute a failure to exercise reasonable care.

**23) Limitation of Bank's Liability for Services.** Customer acknowledges that Bank's fees for Services are very small in relation to the amounts of transfers initiated through these Services and consequently Bank's willingness to provide such Services is based on the liability limitations contained in this Agreement.

- a) In addition to greater limitations on Bank's liability that may be provided elsewhere in this Agreement, Bank's liability related to any Service shall be limited exclusively to actual proven damages arising directly from its own gross negligence or willful misconduct or its failure to exercise good faith. Bank will not, under any circumstances, be liable for any special, incidental, indirect, consequential, punitive or similar losses or damages, whether or not the likelihood of such losses or damages was known by either party at the time Customer first obtains Services from Bank or at the time any instruction or Order is given to a Bank pursuant to any Service, and whether such losses or damages arise from tort, contract or otherwise.
- b) Bank's cumulative liability to Customer for all loss or damage arising from or relating to this Agreement and any Service, regardless of the form of action, is limited to direct losses attributable to Bank's gross negligence, willful misconduct or failure to exercise good faith and is limited to an amount not to exceed twelve (12) times the fees paid by Customer during the month immediately preceding the month in which the loss or damage was incurred.
- c) Any claim known or unknown for liability arising under this Section shall be made within twelve (12) months after the date the claim arises.
- d) Except as otherwise expressly required by Article 4A of the Uniform Commercial Code of Illinois, Bank's sole and exclusive liability for Bank's loss, destruction, or erroneous transmission of ACH Entries or Entry data shall be to assist Customer in recreating or regenerating such Entry data or retransmitting the transactions based on that Entry data.
- e) If in any case Bank is liable to Customer for lost interest, Bank will calculate interest based on Bank's then current Fed Funds rate.
- f) Notwithstanding the foregoing, Bank shall not be liable for any losses or damages caused, in whole or in part, by the action or inaction of Customer, or any User or employee of Customer, whether or not such action or inaction constitutes negligence or a breach of this Agreement.
- g) Bank shall not be liable for any damage, cost, loss, liability or delay caused by Bank acting in accordance with Applicable Law, accident, strike, fire, flood, war, riot, terrorist act, pandemic or other national emergency, cyber-attacks, cyber warfare, Equipment breakdown, electrical or mechanical failure, acts of nature, any cause which is

attributable to a third party, or any other cause or event that was beyond Bank's reasonable control. Bank has no responsibility and will incur no liability for any act or failure to act by any other Bank, intermediary or any other third party including any failure, delay or error by any Federal Reserve Bank or other intermediary bank in timely, presenting data or Checks to Bank.

**24) Customer Indemnification of Bank.** Customer agrees to indemnify and hold Bank and Bank's officers, directors, agents, affiliates and third party providers harmless from and against any and all actions, claims, demands, loss, liability or expenses whatsoever, including court costs and reasonable attorneys' fees and expenses resulting directly or indirectly from Bank's performance under this Agreement or any Service in accordance with the Service Documentation; Customer's omissions, acts, or breach of any of the representations, warranties or covenants of this Agreement or the Account Agreement; or any willful misconduct or wrongful, fraudulent or grossly negligent act or omission of any third party where Customer voluntarily waived the uses or improperly used the Security Protocol offered by Bank.

**25) Dispute Resolution.**

- a) **Governing Law.** Except as otherwise provided herein; this Agreement shall be governed by the laws of the State of Illinois, without regard to conflicts of law principles, including the Uniform Commercial Code as in effect in the State of Illinois from time to time. The parties acknowledge that certain provisions of the UCC contain provisions which by the express terms of the UCC may not be varied by agreement of the parties (a "Non-variable Obligation"). To the extent that any provision of this Agreement purports to vary such Non-variable Obligation, the parties acknowledge that their respective rights and obligations under this Agreement are subject to the Non-variable Obligation.
- b) **Jury Trial Waiver.** To the fullest extent permitted by law, Bank and Customer hereby agree to waive trial by jury in any judicial proceeding involving, directly or indirectly, any matter (whether in tort, contract or otherwise) in any way arising out of, related to or connected with these Services or this Agreement. Bank and Customer represent and warrant to each other that this jury trial waiver is knowingly, willingly and voluntarily given.
- c) **Arbitration.** Any dispute, controversy or claim arising out of or relating to this Agreement, including a breach of this Agreement, shall be decided by arbitration conducted in the United States of America (except as Customer and Bank expressly agree otherwise) in accordance with the United States Arbitration Act (Title 9, U.S. Code) under the Commercial Arbitration Rules of the American Arbitration Association. Under these procedures, the dispute, controversy or claim shall be submitted to a neutral person for determination in place of a trial before a judge or jury. Judgment upon the decision rendered by the arbitrator may be entered in any court having jurisdiction.
- d) **Effect of Provision.** This provision shall not limit the right of either party to this Agreement to exercise self-help remedies, or obtain provisional or ancillary remedies from a court of competent jurisdiction before, after or during the pendency of any proceeding. The exercise of such a remedy



does not waive the right of either party to resort to arbitration or trial by a judge. Customer or Bank may exercise or obtain these remedies at any time, even while the arbitration or trial by a judge is pending.

e) **Jurisdiction and Venue.** Customer consents to the jurisdiction of the courts of the State of Illinois, waives any argument that such venue is inconvenient and agrees to bring litigation commenced in connection with this Agreement in any state or federal court located in the State of Illinois.

f) **Collection Costs.** Should Bank have to undertake any action to recover any amount due under this Agreement for the Services, including, without limitation, fees, overdrafts or overpayment, Customer will be liable to Bank for the cost of such effort, plus reasonable attorney fees in any court action or appeal therefrom.

g) **Adverse Claims.** If Bank receives an adverse claim against any Account, and Bank reasonably believes that it will not be protected if the claim is ignored, Customer agrees that Bank may place a hold on the affected Account. Any such hold will remain in place only so long as reasonably necessary to resolve the claim or employ legal remedies to allow a court to decide such claim. Assuming compliance with this Section, Bank shall have no liability for dishonored transactions due to the hold, and Customer agrees to reimburse Bank all costs, including attorney fees, incurred due to such adverse claim.

#### 26) **Third-Party Service Providers.**

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

b) **Third-Party Equipment and Software Vendors.** Certain Services require computer Equipment and software that are provided to Customer by a third-party Vendor selected by Customer who is unaffiliated with Bank. Bank does not warrant and shall not be responsible for Services provided by unaffiliated third-party vendors.

c) **Customer's Vendors.** If Customer engages any third-party Vendor to execute Orders, the Vendor is Customer's agent and Customer is bound by all information, Orders, Entries or other instructions provided on Customer's behalf by Vendors through the Services in compliance with the procedures required by Bank (including the Security Protocol). Customer confirms that Customer grants authority to Vendors to legally bind Customer with respect to their use of the Services. Customer is liable for (i) the Vendor's actual failure to comply with any of Customer's obligations under the Agreement and the Service Documentation relating to the Service, (ii) all fees, costs and expenses owed to each Vendor for its services on Customer's behalf, and (iii) any claims, damages, costs and expenses incurred by Customer or Bank as a result of any Vendor's failure to perform, or delay or error in performing its services on Customer's behalf.

Customer will indemnify Bank and hold Bank harmless from and against any and all liabilities, losses, claims, costs, expenses and damages of any nature (including, but not limited to, reasonable attorneys' fees and any fees and expenses incurred in enforcing the Agreement) in any way relating to any action or inaction of a Vendor, unless such loss is attributable to Bank's gross negligence or willful misconduct. In the event Customer terminates its relationship with a Vendor, it is Customer's sole responsibility to terminate such Vendor's access to the Services. Customer authorizes Bank to disclose to any third-party Vendor information concerning Customer to the extent required to deliver the requested Service.

#### 27) **Notices.**

a) All written notices to Bank shall be delivered or mailed to Treasury Operations at Midland States Bank, 1201 Network Centre Dr., Effingham, Illinois 62401-4602, or at such other address as Bank may specify in writing or they may be emailed to [customerservice@midlandsb.com](mailto:customerservice@midlandsb.com), unless Electronic Transmission is not permitted.

b) Notices sent to Customer shall be delivered or mailed to Customer's current lead Account address or other known address if deemed more appropriate by Bank under the circumstances. Notices may be delivered in electronic format, including posting to Bank's website, if requested or appropriate. Any notice or communication to Customer or Bank will be effective when it is actually received and there has been a reasonable time to act on it, except that written notice or communication to Customer will be effective no later than five (5) Business Days after it was mailed by first class, certified or registered mail, return receipt requested, whichever is earlier.

c) Bank is entitled to rely on any written notice or other communication that Bank believes in good faith to be genuine. Bank is permitted at Bank's sole discretion, to act on email notices from Customer sent to Bank's web address or otherwise, although Bank shall be under no obligation to do so. Bank will accept any such communications unless Bank notifies Customer to the contrary.

d) Customer should be aware that sending any personally identifiable information (such as Account numbers, tax identification numbers, etc.) by unsecured email is not advisable and Customer assumes all risks of loss arising from Customer's use of such delivery method should Customer choose to do so. Bank reserves the right to give notices and communications to Customer in such form or medium as Bank considers reasonable and by such means as are permitted by Applicable Law.

#### 28) **Termination.**

a) Any Services may be terminated by either party upon ten (10) Business Days' prior written notice to the other.

b) Either party may terminate the Agreement or any or all Services immediately upon written notice to the other due to: (i) the other party's breach of a material obligation, representation, warranty or agreement made by such party under the Agreement, or (ii) the other party's insolvency, receivership or voluntary or involuntary bankruptcy, or the

institution of any proceeding therefore, or any assignment for the benefit of the other party's creditors, or if in the good faith opinion of one party the financial condition of the other party has become impaired.

c) Bank may also terminate or suspend any Service without notice to Customer if any of the following occurs: (i) a material adverse change occurs in Customer's business or financial condition; (ii) Bank has reason to believe that Customer has engaged in fraudulent or illegal activity; (iii) Customer fails to maintain balances in Accounts sufficient to cover overdrafts; (iv) Customer violates the terms of this Agreement or any financing arrangement with Bank; (v) Customer fails to comply with Bank's Security Protocol or fails to provide financial information reasonably requested by Bank; (vi) Bank determines it is impractical or illegal to provide any Services because of changes in laws, regulations or rules; (vii) Bank, in good faith, is unable to satisfy itself that any Services have been properly authorized by Customer; (viii) Bank, in good faith, deems itself insecure, believes such Services may create a risk of financial loss for Bank or result in an unacceptable credit exposure to Bank; or (ix) Customer has not used the Service for ninety (90) days.

d) Notwithstanding any termination, the terms of this Agreement shall apply to all transactions which have been initiated prior to termination. Termination of a Service does not affect Customer's payment obligations for Services that Bank provides to Customer before the Service is terminated, and any such termination is in addition to Bank's other rights under Applicable Law and under the terms of this Agreement.

e) Upon termination, all amounts owed by Customer and outstanding will become immediately due and payable and Customer will immediately return to Bank or destroy the originals and all copies (in all formats and media) of software programs, if any, that were licensed to it as part of the Services, all Quick Start Guides and User Guides, and security and access devices.

f) Any licenses granted to Customer with respect to those terminated Services under the applicable Service Documentation will automatically terminate. Even if the Agreement or any or all Services are terminated, the Agreement shall continue in full force and effect as to all transactions that Bank began processing before such termination.

g) Sections 2, 4, 9, 11, 21-25, 27 and 30 of Article II of this Agreement will survive any termination of the Agreement and the relevant Service, along with any indemnification undertaking or limit of liability.

#### 29) Money Laundering and Funding of Terrorism.

a) Customer acknowledges that transactions made on Customer's behalf may be subject to federal and state laws and regulations governing transactions in currency and other monetary instruments relating to money laundering activities and the funding of terrorism and that such laws and regulations may impose severe criminal penalties on those who participate or assist in such activities or in structuring of such activities to avoid reporting requirements.

b) Customer acknowledges that Bank may monitor transactions for compliance with such laws and regulations.

Customer agrees that Customer will not initiate any Order which would violate, or result in a payment in violation of the federal and state laws or regulations, including, without limitation, the federal laws and regulations administered by bank regulatory agencies and OFAC relating to money laundering and the funding of terrorism.

30) **Audit.** Upon request by Bank, Customer hereby authorizes Bank to enter Customer's business premises for the purpose of ensuring that Customer is in compliance with the Agreement and Customer specifically authorizes Bank to perform an audit of Customer's operational controls, risk management practices, staffing and the need for training and ongoing support, and information technology infrastructure. Customer hereby acknowledges and agrees that Bank shall have the right to mandate specific internal controls at Customer's location(s) and Customer shall comply with any such mandate. In addition, Customer hereby agrees to allow Bank to review available reports of independent audits performed at Customer location related to information technology, the Agreement and any associated operational processes. Customer agrees that if requested by Bank, Customer will complete a self-assessment of Customer's operations, management, staff, systems, internal controls, training and risk management practices that would otherwise be reviewed by Bank in an audit of Customer. If Customer refuses to provide the requested financial information, or if Bank concludes, in its sole discretion, that the risk of Customer is unacceptable, if Customer refuses to give Bank access to Customer's premises, Bank may terminate the Agreement.

#### 31) Miscellaneous.

a) This Agreement is binding upon and will inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns. This Agreement is not for the benefit of any other person except as explicitly provided herein, and no other person shall have any right against Customer or Bank under this Agreement.

b) To the extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision shall be held to be invalid, illegal or unenforceable, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without rendering invalid, illegal or unenforceable the remainder of any such provision or the remaining provisions of this Agreement.

c) Bank may at any time assign or delegate its rights and duties under this Agreement. Customer may not assign or transfer its rights or obligations hereunder to any other person or entity without Bank's written consent, whose consent shall not be unreasonably withheld. Any purported assignment of this Agreement or any Service without Bank's prior written consent is void.

d) A waiver by Bank or Customer of any term or provision shall not be construed as a waiver of such term or provision at any other time, or of any other term or provision. Bank's waiver of the enforcement of any of the terms of this Agreement with respect to any transaction or series of transactions will not affect Bank's right to enforce any of its rights with respect to other Customers or to enforce any of its rights with respect to later transactions with Customer.

e) This Agreement may be executed in multiple counterparts with the same effect as if Customer and Bank had executed the same document, and all counterparts must be construed together as one instrument. Delivery of an executed counterpart by Electronic Transmission is effective as delivery of a manually signed counterpart.

### III. TERMS APPLICABLE TO ALL INTERNET-BASED SERVICES

1) **Internet Services.** Bank offers a number of Services over the Internet through Service Providers in addition to Digital Banking, including Lockbox. If requested by Customer and agreed to by Bank, Bank will grant Customer access to Bank's Internet Service Providers in the manner established by Bank. Bank may change the number or type of Services offered at any time.

2) **Terms of Use.** Bank or Bank's Service Provider may provide Terms of Use governing Customer's use of the Internet Services. Such Terms of Use shall supplement and amend the terms set forth in this Article. In the event of a conflict between the Terms of Use and the rules set forth in this Agreement, the Terms of Use shall govern. Customer's initial use of an Internet Service shall constitute an acceptance of the Terms of Use. Bank may change the Terms of Use for any Internet Service at any time by notifying the Primary Administrator via email. All changes shall have an effective date. Customer's use of the Internet Service after the effective date of any such change shall constitute an acceptance of the revised Terms of Use by Customer.

3) **Accuracy of Information.** Some Internet Services allow Customer to view and receive information about Customer's Account balance, activity, transactions and other Treasury Management information electronically. Account information changes frequently and is subject to updating, verification, and correction. Since the information may change during the delay between when the information was last sent to Customer or posted by Bank and when Customer receives or accesses the information, Bank assumes no responsibility for Customer's reliance on such information which is subsequently updated, verified or corrected. If Customer identifies and reports to Bank any information which requires updating or correction, Bank will promptly make any required corrections.

4) **Access and Security.** Customer agrees to use the Internet Services in accordance with the Security Protocol established by Bank. Without limiting the foregoing, Customer shall at all times use a Web browser that supports the level of encryption used by Bank as part of its Security Protocol. Due to emerging technologies and ensuing changes in security practices, Bank reserves the right to supplement or change its Security Protocol from time to time upon reasonable notice to Customer.

5) **Customer Policies and Procedures.** In addition to Customer responsibilities under this Agreement, Customer agrees to institute and maintain and enforce procedures and policies to ensure that Internet-accessed Services are only used by authorized Users for authorized activities and transactions on Customer's behalf. These procedures must include, among other measures, internal controls, procedures to ensure that terminals used to access the Internet Services are attended only by authorized Users while accessing the Internet Services and that sessions are fully terminated when authorized use is completed. Customer must

also ensure that authorized Users use Login Credentials only as authorized and only for the specific modules or Services for which the authorized User has authority. Bank is not responsible if any authorized User exceeds the limits of the User's authority. Customer understands that the Internet is inherently insecure and that all data communications and transfers occur openly on the Internet and can be monitored, intercepted, rerouted, copied and read by others. To reduce the likelihood of such third-party access, Customer agrees to transmit and receive data and messages through the Internet Services using only software acceptable to Bank and to follow the other Security Protocols.

6) **Unavailability of Access.** If Internet Services or any other communication system or website becomes disabled or is otherwise unavailable for Customer use for any period of time, Customer must promptly notify Bank of the situation. Bank will cooperate to restore access as promptly as possible. However, if a timely remedy is not available, Customer and Bank will cooperate to seek an alternative method to initiate Orders and carry out other Services. In any event, Bank will have no liability to Customer based on the unavailability of Internet Services or any other communications system or website or Bank's failure to remedy the problem in a timely manner.

7) **Third Party Information and Linked Websites.** Financial market data, quotes, news, research and other information developed by third parties and transmitted by Bank may be available on the websites (or sites linked to the websites). The posting of such information or data on the websites (or sites linked to the websites) will not be a recommendation by Bank that a particular service or transaction is suitable or appropriate for Customer. Although Bank strives to ensure that information Bank obtains from third parties is reliable, Bank does not guarantee the accuracy, completeness or timeliness of third-party Information, nor is Bank in any way responsible for any decision Customer makes or action Customer takes in reliance on such information.

#### 8) Other Customer Responsibilities.

a) **Equipment and Software.** Customer is responsible for obtaining (from Bank, in some instances), installing and maintaining the computer and communications Equipment (including, without limitation, personal computers and modems), software, Web browsers, Internet access and communications services necessary to access and use the Internet Services in accordance with this Agreement.

b) **Antivirus Protection.** Customer must ensure that the software (excluding software provided by Bank), listed websites and related materials Customer uses in accessing Bank's Internet Services are free of defects, bugs and virus, software problems and other Items of a destructive nature; Bank is not responsible for any of these problems. Customer agrees to run antivirus scans before transmitting data to or through any website. Customer may use any commercially available, industry recognized antivirus software of the type that detects and disinfects viruses automatically, without the need for Customer to execute virus scanning for each file manually. Customer shall update its antivirus software on a regular basis and in no event less often than once every month or as updates become available.

9) **Ownership of Data and Intellectual Property.** Customer

acknowledges that Bank or its Service Provider owns all rights and interest in its network, systems and data, and that each is a valuable asset of the owner. Title and ownership to and all other rights in the data contained on the network/system, or any modification thereof, will at all times remain in Bank or its Service Provider. Customer acknowledges that it is acquiring only the non-exclusive right to use the network/system for the sole and specific purposes intended by Bank in providing access to the network/system. Customer will not use or disclose, or permit any other use or disclosure of the network/system outside of the specific purpose intended by Bank. Customer may not sell, sublicense, transfer, assign, encumber or otherwise dispose of or exploit any of the data on the network.

10) **Disclaimer of Warranty.** BANK DOES NOT WARRANT THAT THE OPERATION OF ANY WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER IS RESPONSIBLE FOR TAKING APPROPRIATE PRECAUTIONS AGAINST DAMAGE TO ITS OPERATIONS WHICH COULD BE CAUSED BY INTERRUPTIONS OR MALFUNCTIONS OF ANY WEBSITE AND ASSUMES THE RISK OF SUCH OCCURRENCES.

#### **IV. SERVICE TERMS APPLICABLE TO SPECIFIC TREASURY MANAGEMENT SERVICES**

The following Service Terms for each Service apply when Customer completes the appropriate Implementation Documents for the Treasury Management Service(s) identified below (which are accepted by Bank) or when Customer otherwise uses a Service. The Service Terms for each Service shall apply only to the described Service and shall not be applicable to Services not used by Customer.

##### **A. DIGITAL and MOBILE BANKING**

1) **Services.** The Services and other features currently available through Digital Banking and Mobile Banking are summarized below and are described in more detail in the Digital Banking User Guides and Enrollment documents which are separately furnished. Digital Banking provides direct access to these Services via the Internet and facilitates reporting, individual transactions and Orders which can be key-entered.

a) **Transaction Services.** Customer may use Digital Banking to access Treasury Management Services offered by Bank for which Customer has enrolled. Depending on the type of product offered by Bank, access to the transaction Services may include, but are not limited to, ACH origination, ACH Positive Pay, Wire Transfers, Internal Transfers, stop payments, Check Positive Pay, Remote Deposit Capture, image access, online periodic statements, Mobile Services and System administration.

b) **Balance and Information Reporting Services.** Customer may use Digital Banking to access, view and receive information about Customer Account(s), including balances and transactions, and other information relating to Customer's relationship with Bank (including, but not limited to information on any loans, transactions or other Services Customer uses) as Bank may provide or make available to Customer.

c) **Internal Account Book Transfer Services.** Customer may effect an Internal Transfer of funds using Digital Banking. Each Internal Transfer shall be deemed to be an Order and Bank's

liability for processing such Order shall be subject to the limitations on liability as set forth in Article II of this Agreement. Customer must communicate instructions to initiate an Internal Transfer through Digital Banking by using the Security Protocol. Internal Transfers shall be subject to the Cut-off times Bank establishes and any of Bank's information or formatting requirements, and Customer may schedule Internal Transfers for future dates. Bank may reject any Internal Transfer Order for any reason in Bank's sole discretion (including, but not limited to, an overdraft in Customer Account). Uncollected funds may be accessed for transfers and Check clearing, subject to applicable fees. Customer agrees to be liable for any Internal Transfer communicated to and executed by Bank in compliance with the Security Protocol, whether or not they are authorized. Customer shall have no right to cancel an Internal Transfer Order once Customer submits it to Bank for processing.

d) **Stop Payment Services.** Customer may use Digital Banking to transmit an Order for Bank to stop payment on a Check Customer issued (each a "Stop Payment") on Customer Account, and Bank agrees to provide such Service relating to Stop Payments subject to the terms herein.

i. Bank is authorized to rely on Stop Payments received through Digital Banking and Customer agrees that a Stop Payment placed under this Service constitutes a writing pursuant to Section 4-403 of the UCC. Prior to Customer submitting a stop Payment Order to Bank through Digital Banking, Customer agrees to access the appropriate Account and database information through Digital Banking, review the applicable periodic statement for the Account, and determine whether the Check to which the stop Payment Order relates has or has not already been paid. Customer acknowledges that a transaction search through Digital Banking will not necessarily reveal whether a Check has been paid until the banking day after the banking day on which the stop Payment Order is received by Bank. To place a Stop Payment, Customer must provide all information Bank requires (the "Required Information") and the Required Information must precisely identify a Check Customer has issued on an Account or the Stop Payment shall be void and not processed.

ii. This Service is available only for Checks drawn on an Account and will not apply to cashier's or certified checks, drafts or other similar cash equivalent Items.

iii. Bank will not be obligated to honor any Stop Payment and such Stop Payment will be void if the Item to which it relates has been paid or Bank has become otherwise obligated to pay such Item.

iv. Unless otherwise set forth on the request for a stop payment, each stop payment placed hereunder will automatically expire six (6) months after the date submitted unless customer renews it for a similar period. Bank has no obligation to comply with any expired stop payment and shall have no liability for payment of a Check on which the stop order has expired. No notice will be provided to customer that an order is expiring.

e) **Online Statements.** Customer may elect to receive electronic periodic statements to be posted on the System each month.

f) Alerts Services. Customer may elect to receive informational alerts for selected Services delivered to the Mobile Device, voicemail box or email address Customer designates. The types of alerts are described in the Service Documentation for a specific Service to which the alert applies. Customer is solely responsible for the selection, security, accuracy and accessibility of the email addresses and phone numbers provided for the alerts. Alerts are provided for Customer convenience and are based on Customer Account information, which may be updated throughout the day. Bank shall not be liable for any failure or delay or inaccuracy in any alerts. Customer is solely responsible for User use and reliance on such alerts.

i. Customer is not permitted to reply to any alerts by means of the mobile or online address to which such Alerts are delivered or otherwise. Customer acknowledges and agrees that alerts are sent without encryption or any security codes and that Bank shall not be responsible or have any liability for unauthorized access to an alert or the information therein.

ii. Customer acknowledges and agrees that alerts are provided as a courtesy and do not have any effect on the validity of transactions initiated using any other Service or information provided to Customer as part of a Service or in connection with an Account, including periodic statements or information provided by other means and Customer obligations to monitor activity on Customer Accounts is not modified by Bank's providing, or failure to provide, alerts. Customer further acknowledges and agrees that Customer is responsible for accessing each Service as applicable to administer Customer transactions and information, notwithstanding whether an alert is provided, and alerts do not relieve Customer of Customer's responsibilities under the terms of any Service.

## 2) Administration.

a) Primary Administrator. Customer agrees to designate one Primary Administrator for Digital Banking.

i. The Primary Administrator is responsible for setting up Services available through the System and for establishing internal security procedures related to such Services, including, without limitation, system-wide configuration of Accounts, assigning Users, establishing authority levels, establishing authorization requirements, distributing and re-setting Login Credentials and other internal security devices related to the Services.

ii. Customer represents to Bank that the Primary Administrator has full authority on Customer's behalf to: designate individuals who will have authority to access Digital Banking, establish their permission rights and otherwise act on Customer's behalf in connection with Digital Banking.

iii. Customer acknowledges that the Primary Administrator may receive email notifications from Bank from time to time and that the Primary Administrator is responsible for sharing pertinent information regarding updates to Digital Banking and notices regarding the availability of services with other users at Company.

b) Users. Bank has no control over the establishment of Users or the identity of such Users, the personal information of such Users, or such Users' Login Credentials.

## 3) Security Protocol.

a) Access. Identification. Access to Digital Banking Services will be controlled through the use of Login Credentials. Bank will assign unique codes which may include a Customer identification number ("Company ID"), a User identification number ("User ID") and password ("User Password"). Login Credentials that are assigned to individual Users shall not be shared with any other person, including other Users and Customer shall not disclose any information regarding the Services that an unauthorized User would find helpful to obtain access to all or part of any Service.

b) Enhanced Multi-Factor Security. Access to Digital Banking requires the use of a Token or Out-of-Band Authentication/Biometrics for ACH Entries, Payment Orders, Positive Pay, Remote Deposit Capture and other electronic funds transfers. Each enhanced security device delivers a Security Access Code to be entered before accessing the applicable Service. One-time passcodes may be used in lieu of Tokens for customers who have view-only access to Account activity.

i. Each tangible Token at all times remains Bank's exclusive property. Customer may not export, directly or indirectly, the Tokens or any technology inherent in the Tokens.

ii. Customer is responsible for communicating to Bank any employees that have been assigned a Token. Customer is responsible for notifying Bank of the termination of an employee's Token access and the reassignment or return of Token.

## 4) Additional Functions Available through Digital Banking.

a) Controlled Disbursement. Customer may use reporting tools in Digital Banking to view the total amount of Checks that have been presented for payment to the designated Account ("Inclearings") on an intraday basis for each Business Day. Bank relies on clearing information received from the applicable Federal Reserve Bank or other clearing entity, the accuracy and timeliness of which Bank does not control and for which Bank assumes no responsibility or liability. If, for any reason, Bank is not provided with such information, Customer shall estimate the Inclearings for that Business Day.

i. Prior to the physical delivery of the actual Inclearings to Bank, Bank will facilitate a preliminary posting of Inclearings ("Memo Post") to Customer's Account intraday based on an electronic file of the estimated Inclearings provided by the Federal Reserve Bank each Business Day. During end-of-day processing, Bank will reverse each Memo Post entry and post each physical Item received from the Federal Reserve Bank against the Controlled Disbursement Account. The total of the Checks posted against the Account may or may not equal the Memo Post total from earlier that Business Day.

ii. Prior to the close of business each Business Day, Customer will ensure that the Account or an Account that is linked to the designated Account for Controlled Disbursement via a sweep mechanism contains Available

Funds in an amount at least equal to the aggregate Inclearings for that Business Day. If the Available Funds in the Controlled Disbursement Account or sweep Account are less than the aggregate Inclearings presented against the Controlled Disbursement Account, Bank will have the right to dishonor one or more of the Checks for which there are not adequate Available Funds.

5) **Business Mobile Banking.** Based on the permissions established in Digital Banking, Customer may use Mobile Banking in the same manner Customer uses Digital Banking, to: (i) view current balance information for Accounts linked to the Service; (ii) review available transactions for Accounts; (iii) transfer funds between Accounts on a one-time basis; (iv) view Account alerts and notifications; and (v) view payment history. In addition, Users may approve or reject ACH batch files for processing and approve or reject Wire Transfer requests.

a) Customer will not use the Mobile Service in or for any illegal, fraudulent, unauthorized or improper manner or purpose and will only use it in compliance with all Applicable Laws, rules and regulations, including all applicable state, federal, and international Internet, data, telecommunications, telemarketing, "spam," and import/export laws and regulations, including the U.S. Export Administration Regulations.

b) Without limiting the foregoing, Customer will not use the Mobile Services to transmit or disseminate: (i) junk mail, spam, or unsolicited material to persons or entities that have not agreed to receive such material or to whom Customer does not otherwise have a legal right to send such material; (ii) material that infringes or violates any third party's intellectual property rights, rights of publicity, privacy, or confidentiality, or the rights or legal obligations of any wireless service provider or any of its Customers or subscribers; (iii) material or data that is illegal, or material or data, as Bank determines (in Bank's sole discretion), that is harassing, coercive, defamatory, libelous, abusive, threatening, obscene, or otherwise objectionable, materials that are harmful to minors or excessive in quantity, or materials the transmission of which could diminish or harm Bank's or Bank's Service Provider's reputation; (iv) material or data that is alcoholic beverage-related (e.g., beer, wine, or liquor), tobacco-related (e.g., cigarettes, cigars, pipes, chewing tobacco), guns or weapons-related (e.g., firearms, bullets), illegal drugs-related (e.g., marijuana, cocaine), pornographic-related (e.g., adult themes, sexual content), crime-related (e.g., organized crime, notorious characters), violence-related (e.g., violent games), death-related (e.g., funeral homes, mortuaries), hate-related (e.g., racist organizations), gambling-related (e.g., casinos, lotteries), specifically mentions any wireless carrier or copies or parodies the products or services of any wireless carrier; (v) viruses, Trojan horses, worms, time bombs, cancelbots, or any other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data, or personal information; (vi) any material or information that is false, misleading, or inaccurate; (vii) any material that would expose Bank or any of Bank's Affiliates or Bank's Service Provider, or any other third party, to liability; or (viii) any signal or impulse that could

cause electrical, magnetic, optical, or other technical harm to the equipment or facilities of the Service Provider or any other third party.

c) Customer must comply with the Security Procedures for Digital Banking, including either Tokens or Out-of-Band Authentication, as selected by Customer.

d) Neither Bank nor the Service Provider will be liable for any errors in the content of information obtained or transmitted through the Mobile Services, or for any actions taken in reliance thereon (including, but not limited to, the type of alerts and other preferences Customer select). Customer is responsible for any and all charges, including, but not limited to, fees associated with text messaging or data usage rates imposed by Customer's telecommunications carrier. Bank is not responsible for any damages resulting from Customer's failure to comply with any terms and conditions provided by any telecommunications carrier or any app store. Any losses or charges incurred through the loss of a Mobile Device or the safeguarding (or failure to adequately safeguard) of Login Credentials will remain Customer's sole responsibility.

e) In connection with Customer's use of Mobile Banking, Bank and its Service Provider may receive and may share with one another names, domain names, addresses, passwords, telephone and device numbers, the content of messages, data files and other data and information provided by Customer or from other sources in connection with the Mobile Services. Bank and the Service Provider will maintain reasonable safeguards to protect the User information from unauthorized disclosure or use, but Bank reserves the right to use and disclose the User information as reasonably necessary to deliver the Mobile Services and as otherwise permitted by law, including, without limitation, compliance with court orders or instructions from a government agency, to protect the personal safety of subscribers or the public, to defend claims, and as otherwise authorized by Customer. Bank and the Service Provider also reserve the right to monitor the use of Mobile Banking for purposes of verifying compliance with Applicable Law, these Service Terms and any applicable license, but disclaim any obligation to monitor, filter, or edit any content.

f) It is important that Customer understands the limitations of the Mobile Services, including but not limited to the following: (i) Because Mobile Banking is accessible only through Customer's Mobile Device, Customer's access to the Mobile Services may be limited by the service provided by Customer's telecommunications carrier; (ii) There may be technical or other difficulties related to Mobile Banking. These difficulties may result in loss of data, personalized settings or other the Service interruptions. Bank does not assume any responsibility for the timeliness, deletion, or misdelivery of any user data, failure to store user data, communications or personalized settings in connection with Customer's use of a Mobile Banking; nor for the delivery or the accuracy of any information requested or provided through Mobile Banking; (iii) Bank reserves the right to block access or delete the Mobile Banking software from Customer's Mobile Device if Bank or Bank's Service Provider has reason to believe Customer is not complying with these Service Terms, or has

reason to suspect Customer's Mobile Device has been infected with malicious software or virus.

**6) Mobile RDC.**

a) Once Customer has requested and enrolled in Mobile Deposit, identified a Primary Administrator and set up Users, Customer will be able to take pictures of Checks for deposit. Customer will need to provide an image from both the front and the back of the Check and provide the information required. Notifications will be sent to let Customer know Customer's transaction was successful.

b) All of the terms applicable to the Remote Deposit Capture Service, including Customer's representations and warranties and limitations, apply to Mobile RDC.

c) Customer must restrictively endorse any Check transmitted through Mobile Deposit as "For mobile deposit only, Midland States Bank" or as otherwise instructed by Bank. Customer agrees to follow any and all other procedures and instructions for use of the Mobile Service as Bank may establish from time to time.

**B. ACCOUNT RECONCILIATION SERVICE**

1) **Introduction.** Bank shall provide certain reports and periodic statements of Account activity to Customer relating to deposits or paid Items for the designated Account(s) in accordance with the Service Documentation. Customer may choose to receive or send Check Register Information to aid Customer with the reconciliation of Customer's Accounts. Use of Account Reconciliation does not affect any of Customer's obligations under the Account Agreement to discover and report unauthorized or missing signatures and endorsements, alterations on Checks drawn, or any other discrepancies or problems with Customer's Accounts.

2) **Full Account Reconciliation.** The Service will provide an Account reconciliation of Customer's Account by matching the Check Issue File provided by Customer containing the Check Register Information against Checks actually paid from Bank's Account for the respective reconciliation period selected by Customer. Customer can send Check Issue File through Digital Banking.

a) **Process.** On any day, whether or not a Business Day, on which Customer issues any Check or other debit Item drawn on the Account, Customer shall prepare and electronically transmit to Bank, prior to the Cut-off, the required Check Register Information identifying each Check issued. If Customer is unable to electronically transmit Check Register Information on the day of such issue, Customer shall electronically transmit such Check Register Information to Bank on the next Business Day.

b) **Accuracy and Timeliness of Information.** Customer represents and warrants that all Check Issue Files provided to Bank by Customer will be accurate and complete. Customer accepts full responsibility for the accuracy of the Check Issue File. Bank will use reasonable efforts to provide the reports requested through the Service in a prompt fashion, but shall not be liable for temporary failure to provide timely information. In such event, Customer shall be responsible for carrying out banking business through alternative delivery channels.

3) **Partial Account Reconciliation.** Bank will provide a listing of all deposits, debits and Checks paid during the selected reconciliation period in the file download function of Digital Banking.

4) **Deposit Reconciliation.** Reconciliation of deposits is based on serial numbers placed on the MICR line of a deposit ticket to designate distinctions (such as location) per deposit. At the end of each reconciliation period, Bank will provide reports in standard paper format by mail in accordance with the Service Documentation.

5) **Discrepancy.** Customer shall review reports received under the Service promptly to ensure accuracy and completeness of the information. If Customer fails to notify Bank within thirty (30) days after receipt of a report that any information is inaccurate, incomplete, unclear, unreadable, or otherwise unacceptable, Bank shall be deemed to have accepted the report and to have waived (a) any and all objections including but not limited to objections concerning its accuracy, completeness, clarity, readability or quality, and (b) the right to bring any action or raise any claim against Bank based on any such objection. Bank shall not be liable for any loss, including loss of interest, resulting from Customer's failure to give such notice and Customer shall be precluded from asserting such discrepancy against Bank.

6) **Voiding a Serial Number.** If Customer desires to void a Check serial number or range of Check serial numbers not yet issued, Customer must deliver to Bank a void file in a method or format mutually agreed upon by Customer and Bank. A void file will not stop payment on an issued Check. If Customer seeks to stop payment on an issued Check, Customer must issue a stop-payment order with respect to such Check in accordance with Bank's usual stop-payment procedures.

7) **Bank's Duty.** Bank assumes no duty to identify and/or return duplicate Checks, Checks with poor MICR quality, mis-encoded items, or Checks lacking an encoded serial number unless Customer is enrolled in Bank's Positive Pay Service.

**C. ACH ORIGATION SERVICE**

1) **Introduction.** If requested by Customer and agreed to by Bank, Customer may initiate Credit or Debit ACH Entries for payments and/or collections on ACH Business Days to its Accounts or the accounts of Receivers in accordance with Bank's Security Protocol and this Agreement. Bank will act as an ODFI with respect to such Entries. Bank may process Entries directly, through one or more clearinghouses, or through the mechanism selected by Bank.

a) Customer's rights and obligations with respect to such Entries are governed by Applicable Law and the Nacha Rules, as amended from time to time. Customer acknowledges that it shall be bound by Nacha Rules and agrees not to initiate any Entry in violation of the Nacha Rules or applicable federal, state or international law, regulation or clearinghouse rules, including, regulations promulgated by the Office of Foreign Assets Control, FinCEN, and Operating Circular 4 of the Federal Reserve Bank.

b) Customer acknowledges and agrees that Bank shall have the right to examine Customer's books, records and systems to ensure Customer's compliance with the Nacha Rules and this Section and that Bank shall further have the right to suspend Services if Bank determines, in its sole and absolute

discretion, that Customer is not complying with the Rules and/or this Section.

c) Customer acknowledges that access to a copy of the Nacha Rules is available through Nacha at current prices.

d) Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in the Nacha Rules.

2) **Fines and Penalties.** Bank will charge Customer with any fines or penalties imposed by OFAC, Nacha or any other organization, which are incurred as a result of non-compliance by Customer, and Customer agrees to fully reimburse Bank for such charges or fines.

3) **Entry Origination/Processing Dates/Cut-off Times.** Customer may initiate Entries in the manner and format agreed to by Bank. Bank offers PPD, CCD and CTX as its standard package including child support and tax payments. Customer acknowledges that it must enroll in the Electronic Federal Tax Payment System if Customer originates Federal tax payments. Bank has the right to restrict the standard Entry class (SEC) codes utilized by Customer. If notified by Bank of such restriction, Customer must cease use of the SEC code and the underlying transaction type.

a) Customer agrees that all ACH Entries (regardless of SEC Code) that involve the exchange or transmission of banking information via unsecured electronic networks shall be encrypted or transmitted via a secure session, using a commercially reasonable security technology.

b) Bank must receive Customer's Entries at or prior to the Cut-off Time for the Entries to be processed on the Business Day of receipt. Entries received after the Cut-off Time will be processed on the next Business Day. Entries with Effective Entry Dates of thirty (30) calendar days or more from receipt will not be processed and the System will not allow the Entry to be processed.

c) Bank will accept and process Same Day Credit and Debit Entries with its prior approval and subject to a fee disclosed in the fee schedule, as long as the amount is less than the per item thresholds established by Nacha and the format requirements are met. File qualifications for Same Day Entries are set by the Federal Reserve, as ACH operator. Qualifying files are processed throughout the day at regular intervals established by the Federal Reserve.

d) Credit Entries are provisional until Bank receives final settlement for such Entry through a Federal Reserve Bank. If Bank does not receive such final settlement, Customer is hereby notified and agrees that Bank is entitled to a refund of the amount credited to Customer in connection with such Entry, and the party making the payment to Customer via such Entry shall not be deemed to have paid Customer in the amount of such Entry.

4) **Content.** All files will be formatted in a Nacha or other pre-approved format. Bank will establish transmission specifications. Files shall be initiated from within Bank's Digital Banking program. In submitting any Entry, Customer shall be responsible for providing all information required by Bank. Customer bears sole and exclusive responsibility to verify that the information set forth in Entries submitted to Bank is authentic, accurate and conforms to the Nacha Rules. The Services hereunder are only designed to respond to information provided by Customer. Accordingly, any

inaccuracy in any information provided by Customer may result in unintended processing by Bank. Bank bears no responsibility for detecting or reporting any error in data supplied by Customer and shall not be liable to Customer for any information provided by Customer with respect to an Entry which is inaccurate, incomplete or otherwise incorrect.

5) **Data Retention.** Customer shall retain data on file adequate to permit remaking of Entries for fourteen (14) 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, Customer 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, Customer's responsibilities to retain all Items, source documents, and records of authorization in accordance with the rules of the National Automated Clearing House Association.

6) **Prenotification.** To the extent required by Nacha Rules, Customer shall send a prenotification that it intends to initiate an Entry to a particular account in accordance with the procedures set forth in the Nacha Rules or by Bank. The prenotification can be returned or result in a Notification of Change ("NOC"). If the prenotification is returned, Customer shall research the problem and make any necessary corrections before transmitting another Entry. If the prenotification results in a NOC, Customer shall make the required change prior to initiating another Entry, or issue a Refused NOC.

7) **Exposure Limits.** Customer shall at all times maintain a settlement Account with Bank for the purpose of funding Customer's Entries. The total dollar amount of Entries initiated by Customer through Bank under all ACH Services and pending on a given day shall not exceed the lesser of collected or available balances in the Account or an exposure limit established by Bank ("Exposure Limit"). Establishment of an Exposure Limit should not be interpreted or construed by Customer as a commitment or agreement to provide any credit or loans to a Customer and is subject to modification or termination at any time by Bank. Bank may establish, monitor and periodically review Customer's Exposure Limit and Customer's compliance thereof, and may, in Bank's sole discretion, cease processing Entries based on such review.

8) **Payment.** Customer shall pay Bank for all Entries and authorizes Bank to charge its Account or any other account with Bank in the amount of such Entries. Bank shall have the right to reject Entries initiated by Customer without notice if Bank has reason to believe that there will be insufficient available funds on the relevant Settlement Date. Customer will receive funds for any Debit Entry on the ACH Settlement Date. Bank shall credit the Account in any amount payable to Customer, subject to Bank's right to make adjustments in accordance with this Agreement.

9) **Prefunded Entries.** Bank may, at any time, and in its sole discretion, require Customer to prefund all Credit Entries that Customer desires to initiate with collected funds. Customer acknowledges and agrees that such funds are held solely for the benefit of Bank and that Customer will not be entitled to earn any interest thereon. Upon initiation of such Credit Entries, Bank is authorized to immediately charge the Account (in the total amount of such Entries).



10) **ACH Security Protocol.** Initiation of ACH Entries requires enhanced security measures.

- a) **Enhanced Login.** Users must use Tokens to initiate ACH Entries. Bank will have no duty to further verify the identity of any electronic User with valid Login Credentials and Token. Bank will act on instructions received under User's login.
- b) **Confirmation.** Bank strongly recommends that Customer utilize a second individual to review and approve ACH files prior to submission to Bank. Customer acknowledges and agrees that such a Security Protocol is commercially reasonable and that Customer's failure to use this procedure substantially increases Customer's risk of an unauthorized ACH file.

11) **ACH Processing Schedule.** Except for Same Day Entries, Entries initiated by the Cut-off time on a Business Day may have an Effective Date of the next Business Day. Entries initiated after the Cut-off time on a Business day shall not have an Effective Date earlier than the second Business Day after initiation. Cut-off times are set at Bank's discretion and may change at any time upon notice to Customer. Cut-off times are indicated within the Digital Banking program on applicable ACH screens. Credit Entries should be submitted to Bank two (2) Business Days prior to the Effective Date. Debit Entries should be submitted one (1) Business Day prior to the Effective Date. Files may be submitted up to thirty (30) days in advance.

12) **Rejected and Unauthorized Entries.** Bank may reject any Entry that is not initiated in accordance with this Agreement. In the event that an Entry is rejected, or returned by an ACH processor, for any reason whatsoever, it shall be Customer's responsibility to reinitiate the Entry.

13) **Returns and Notifications of Change.**

- a) **Returns.** Bank shall notify Customer by phone, fax, electronic transmission, email or in writing of the receipt of a returned Entry from the ACH Operator no later than one Business Day after the Business Day of such receipt.
- b) **Limits on Reinitiation of Returned Entries.** Customer's rights to reinitiate a returned Entry under the Nacha Rules is limited: (i) where Customer requests, and Bank is capable, Bank may reinitiate Debit Entries returned due to insufficient or uncollected funds, but not more than two times following the return; (ii) Customer may also reinitiate an Entry when corrective action has been taken to remedy the reason for the return; (iii) neither Customer nor Bank shall knowingly resubmit Debit Entries returned due to stop payment unless reinitiation has been separately authorized by the Receiver after the Entry was returned; and (iv) Customer may not reinitiate Entries returned as unauthorized or returns due to revocation or termination of an authorization. Entries must in all events be reinitiated no later than 180 days of the Settlement Date of the original Entry.
- c) **Excess Return Rates.** Bank will monitor the return rates of Customer's Entries and may require corrective action in the event of excess return rates. Bank will require a detailed plan from Customer (no later than ten (10) Business Days after request) to reduce return rates considered excessive under the Nacha Rules or may terminate these Service Terms. Bank

may charge Customer any fines or fees assessed against it by Nacha or an RDFI for returned Entries.

d) **Dishonor of Returned Entry.** Bank may dishonor a returned Entry to the RDFI if the returned Entry was untimely, contained incorrect information, was misrouted, was a duplicate, or resulted in an unintended credit to a Receiver related to the reversal process. Bank will transmit any dishonored return Entry within five (5) Business Days of the Settlement Date of the return.

e) **Notification of Change.** Bank shall provide Customer all information, as required by the Nacha Rules, with respect to each NOC Entry or Corrected NOC Entry received by Bank relating to Entries transmitted by Customer. Bank will provide such information to Customer by phone, fax, electronic transmission, email or in writing no later than one Business Day after the Business Day of such receipt of each NOC or Corrected NOC Entry. Customer shall ensure that changes requested by the NOC or Corrected NOC (except NOCs that are in response to a prenotification) are made within six (6) Business Days of Customer's receipt of the NOC information from Bank or prior to initiating another Entry to the Receiver's account, whichever is later. Bank may refuse an NOC containing incorrect or incomplete information.

14) **Reversals, Adjustments, Cancellations and Amendments.**

a) **Reversals.** Customer or Bank may initiate Reversing Entries as permitted by the Nacha Rules to correct Erroneous Entries. The initiation of Reversing Entries for any reason other than those explicitly permissible in the definition of Erroneous Entry is prohibited. In initiating a Reversing Entry, Customer warrants that it has initiated Reversing Entries or files within five (5) Business Days of the original Entry or Entries. Customer also warrants that the account holder of a Reversing Entry has been notified of the reversal, and the reason for the reversal, no later than the Settlement Date of the reversal. For both Reversing Entries and files, Customer shall indemnify all parties to the transactions(s) from and against any claim, demand, loss, liability or expense.

b) **Adjustments.** Bank will give Customer prompt notice of Adjustment Entries received by Bank, and Bank is authorized to debit or credit the Account for such Adjustment Entries.

c) **Cancellations or Amendment by Customer.** Customer shall have no right to cancel or amend any individual Entry after release to the ACH Operator, except as permitted by the Nacha Rules. However, if such request complies with the Security Protocol and is received prior to the established Cut-off, Bank will use reasonable efforts to act on a request by Customer for cancellation of an Entry batch or file prior to transmitting it to the ACH Operator or, in the case of an On Us Entry, prior to crediting a Receiver's account. Bank shall not be responsible if such cancellation is not effected. Customer shall reimburse Bank for any expenses, losses, or damages Bank may incur in effecting or attempting to effect the cancellation or amendment of an Entry.

15) **Customer Representations/Indemnity.**

a) Customer represents and warrants to Bank that each Entry: (i) complies with the terms of this Agreement and Nacha Rules; (ii) does not breach any warranty of Customer or

Bank contained in this Agreement and Nacha Rules; (iii) complies with Applicable Law, including, without limitation, the Electronic Funds Transfer Act, Regulation E and regulations overseen by OFAC; (iv) is accurate, timely, and authorized; and (v) that any Debit Entry is for a sum that on its Settlement Date is due and owing from the Receiver to Customer or is a correction of a previously transmitted erroneous Credit Entry.

b) If a Receiver alleges an error under the Electronic Fund Transfer Act, the Federal Reserve Board Regulation E or any other Applicable Law with regard to a Debit Entry, including a claim that a Debit Entry was unauthorized, Customer shall promptly investigate the claim of error and shall, upon Bank's request, provide Bank with copies of all documentation relating to such error to allow for appropriate adjustments to the Receiver's account, if any are required.

c) With respect to each ACH Entry (regardless of SEC Code), Customer is deemed to make to Bank any representation or warranty that Bank makes, under Applicable Law and Nacha Rules to any person, Receiving Depository Bank, or any other transferee.

d) Customer shall indemnify Bank against any loss, liability or expense (including attorneys' fees and costs) resulting from or arising out of any breach of any of the foregoing warranties, representations, or agreements.

**16) Bank Responsibilities; Liability; Limitations on Liability; Indemnity.** In the performance of the Service, Bank shall be entitled to rely solely on the information, representations, and warranties provided by Customer pursuant to these Service Terms, and shall not be responsible for investigating or confirming the accuracy or completeness thereof.

a) Bank shall not be responsible for Customer's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or authorization of any Entry received from Customer) or those of any other person, including without limitation any Federal Reserve Bank (including any service provided by any Federal Reserve Bank), Automated Clearing House 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. Customer shall indemnify Bank against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any claim of any person that Bank is responsible for any act or omission of Customer or any other person described in this Section.

b) Without limiting the generality of the foregoing provisions and in addition to the limitations provided in Article II of this Agreement, Bank shall be excused from failing or delaying the transmission of an Entry if such transmittal would result in Bank's exceeding any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or if, in Bank's reasonable judgment, such transmission involves possible fraudulent activity or would violate provisions of any present or future risk control program of the Federal Reserve, or any other rule or regulation of any other U.S. governmental regulatory authority.

**17) Provisional Credit.**

a) Customer specifically acknowledges that it has received notice of the rule regarding provisional payment 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 Customer shall not be deemed to have paid the Receiver the amount of the Entry.

b) For a non-consumer Credit Entry subject to UCC Article 4A (such as a CCD or CTX), Customer understands: (i) the Credit Entry may be transmitted through the ACH system; (ii) the rights and obligations of the Originator concerning the Entry are governed by and construed in accordance with the laws of the State of New York, unless the Originator and the ODFI have agreed that the laws of another jurisdiction govern their rights and obligations; (iii) credit given by Bank to Customer for the Entry is provisional until Bank has received final settlement through a Federal Reserve Bank or otherwise has received payment as provided for in Section 4A-403(a) of UCC Article 4A; and (iv) if Bank does not receive such payment for the Entry, Bank is entitled to a refund from Customer in the amount of the credit to the Account, and the Originator will not be considered to have paid the amount of the Credit Entry to Customer.

**18) Evidence of Authorization.** The Nacha Rules require Customer to obtain authorizations from all Receivers, consumer and corporate, and Customer shall retain such consents and authorizations for two (2) years after they expire. Customer must provide proof of the authorization to Consumer Receivers for Debit Entries to be initiated and must respond to Bank within five (5) Business Days of a request with an accurate record evidencing the Receiver's authorization. Customer shall immediately cease initiating Entries upon receiving actual or constructive notice of the termination or revocation of the Receiver's authorization.

**19) Cooperation in Loss Recovery Efforts.** In the event of any damages for which Bank or Customer may be liable to each other or to a third party pursuant to the Services provided under these Service Terms, Bank and Customer will undertake reasonable efforts to cooperate with each other, as permitted by Applicable Law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.

**20) ACH Security Framework.** The Nacha Rules require that each non-consumer Originator must establish, implement, and update, as appropriate, policies, procedures, and systems with respect to the initiation, processing, and storage of Entries that are designed to: (a) protect the confidentiality and integrity of Protected Information until its destruction; (b) protect against anticipated threats or hazards to the security or integrity of Protected Information until its destruction; (c) protect against unauthorized use of Protected Information that could result in substantial harm to a natural person.

a) "Protected Information" for this purpose means 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.

b) Such policies, procedures, and systems must include controls that comply with applicable regulatory guidelines on

access to all systems used by such non-consumer Originator to initiate, process, and store Entries. Customer agrees to develop and implement policies and procedures and establish oversight that will comply with the ACH Security Framework rule to ensure the protection of security and integrity of ACH sensitive data throughout its lifecycle.

c) Customer must also protect Depository Institution Account Numbers by rendering them unreadable when stored electronically no later than the time it reaches the Entry thresholds established by Nacha.

d) Customer shall notify Bank immediately as provided in Section 10 of Article II hereof upon learning that any unauthorized person may have gained access to Protected Information. Customer acknowledges that Bank may have an obligation to report any data breaches to Nacha and other affected parties.

#### 21) **Financial Information and Audit.**

a) Customer agrees to furnish Bank with financial statements, in a form acceptable to Bank, upon Bank's request. Customer further agrees to furnish Bank upon request with copies of Federal Tax Returns upon their preparation each year together with all other financial information reasonably requested by Bank.

b) Bank shall have the right from time to time in its sole discretion to audit Customer's compliance with the terms of these Service Terms, including Customer's compliance with the Nacha Rules and these Service Terms, and to require that Customer submit to Bank the results of Customer's self-assessment of such compliance in a form as required by Bank.

22) **Customer's Use of Third-Party Service Provider.** Customer shall not engage a Third-Party Service Provider ("TPSP") to generate and/or transmit Entries to Bank without the prior written consent of Bank and without requiring such TPSP to first enter into a written agreement with Bank setting out the relationship, rights and duties between such TPSP and Bank. Customer agrees any such TPSP shall be Customer's agent for all purposes under this Service, including the right of Bank to give notices to the TPSP and receive directions from the TPSP, all on behalf of Customer. The TPSP must also comply with the ACH Security Framework rule described above and submit to audits for compliance with the Nacha Rules. Customer shall indemnify Bank against any loss, liability or expense, including reasonable attorney's fees, with regard to a breach of these Service Terms that may result from the actions of a TPSP.

23) **Re-presented Check Entries.** Nacha Rules allow Customer to initiate an ACH Entry to collect certain Checks that have been returned unpaid for insufficient or uncollected funds ("RCK Entry"). In the event that Customer initiates an RCK Entry to Bank for Check collection purposes, Customer agrees that such RCK Entry will comply with all provisions of this Agreement and applicable Rules and will enter into a separate addendum with Bank.

#### 24) **Third-Party Sender.**

a) If Customer is transmitting Entries as a third-party vendor or processor on behalf of Originators ("Third-Party Sender"), Customer agrees to be bound by the applicable terms provided in this Section and Nacha Rules. Customer

warrants to Bank that the Third-Party Sender has agreed to assume the responsibilities of an Originator under Nacha Rules and that ACH Entries shall not be initiated in violation of laws of the United States.

b) Customer understands that Bank must register it as a Third-Party Sender with Nacha and will cooperate in that process. Furthermore, Customer will provide Bank with the names and pertinent information required by Bank with respect to any Third-Party Sender for which it transmits Entries through Bank (a "nested" Third-Party Sender), before transmitting any such Entries, for the purpose of Bank's due diligence and registration of the nested Third-Party Sender with Nacha.

c) Customer shall enter into a binding agreement with each Originator ("ACH Agreement") that is SEC code specific and binds the Originator to the Nacha Rules, including, without limitation, authorization requirements, the audit rights of Bank set forth in the Agreement and the Service Terms, the ACH Security Framework, provisions with respect to return rate monitoring and the rights to suspend the Service for Nacha Rules violations, and will be responsible for verifying the proper authorization and execution of all such agreements, which must be executed by authorized signers of Originators who are executive officers, general partners, principals, proprietors, or owners, as appropriate, for their respective forms of business organization. The ACH Agreement must be approved in form by Bank and satisfy all of the requirements of the Nacha Rules.

d) Customer, as a Third-Party Sender, is responsible to know its Originators and their creditworthiness. Prior to entering into an ACH Agreement with an Originator, Customer must utilize a commercially reasonable method to verify the identity of an Originator and its principals and shall have conducted an investigation appropriate to the degree of risk associated with the Originator and in accordance with Bank's due diligence requirements, including, as deemed necessary, physical inspection of the Originator's premises, its data security and customer identification processes, and it shall have verified through such investigation that the Originator conducts a legal bona fide business operation and has the proper facilities, equipment, and inventory, and, where necessary, licenses and permits to do business. At the request of Bank, Customer will provide photographs taken of the Originator's premises, inventory, or product, and/or a Credit Bureau Report on principals of the business.

e) Before Customer can originate Entries for a new Originator but not less than ten (10) Business Days prior to originating Entries for a particular Originator, Customer must notify Bank of Customer's intent to onboard a new Originator and provide Bank with any information reasonably necessary to identify each Originator. Failure to notify Bank of any new Originators may result in processing delays or even rejection of Entries.

f) Customer shall, within five (5) Business Days following the end of each calendar quarter, provide Bank with the following information pertaining to each Originator for which it initiates Entries: name; principal business activity; street address; telephone number; employer identification number; name and telephone number of the principal; date of the ACH

Agreement; and summary of Customer's due diligence. Bank shall have the right, in its sole discretion, to refuse to accept Entries from any such Originators. Customer shall, following periodic requests from Bank, provide to Bank any information considered to be reasonably necessary to identify each Originator on whose behalf Customer initiates Entries hereunder within two (2) Business Days of Bank's request. Customer must provide accurate and complete information to Bank for each Originator in order to minimize risks placed on Customer and Bank.

g) At all times, Customer shall be responsible for supervising and overseeing each Originator's performance under the applicable ACH Agreement and shall be responsible for their respective compliance with the Nacha Rules. Customer shall perform ongoing due diligence on Originators to ensure no adverse or negative business activities are occurring and no material change in the nature of business has occurred. If Customer identifies any adverse or negative business activity on the part of an Originator, Customer must inform Bank immediately to determine a course of action including but not limited to termination of Customer's use of Services for that Originator.

h) Customer shall establish, implement and periodically review exposure limits for Originators and establish policies and procedures to: (i) monitor the Originators' origination and return activity across multiple Settlement Dates and require corrective action if Return Rates exceed the requirements of the Nacha Rules; (ii) enforce restrictions on the types of Entries that may be originated; and (iii) enforce exposure limits.

i) In addition to any other duties, responsibilities, warranties, representations and liabilities under the Agreement, for each and every Entry transmitted by Customer as a Third-Party Sender to Bank, Customer represents and warrants to Bank and agrees that Customer, as a Third-Party Sender, shall: (i) perform all of the duties, including, but not limited to, the duty to identify Originators; (ii) assume all of the responsibilities, including, but not limited to, the responsibilities of ODFIs and Originators; (iii) make all of the warranties, including, but not limited to, the warranties of ODFIs, the warranty that each Originator has agreed to assume the responsibilities of an Originator under the Nacha Rules and is legally able to do so; (iv) assume all of the liabilities, including, but not limited to, liability for indemnification for failure of an Originator to perform its obligations as an Originator of Third-Party Sender in accordance with the Nacha Rules; and (v) limit the dollar value and types of the Entries that are transmitted to Bank by Customer as Third-Party Sender as set forth in the Implementation Documents.

j) In addition to the limitations set forth above and in the Implementation Documents, Bank may place additional limits on the amount or the type of Credit Entries or Debit Entries that Customer may originate in a file, batch or any single Entry. Such limit will be communicated by Bank to Customer from time to time. Bank reserves the right to modify limits at its sole discretion.

k) As Third-Party Sender, Customer agrees to indemnify, defend and hold Bank harmless from and against any and all

claims, demands, expenses, losses, liabilities, and damages, including reasonable attorney fees and court costs at trial or on appeal that arise directly or indirectly from the failure of the Originator to perform its obligations as an Originator under Nacha Rules. Customer further agrees to assume all applicable responsibilities, warranties and liabilities of the ODFI, as specified in the Nacha Rules.

l) Customer shall cooperate fully and respond within five (5) Business Days to any inquiry from Bank relating to potential Nacha Rule inquiries or violations.

m) Customer is responsible for conducting a periodic risk assessment of its ACH activities and those of its Originators. Bank may request copies of such risk assessments and its supporting documentation.

n) Customer must conduct an annual audit of its compliance with the Nacha Rules and other applicable laws by December 31 of each year. The scope of the audit includes data security, record retention, agreements and authorizations and such other areas as Bank requires based on its underwriting of Customer's business. Customer must retain and provide upon request documentation supporting the completion of the audit for six (6) years from the date of the audit and, as Bank may periodically request, provide copies of such audit(s). Customer shall provide the requested copy within five (5) Business Days of receiving such request. Bank may, at its own discretion, require Customer to engage a certified, independent audit firm to conduct a SSAE 16 audit. Customer will be solely responsible for any costs associated with the SSAE 16 audit as well as timely remediation of issues identified by the SSAE 16 audit. Customer must notify Bank immediately of any actual or suspected breach of the data security requirements of the Nacha Rules or any applicable privacy law.

o) If Customer transmits Entries for any nested Third-Party Sender, Customer must have a Nacha compliant agreement with the nested Third-Party Sender that includes the requirements of these Service Terms as if the nested Third-Party Sender were Customer and Customer were Bank. Such agreement also shall include the warranties in subsection b above with Bank as an express beneficiary and the indemnification of Bank as provided in Subsection k. Further, Customer must provide the list of such nested Third-Party Sender's Originators with the information set forth above before transmitting Entries for the nested Third-Party Sender and provide to Bank any information considered to be reasonably necessary to identify each Originator on whose behalf it initiates Entries two (2) Business Days of Bank's request. Bank reserves the right to conduct periodic due diligence of each such nested Third-Party Sender and its Originators in its discretion as long as the relationship continues.

#### **D. ACH POSITIVE PAY SERVICE**

1) **Introduction.** The ACH Positive Pay Service assists Customer in detecting fraud by electronically matching incoming ACH transactions to authorizations that Customer can create and manage online.

2) **Authorizations.** If ACH Positive Pay Service is selected by Customer, Customer shall designate the Account(s) maintained at

Bank that are to be used with the ACH Positive Pay Service. Customer shall create authorizations for incoming ACH Credit and/or Debit Entries or request all ACH Items become an Exception that Customer decides and approves for future posting to the Account. Customer shall be responsible for the accuracy and completeness of all information provided to Bank. Bank will allow incoming ACH Entries that match Customer's authorizations to post to Customer's Account.

a) The agreed Cut-offs and formats for ACH Positive Pay Services are as follows: Customer may provide standing instructions to Bank to manage ACH activity on the terms specified herein; no instructions shall be binding on Bank unless they are in writing, on such forms as Bank may require from time to time, and are received in such time as to provide Bank a reasonable opportunity to act thereon; Bank shall be entitled to rely exclusively on the originator identification number provided in Customer's written instructions in implementing any ACH block or filter, and Customer understands that any error made by Customer in furnishing the identification number will make the block instructions ineffective.

b) Notwithstanding any instructions received by Bank in connection with the ACH Positive Pay Service, Bank may charge Customer's Account for any fees, charges, or payments in connection with transactions or Services provided to Customer or for any ACH transactions that Bank is required to accept under applicable rules, operating circulars, guidelines, or regulations.

c) If approved by Bank, Customer may provide different instructions for different Accounts in the ACH Implementation Documents, as provided by Bank.

**3) Exceptions.** Incoming ACH transactions that do not match Customer's authorizations will be treated as Exceptions, and Customer agrees to monitor, review and make payment decisions on the Exceptions prior to Bank's established Cut-off.

a) If Customer's requested default setup is for Bank to pay all Exceptions, then such Exceptions shall post to Customer's Account unless Customer has instructed Bank to return one or more Exception prior to the established Cut-off.

b) If Customer's requested default setup is for Bank to return all Exceptions, then Bank is authorized to return all Exception Items unless Customer instructs bank to pay one or more Exceptions prior to the established Cut-off.

c) Bank shall have no responsibility for any liability, loss or damage resulting from: payment in accordance with this Section of any Exception that is unauthorized; the return of any Exception Item to the Originator in accordance with this Section; or Customer's failure to meet Bank's established Cut-offs.

d) Bank's failure to report a discrepancy will not discharge Customer's obligation with regard to any Item, and shall not obligate Bank to return any Item if it is otherwise authorized.

**4) Exception Decisions.** Except as provided herein, Bank will not provide Customer with notice of any ACH transactions; ACH Exceptions will be made available to Customer by the Cut-off time as indicated in the applicable User Guide on a Business Day; and Customer shall send Bank an Exception Decision by the Cut-off

time as designated within the Positive Pay program on the same day the Exception Item was made available. If this Cut-off passes, the default decision, as indicated on the Implementation form, will be entered for any Exception Item(s). Cut-off times are set at Bank's discretion and may change at any time upon notice to Customer.

#### **E. CHECK POSITIVE PAY SERVICES**

**1) Introduction.** Positive Pay Services are offered by Bank as the most effective way to minimize loss from fraudulent Check issuance or payment. Nothing in these Service Terms is intended to limit Bank's right to return an Item unpaid if there are insufficient available funds in the designated Account.

##### **2) Responsibilities.**

a) **Format Specifications.** Customer shall comply at all times with Bank's format standards for the Positive Pay Service. Customer agrees to send the Check Issue File in accordance with Bank's specifications. Customer shall supply Bank with a sample Check Issue File for testing.

b) **Customer Responsibilities.** Customer shall designate to Bank all Account(s) that are to be used with the Positive Pay Service. Customer will provide Bank with a Check Issue File of all outstanding Items prior to activation of this Service. On each day that an Item is written against the Account, Customer shall supply Bank with all required Item issue information prior to the Cut-off established by Bank. Such information shall include, without limitation, the Account number, the issue date, the Item number, the Payee and the face amount. Customer shall be responsible for the accuracy and completeness of all information provided to Bank. In the event of system failure such that the Check Issue File cannot be received by Bank or Bank cannot process the file, the file shall be considered as not received, even if Bank has possession of the file.

c) **Bank's Responsibilities.** In reliance on the information provided by Customer, excluding valid stop Payment Orders and issue records voided by Customer request, all Items, including those that have been electronically converted, that match by Check number, issue date and amount to the Check Issue File will be deemed properly payable and Bank is authorized to pay all such Items.

**3) Exception Items.** Each Business Day by the designated time, Bank shall make reasonable efforts to report to Customer any Items that do not match the Check Issue File, and, if requested and available, provide the front and back images of those Items for that day's presentment; provided, however, no images shall be provided in the case of electronically converted Items. Customer agrees to review and make payment decisions on the Exception Items prior to Bank's established Cut-off.

a) If Customer's requested default setup is for Bank to pay all Exception Items, then Bank is authorized to finally pay any Exception Item unless Customer has instructed Bank to return the Exception Item prior to the established Cut-off.

b) If Customer's requested default setup is for Bank to return all Exception Items, then Bank is authorized to return any Exception Item unless Customer instructs bank to pay an Exception Item prior to the established Cut-off.

c) Bank may rely on any instructions received from Customer that Bank reasonably believes to be genuine. Bank shall have no responsibility for any liability, loss or damage resulting from: (i) payment in accordance with this Section of any Paid No Issue Item that is altered or unsigned or which bears the forged or unauthorized signature of Customer; (ii) the return of any Paid No Issue Item to the depository bank in accordance with this Section; or (iii) Customer's failure to meet Bank's established Cut-offs. Customer may be required to place a stop Payment Order on any returned Paid No Issue Item, which shall be subject to Bank's customary stop payment fee. Bank's failure to report a discrepancy will not discharge Customer's obligation with regard to any Item and shall not obligate Bank to return any Item if it is otherwise properly payable.

4) **Payee Positive Pay.** Customer shall designate to Bank all positive pay Accounts that shall use Payee Positive Pay. In addition to the Item issue information provided by Customer for the Positive Pay Service, Customer shall supply Bank with the payee name(s) for each Item issued by Customer. Customer shall be responsible for the accuracy and completeness of the payee information provided to Bank. In reliance on the payee information provided by Customer, Bank will compare the payee information on the Item with Customer's Check Issue File for Items presented or deposited at Bank. Customer acknowledges that Bank will not be able to validate payee information for handwritten or electronically converted Items presented to Bank for payment.

5) **Performance of Bank.** Bank shall be responsible only for performing the Service it expressly agrees to perform in these Service Terms and shall be liable only for direct damages, not to exceed the value of any Checks negligently handled, caused by its negligence in performing those Services. Bank shall not be responsible for any acts or omissions of Customer, including without limitation the amount, accuracy, timeliness of delivery or Customer authorization of any Item or instruction received from Customer, or any act or omission of any other person, including without limitation any transmission or communications facility, and Vendor of Customer, and no such person shall be deemed Bank's agent.

6) **Wrongful Honor.** It shall constitute wrongful honor by Bank if Bank pays an Exception Item marked as "return" listed in an Exception Decision delivered prior to Bank's designated Cut-off. In the event there is wrongful honor:

a) Bank shall be liable to Customer for the lesser of the amount of the wrongfully paid Exception Item or Customer's actual damages resulting from Bank's payment of the Exception Item. Bank retains the right to assert the defense that Customer has sustained no actual damages because Bank's honor of the Exception Item discharged for value an indebtedness of Customer.

b) Bank retains the right to assert Customer's failure to exercise reasonable care under U.C.C. section 3-406(a) and 4-406 and other Applicable Law in relation to the payment or handling of any Item.

7) **Wrongful Dishonor.** Except as provided below, it shall constitute wrongful dishonor by Bank if Bank dishonors a Check

for which Customer has not issued a Return Request on an Exception Item.

a) Bank's liability for wrongful dishonor of an Exception Item shall be limited to the damages for wrongful dishonor recoverable under UCC Articles 3 and 4.

b) Notwithstanding anything contained herein to the contrary, Bank shall have no liability to Customer for wrongful dishonor when Bank, acting in good faith, returns an Exception Item:

i. That it reasonably believes was not properly payable; or

ii. By reason of insufficient funds (available for withdrawal pursuant to Bank's applicable funds availability schedule and policies) on deposit in a Designated Account necessary to satisfy Items presented for payment; or

iii. If required to do so by the service of legal process of Bank or the instructions of regulatory or government authorities or courts; or

iv. If Customer fails to provide proper and timely notice to pay said Item.

8) **Faulty Information.** Subject to the limitations of liability contained in Article I of the Agreement and provided Customer provides correct information in the Issues Register, Bank shall be liable for losses proximately caused by its honor of a Check that was not properly payable, or its dishonor of a Check that was properly payable, if the honor or dishonor arose exclusively through its own fault and not the fault of or caused by any third person.

## F. ELECTRONIC DATA INTERCHANGE SERVICE

1) **EDI Introduction.** EDI allows Customer to receive payment and remittance detail from its trading partners and customers by batch transfer in electronic form. Customer may access such information for the Receiving Account(s) via file download in Digital Banking or may request secure email, as provided in the Service Documentation.

2) **Processing Data Transmissions.** Customer may receive data transmissions that consist of financial information provided such transmissions comply with Bank's processing requirements for this Service. Failure to comply with the requirements will relieve Bank of any obligation to process any transmission received as part of this Service. Furthermore, Customer is responsible for informing its trading partners and customers of the correct Account number format as described in the Service Documentation.

3) **Limitation of Liability.** In addition to the Limitations of Liability set forth in Article I of the Agreement, Bank has no duty to interpret the content of any data transmitted to it for or on Customer's behalf. The legal relationships between Customer and its trading partners and customers will be governed by the terms of the EDI contracts between Customer and its trading partners and customers and will not be binding on Bank. Bank will not have a duty to know or enforce the terms of any such agreement.

## G. INTEGRATED PAYABLES SERVICE

1) **Service.** Integrated Payables is a web-enabled, single platform Service that provides payment execution services to allow Customer to send Bank a single file with multiple payment types

for processing, including Check, ACH, wire and credit card payments and allows for integration with Customer's accounts payable software. The Service is provided by a Third-Party Service Provider that manages the printing and mailing of Checks, creates and transmits ACH Entries to Bank, formats wire payments and permits credit card payment.

2) **Additional Requirements.** Customer must subscribe to the ACH Origination Service in order to initiate ACH payments using this Service and the Wire Transfer Service for Wires. Customer must subscribe to the Positive Pay Service in order to initiate Check payments using this Service. Users must enter into an electronic End User Licensing Agreement ("EULA") with the Service Provider to access the Service.

3) **Vendor Options.** The Service Provider also permits Customer's vendors to sign up on a self-enrollment website to receive electronic payments and view electronic remittance advices.

4) **Security Procedures.** Customer will name Users in the Implementation Documents who will access and control the Service through User IDs and passwords.

5) **Process.** Users who are authorized to approve invoices may click online to approve each invoice or return for re-work. Users will select the invoices to pay, when the payment is to be initiated and the method of payment (Check, ACH, wire or credit card).

## H. LOCKBOX SERVICES

1) **Lockbox Service Requirements.** Bank provides retail and wholesale Lockbox Services to assist customers in expediting receipt of their remittances. Customer will have its customers forward their payments to the Lockbox location designated by Bank. Prior to initiation of any Lockbox Service, Customer must maintain a DDA with Bank associated with the Lockbox Service. Customer hereby authorizes Bank to establish a Post Office Box in Customer's name and Bank shall have exclusive access to the Post Office Box.

a) Customer shall execute any and all forms required by the Postmaster to establish the Post Office Box and to grant Bank exclusive access thereto. Customer shall not have access to the Post office Box and shall not authorize any other person or entity to have access to or remove the contents of the Post Office Box.

b) Customer authorizes Bank and/or Bank's Service Provider to remove the contents. The terms Bank and its Service Provider may be used interchangeably when used in relation to any Services performed by a subcontractor on behalf of Bank including, but not limited to, the receipt and processing of Checks and remittances and any data related thereto, to pick up mail at the appropriate postal facility, to have custody of the keys or combinations and unrestricted and exclusive access to such box, and to collect the mail therein to be processed by Bank as agreed by the parties.

c) Bank shall process remittances in accordance with its standard procedures or in accordance with prior instructions received from Customer and agreed to by Bank. Upon termination of Customer's Lockbox Service, mail received shall be forwarded for ninety (90) days following termination.

2) **Collections/Availability.** Unless otherwise agreed, while Customer receives Lockbox Services, all collected funds held in the

Lockbox Account shall be deemed to be Customer's funds for all purposes, including adjustment, attachment, execution, garnishment and other forms of legal process. The crediting and collection of Items will be handled under the same agreement as applied to other commercial deposits and shall be subject to Bank's then current funds availability schedule.

3) **Transmission of Information.** Bank may transmit to Customer remittance information or other information received at the Lockbox ("Lockbox Information") via secure Electronic Transmission. Customer further acknowledges that Bank has a duty to protect Lockbox Information and ensure that it is safely delivered to Customer and that Bank has deemed secure electronic transmissions to be the safest mechanism for delivery. If Customer elects to receive the Lockbox Information using other delivery means including paper reports, Internet delivery, CDs, DVDs, or other portable electronic media, Customer acknowledges that such delivery means are inherently more insecure and agrees to assume all risk, and hold Bank harmless from, any obligations, liability or losses that results from the nonreceipt, disclosure, dissemination, alteration or unauthorized access of the Lockbox Information. If Customer is the recipient of misdirected Lockbox Information, Customer shall immediately notify Bank and return the information to Bank. Customer agrees not to retain, use, copy, distribute or otherwise disclose the information in any manner.

4) **Image Delivery Services.** Bank shall electronically store Check images, Check information, remittance information or other information received at the Lockbox in accordance with Bank's record retention schedule. Customer may obtain such images or information via Internet access, CDs, DVDs or file transmission, if available, at the price outlined in the fee schedule. If the images or information are sent via CD or DVD, Customer agrees to verify the contents of the CD or DVD upon receipt and request a replacement, if necessary, within ten (10) days of receipt. Customer is solely responsible for safeguarding the security and confidentiality of all images and information that is stored on Customer's computer systems, or printed or downloaded from the Internet, CDs, DVDs, other portable media, or file transmissions.

5) **Credit/Debit Card Processing.** If Customer desires to provide its customers with the option of making their payments via credit card or non-PIN based debit card, Customer shall first secure approval from a payment transaction processor that Bank is able to support. Credit/debit card processing shall be subject to Applicable Laws and the terms of any other agreement between Customer and the payment transaction processor. Customer acknowledges that Bank is acting on behalf of Customer to merely initiate the authorization of payments at the Lockbox site, and that Bank shall have no responsibility for chargebacks, processing fees, payment disputes or other matters related to the credit/debit card transaction. Bank shall enter the credit/debit card information using its best efforts and if adjustments are subsequently required, Customer shall be responsible for handling all adjustments.

6) **Foreign Currency-denominated Items and Items Drawn on Foreign Banks.** If Customer desires to have non-US dollar Items processed by Bank, or Items denominated in US dollars but drawn on a foreign bank, Bank shall handle the Items within parameters established by Bank based on amount, the type of currency and other considerations outlined in the Implementation Documents. If the Item does not fall within Bank's parameters for processing,

Bank shall return the Item unprocessed to Customer or forward the Item for handling as a foreign cash letter collection. If Bank provides Customer with credit at the US dollar conversion rate in effect, and if the Item is subsequently returned by the drawee Bank, Bank shall charge Customer's Account for the prevailing exchange rate in effect at the time of the chargeback.

**7) Wholesale Lockbox Processing.** Bank is authorized to remove and examine the contents of each envelope in accordance with Bank's wholesale Lockbox servicing guidelines and shall observe the following guidelines provided in this Section. Bank shall capture, format and send remittance data to Customer via information reporting or data transmission in accordance with the Implementation Documents.

a) **Payee.** Checks made payable to the Acceptable Payees listed in the Implementation Documents or any reasonable derivation thereof is acceptable for deposit. Checks made payable to others may be returned by Bank as exceptions. Customer warrants that each Acceptable Payee is Customer, its affiliate, or an entity that has authorized Customer to act on its behalf for the Services provided herein. If the Acceptable Payee is an affiliate of Customer or an entity which authorized Customer to act on such entity's behalf, Customer represents and warrants that such affiliate or entity has authorized Checks payable to it to be credited to the Lockbox Account. Bank may require written authorization from any Acceptable Payee or written evidence that an Acceptable Payee has authorized Customer to act on its behalf. If Customer designates 'Accept All Payees' in the Implementation Documents and Bank accepts such designation, Bank shall process all Checks for credit to the Lockbox Account regardless of the payee name on the Check. Such designation may be subject to additional Bank fees. Customer agrees to indemnify and hold Bank harmless for any claims, fines, expenses, and damages that arise out of Bank's processing of Checks based on Customer's 'Accept All Payees' designation.

b) **Correspondence.** Any correspondence, invoices and miscellaneous enclosures which are included with a payment, as well as any envelope that does not contain a Check, are scanned and made available within the archive.

c) **Notation.** Customer agrees that Bank shall disregard any notation on a Check containing "paid in full", "lien waiver" or other restrictive notation, whether preprinted or handwritten, and treat any such Check as though such notation did not appear thereon. If Customer instructs Bank not to process Checks with restrictive notations, Bank will use its best efforts to detect Checks bearing such notations, but Bank shall not be liable to Customer for failure to detect any such notation.

d) **Checks(s) Deposited.** Check(s) falling in the following categories will be deposited in the DDA designated by Customer in writing after being processed in the following manner:

i. **Missing Date.** Bank is not responsible for reviewing the date(s) on the Check(s) and will process the Remittance(s) in accordance with the Implementation Documents regardless of date or lack thereof.

ii. **Discrepancies in Amount.** If the numerical and written amounts of any Check are not the same, the numerical or written amount that corresponds to an amount on the Remittance Material(s) enclosed with the Check, if applicable, will be the amount deposited. If the numerical and written amounts on any Check are the same but do not correspond to an amount on the Remittance Material(s) enclosed with each Check, the amount reflected on the Check will be deposited.

iii. **Payee Review.** Bank is not responsible for verifying the payee on the Check(s) and will process the Check in accordance with the Implementation Documents regardless of the named payee or lack thereof.

iv. **Foreign Checks.** Checks drawn on a foreign bank or in a currency other than the United States dollars may, at Bank's discretion, be deposited.

v. **Missing Signature.** In the absence of a signature, Bank will process the Check. Customer agrees to reimburse Bank if the Check is subsequently returned.

e) **Check(s) Not Deposited.** Unless otherwise requested by Customer in writing and agreed to by Bank, Bank will not deposit Checks(s) described herein and will process them in the following manner:

i. **Indeterminable Amount.** If Bank, within its sole discretion, cannot determine a Remittance amount, Bank shall forward such Check to Customer.

ii. **Cash.** Unless otherwise requested by Customer in writing and agreed to by Bank, if cash is sent to the Lockbox the cash will be forwarded to Customer.

iii. **Alterations.** If Bank, within its sole discretion, determines that a Check has been altered, Bank shall forward such Check to Customer. Bank will use commercially reasonable efforts to detect alterations and prevent deposits of altered Checks. However, Bank shall have no liability whatsoever, notwithstanding anything to the contrary contained herein, for depositing Checks containing an alteration of any kind.

**8) Retail Lockbox Processing.** Bank is authorized to open each envelope and remove the contents, disregarding all notations and other marks on the envelopes. Bank shall not examine Checks or other Items with respect to payee names, Check dates and Check signatures. Bank is not required to retain remittance envelopes or forward them to Customer. Bank will disregard any restrictive notation on any Check, including but not limited to "paid in full", whether preprinted or handwritten, and shall treat any such Check as though such language did not appear thereon. Bank will process, endorse and deposit remittances in accordance with its standard procedures. If Bank is unable to determine the amount of a Check, such Check will be forwarded to Customer as unprocessable. Bank will deliver miscellaneous enclosures, unprocessable transactions and remittance data in accordance with the Implementation Documents. Remittances and envelopes submitted to Bank for processing must meet the specifications designated by Bank from time to time. All changes in remittances and return envelope design are subject to prior testing and approval by Bank. Bank may adjust the price for processing Customer's payments if changes are made to Customer's remittances and/or envelopes (including remittance scan line configuration) without such prior approval.



9) **Data Security.** Bank, as a service provider to Customer, acknowledges that it is responsible for the security of cardholder data Bank possesses or otherwise stores, processes, or transmits on behalf of Customer, or to the extent that it could impact the security of Customer's cardholder data environment.

#### H. REMOTE DEPOSIT CAPTURE SERVICES

1) **Introduction.** Remote Deposit Capture Services provide Customer with the option of making electronic deposits of Check Images using one or more products offered by Bank.

##### 2) Upload of Files.

a) Customer shall submit the Remote Deposit Capture transmission (containing one or more Check Images) to Bank prior to the daily Cut-off time established by Bank from time to time for the receipt of Remote Deposit Capture. Cut-off times are posted within the Remote Deposit Capture Service program. Any Remote Deposit Capture transmission received by Bank after its daily Cut-off time shall be deemed to have been received by Bank at the opening of its next Business Day.

b) A Remote Deposit Capture file is received when the entire Remote Deposit Capture transmission in which that Remote Deposit Capture is contained is received by Bank in accordance with Section 2.a. above. If only a portion of that Remote Deposit Capture transmission is received by Bank for any reason, including without limitation a failure during the transmission to Bank, the Remote Deposit Capture transmission is deemed to have been not received by Bank with respect to any Remote Deposit Capture contained in that Remote Deposit Capture transmission (including any Check Image contained in the portion of that Remote Deposit Capture transmission that was received).

c) A per Item limit, dollar limit, daily deposit limit, or file limit may be established by Bank in its sole discretion and communicated to Customer. If any such limit is established, Bank shall have no obligation to process Items or files in excess of the limit. Bank may also limit high risk customers to enrolling only one Account for use with the Service.

d) Prohibited Checks may not be deposited through the Service, and Customer must have processes in place to prevent processing of any Check that:

- i. Is payable to any person or entity other than Customer;
- ii. Customer knows or suspects, or should know or suspect, is fraudulent or otherwise not authorized by the owner of the account on which the Check is drawn;
- iii. Has not been previously endorsed by a bank and is either a "substitute check" (as defined in Regulation CC) or "image replacement document" that purports to be a substitute check, without Bank's prior written consent;
- iv. Is drawn on financial institutions that are located outside the United States or its territories;
- v. Is a "remotely created check" (as defined in Regulation CC);
- vi. Is drawn, or otherwise issued, by Customer or any affiliate of Customer on any account of Customer or of such affiliate; or
- vii. Is not acceptable by Bank for deposit in the Account as provided in the Account Agreement.

3) **Check Images.** Each File transmitted by Customer to Bank shall contain Check Images of the front and the back of the Checks scanned and remotely deposited by Customer.

a) Each Check must be endorsed "Remote deposit to Midland States Bank" to be accepted for deposit under the Service.

b) Each Image of each Check shall be of such quality that the following information can clearly be read and understood by sight review of such Image: (i) the amount of the Check; (ii) the payee of the Check; (iii) the signature of the drawer of the Check; (iv) the date of the Check; (v) the Check number; (vi) the information identifying the drawer and the paying financial institution that is preprinted on the Check, including the MICR line; and (vii) all other information placed on the Check prior to the time an image of the Check is captured, such as any required identification written on the front of the Check and any endorsements applied to the back of the Check. Each Image shall also meet all standards for image quality established by the American National Standards Institute ("ANSI") and the Federal Reserve.

4) **Equipment.** If the Scanner(s) is provided by Bank as part of this Service, Bank hereby grants to Customer a nontransferable non-exclusive license ("License") to use the Scanner(s) ("Scanner(s)") only in connection with the Service provided by Bank. Customer accepts the License subject to the terms and conditions set forth in the following Sections. Customer acknowledges the Scanner(s) is and shall at all times remain the sole and exclusive property of Bank and agrees that Customer will do nothing inconsistent with such ownership. Customer agrees that nothing in this License shall give Customer any right, title or interest in the Scanner(s) other than the right to use the Scanner(s) in accordance with this License, and Customer agrees that it will not attack the validity of this License. Customer shall use the Scanner(s) in a careful and proper manner in accordance with the documentation and shall comply with and conform to all federal, state, municipal, and other laws, ordinances and regulations in any way relating to the possession, use or maintenance of the Scanner(s). If at any time during the term hereof, Bank supplies Customer with labels, plates or other markings, stating that the Scanner(s) is owned by Bank, Customer shall affix and keep them upon a prominent place on the Scanner(s). Bank shall limit the use of the Scanner(s) to the processing of transactions with Bank pursuant to this Agreement. Bank may not use the Scanner(s) to facilitate processing transactions with any other person without the prior express written authorization of Bank. Customer agrees that Bank will deliver or ship the Scanner(s) to Customer at the address on file with Bank. Customer acknowledges that delivery or shipment to Customer shall be considered receipt of the Scanner(s) by Customer. Customer shall inspect the Scanner(s) within 24 hours after receipt thereof. Unless Customer, within this period of time, gives written notice to Bank specifying any defect in or other proper objection to the Scanner(s), Customer agrees that it shall be conclusively presumed, as between Bank and Customer, that Customer has fully inspected and acknowledged that the Scanner(s) is in good condition and repair, and that Customer is satisfied with and has accepted the Scanner(s) in such good condition and repair. Bank shall at any and all times during business hours have the right to enter into and upon the premises where the Scanner(s) may be located for the purpose of inspecting

the same or observing its use. Customer shall give Bank immediate notice of any attachment or other judicial process affecting Scanner(s) and shall, whenever requested by Bank, advise Bank of the exact location of the Scanner(s).

**5) Funds Availability.** Upon acceptance of the Remote Deposit Capture file, Bank shall grant Customer's Account provisional credit for the total amount of the accepted file, as applicable. The transmission of Check Images, MICR Data, or any other legally permissible Check collection method using the Remote Deposit Capture Service is not subject to the funds availability requirements of Regulation CC. Bank may, at any time, and in its sole discretion, provide a one-time notification to Customer if Bank intends to delay funds availability beyond ordinary Regulation CC funds availability time frames for Items submitted by Customer using Remote Deposit Capture Services.

**6) Collection of Check Images and MICR Data.** Notwithstanding anything to the contrary in this Agreement, Bank may in its sole discretion determine the manner in which Bank will seek to collect a Check Image and/or MICR Data deposited by Customer. Without limiting the generality of the preceding sentence, Bank may, at its option: (a) present or transfer the Check Image or MICR Data to the paying bank, a Federal Reserve Bank, Check clearinghouse, image share/exchange network, or other bank; (b) create a Substitute Check, and/or MICR Data and collect such Item, or (c) request that Customer provide to Bank the original paper Check from which the Check Image and/or MICR Data was created and then collect the original paper Check. Depending on the collection method, the Check Image, MICR Data, Substitute Check, is subject to the rules of that clearinghouse, Federal Reserve Bank, or image share/exchange network or Bank agreement.

**7) Law, Fraudulent Checks and Risk.**

a) The Remote Deposit Capture Service program will (i) capture images of Checks that meet the requirements of the Check Clearing for the 21st Century Act ("Check 21"); (ii) support certified Check scanners connected via an Internet connection; (iii) process captured Check Images and enable review, keying of MICR and other data; (iv) permit Customer to approve or reject Check Images presented for deposit; (v) provide access to archived Check Images and (vi) provide Customer with access to then-standard reports.

b) Customer agrees to (i) comply with applicable Check 21 and ACH rules, as well as all other applicable Laws; (ii) acknowledges that use of the Remote Deposit Capture Service is dependent upon broadband Internet connectivity; (iii) will be solely responsible for resolving any Internet connectivity issues; (iv) will not use Remote Deposit Capture Service for any purpose other than the capture of Check Images and associated data; and (v) will implement disaster recovery procedures that permit the deposit of Checks in the event of Equipment, telecommunication, electrical, Remote Deposit Capture Service or other outage.

c) Customer acknowledges that Remote Deposit Capture Service does not detect fraudulent Checks nor does Bank indemnify Customer against any claims including those filed under Check 21 or ACH rules and regulations. Customer acknowledges and agrees that use of Remote Deposit Capture Service will not eliminate the risk or exposure that is inherent in Customer's Check processing Services. Customer agrees to

accept full responsibility for the payment of all Checks processed using Remote Deposit Capture Service.

**8) Storage of Check Images.** Bank shall store Check Images and other Check information on the Remote Deposit Capture System in accordance with Bank's record retention schedule, and shall make such information available to Customer according to the applicable User Guides and fee schedule. If the Remote Deposit Capture Services are terminated, Customer may obtain Check Images or Check information at the price outlined in the fee schedule.

**9) Maintenance and Destruction of Original Check.** Customer shall securely store all original Checks for a period of fourteen (14) days after Customer has received notice from Bank that the File containing the images of such Checks has been accepted. Customer shall take appropriate security measures to ensure that: (a) only authorized personnel shall have access to original Checks, (b) the information contained on such Checks shall not be disclosed, (c) such Checks will not be duplicated or scanned more than one time and (d) such Checks will not be deposited or negotiated in any form. Customer shall also implement proper security and internal controls to ensure the confidentiality of any information that is considered to be confidential personal information that is retained by Customer. Customer will use commercially reasonable methods of destruction. At Bank's request, Customer shall provide the original paper Check to Bank within five (5) Business Days, if the original paper Check has not been destroyed by Customer and Bank needs the original paper Check to process a payment or resolve a dispute.

**10) Representations and Warranties.**

a) Customer represents and warrants, with respect to each Check Image submitted to Bank, that:

i. The Check is currently and was at the time of its creation, a bona fide and existing obligation of the drawer, free and clear of all security interests, liens, and claims whatsoever of third parties and is not now nor has it ever been declared in default;

ii. Documentation under which the Check is payable authorizes the payee to charge and collect the monies owed;

iii. The Check Image accurately represents all of the information on the front and back of the Check, and all such information is clear and legible on the Check Image; and

iv. The Check will not be duplicated and no person will receive presentment of the original Check, a substitute Check based on the original Check, or a paper or electronic representation of the original Check or a substitute Check, such that that person will be asked to make a payment based on a Check that it has already paid.

b) In addition, Customer is deemed to make each representation or warranty that would have applied had Customer deposited the original paper Check. Customer is deemed to make to Bank any representation or warranty that Bank makes, under Applicable Law, clearinghouse rule, Federal Reserve Operating Circular, bi-lateral agreement or otherwise, to any person (including without limitation a collecting bank, a Federal Reserve Bank, a Receiving

Depository Bank, a paying bank, a returning bank, the drawee, the drawer, any endorser, or any other transferee) when Bank transfers, presents or originates the Remote Deposit Capture or Check Image, or a Substitute Check, Demand Draft, PIL, or ACH Entry created from that Check Image or MICR Data. Customer is not a consumer, and the Remote Deposit Capture System shall be used for business purposes only.

**11) Network Connectivity and Security.** Customer is solely responsible for connectivity to the Internet and for the implementation of all commercially reasonable security procedures to control access to its computer systems and to protect any data files stored thereon. Such procedures include but are not limited to anti-virus, physical, logical, and network security control systems and devices. Customer should use a firewall product especially if it has a broadband Internet connection such as DSL or cable modem. Customer's computer operating system and browser should be fully patched with critical security. It is recommended that Customer use the most current fully patched versions of Internet browsers for accessing the Service.

**12) Discrepancies and Investigations.** Customer agrees to provide Bank with any information it may reasonably request in connection herewith. Customer will promptly supply all financial information, financial records, and documentation regarding the Checks that Bank may request. Customer will also cooperate in investigations regarding any unsuccessful or lost transmissions, will provide imaged documents (or original Checks if available) to facilitate investigations within two (2) Business Days of Bank's request and will resolve with Bank any issues regarding the same. Notwithstanding the foregoing, if Bank at any time discovers that the legal amount of the Check is different than the amount that has been credited to the Account, Bank will make the necessary adjustment to the Account to correct the discrepancy.

**13) Self-assessment and Right to Audit.** Customer agrees that if requested by Bank, Customer will complete a self-assessment of Customer's operations, management, staff, systems, internal controls, training and risk management practices that would otherwise be reviewed by Bank in an audit of Customer. Upon request by Bank, Customer hereby authorizes Bank to enter Customer's business premises for the purpose of ensuring that Customer is in compliance with this Agreement and Customer specifically authorizes Bank to perform an audit of Customer's operational controls, risk management practices, staffing and the need for training and ongoing support, and information technology infrastructure. Customer hereby acknowledges and agrees that Bank shall have the right to mandate specific internal controls at Customer's location(s) and Customer shall comply with any such mandate. In addition, Customer hereby agrees to allow Bank to review available reports of independent audits performed at Customer location related to information technology and any associated operational processes. If Customer refuses to provide the requested financial information, or if Bank concludes, in its sole discretion, that the risk of Customer is unacceptable, or if Customer refuses to give Bank access to Customer's premises, Bank may terminate the Remote Deposit Capture Services according to the provisions hereof and in the Agreement.

**14) Business Continuity and Contingency Procedures.** Customer will have in place a business continuity plan, including back-up of data submitted under the Service, and, in the event that Customer

experiences technical difficulties in connection with the Service, Customer should implement the following procedures:

- a) For Equipment and Account issues, Customer should call Bank.
- b) For computer, printer or Internet connectivity issues, Customer should contact the computer repair department, computer vendor or Internet provider as appropriate.
- c) In the event that Check Images may not be transmitted through the Services for deposit into the Account, Customer should bring the deposit in person to any one of Bank's branch offices to deposit the original Check(s).

#### **I. WIRE TRANSFER SERVICES**

**1) Introduction.** Wire Transfer Payment Orders may be initiated by Customer from within Digital Banking ("Digital Banking Wire Transfers") or by telephone using a PIN ("PIN Wire Transfers"). Bank shall transfer funds from a Customer Account to any other account, whether such other account is with Bank or another bank, in accordance with instructions received from Users or Authorized Signers subject to the authority granted to such individuals online or in the Implementation Documents, as the case may be. All funds transfers are governed by this Agreement, The Fedwire Regulation, OFAC regulations, and all other Applicable Law.

**2) Limitations on Service.** Bank may place limitations on all Wire Transfer requests, including setting dollar limits on each transfer or on daily/monthly transfers. Such limitations will be established in Bank's sole judgment based on Bank's risk management procedures, and Bank may consider Customer's creditworthiness and Bank's experience and transactions with Customer for that purpose. Bank will notify Customer of any limitation prior to implementing it.

**3) Cut-off Times.** Bank will establish from time to time a specific Cut-off time after which Bank will not accept an incoming Payment Order to be processed on the day of receipt. All Payment Orders received after Bank's established Cut-off or on any non-Business Day, including any Saturday, Sunday, holiday or any day that Bank's wire department is not open will be considered received on the next Business Day. Online Wire Transfers may be submitted up to thirty (30) days in advance. Bank will act upon all transfer requests on the Business Day designated as the Value Date of the wire.

**4) Digital Banking Wire Transfers.** Online Wire Transfers require enhanced security measures and Bank recommends a separate confirmation before transmission.

- a) **Enhanced Security.** Requests transmitted via Bank's Digital Banking Service must comply with the Security Protocol described, and agreed to, in the Digital Banking Service Terms with respect to Entries transmitted by Customer to Bank, including the use of Tokens. Customer acknowledges that the purpose of such Security Protocol is for verification of authenticity and not to detect an error in the transmission or content of a Request. No Security Protocol for the detection of any such error has been agreed upon by Bank and Customer. Customer is solely responsible for the security of Login Credentials and Tokens. Bank will have no

duty to further verify the identity of any electronic user with Login Credentials and Tokens.

b) Confirmation of Outgoing Wire Transfers. Confirmation of Wire Transfers Initiated through Digital Banking by Customer shall be verified and approved by Customer prior to their transmission to Bank. Bank recommends a minimum of two Users to confirm Payment Orders and that Users serve as an initiator or a confirmer, but not both. Notwithstanding Bank's recommendation, if Customer permits a User to act as both initiator and confirmer, Customer hereby authorizes Bank to process a wire initiated and confirmed by such User and accepts the risk of an unauthorized Payment Order.

c) Compliance with Security Protocol. If a Request (or a Request for cancellation or amendment of a Wire Transfer) received by Bank purports to have been transmitted or authorized by Customer, it will be deemed effective as Customer's Request and Customer shall be obligated to pay Bank the amount of such Wire Transfer even though the Request was not authorized by Customer, provided Bank accepted the Request in good faith and acted in compliance with the Security Protocol with respect to such Request.

d) If a Request (or Request for cancellation or amendment of a Wire Transfer) received by Bank was transmitted by Customer or a designated User, Customer shall pay Bank the amount of the Wire Transfer, whether or not that Request was erroneous in any respect or that error would have been detected if Bank had complied with such procedures.

#### 5) PIN Wire Transfers.

a) PIN Wire Initiation. Customer shall contact a Customer Care Representative at 855-696-4352 and provide the following information:

- i. Name and PIN,
- ii. Amount of the transfer,
- iii. Account to be debited,
- iv. Receiving depository Bank's name, ABA number and physical address, beneficiary's name and physical address;
- v. Beneficiary's account to be credited,
- vi. SWIFT Code, if applicable,
- vii. IBAN number, if applicable, and
- viii. Any special instructions to be included in the text of the wire.

b) Distribution. Customer shall be solely responsible for controlling the distribution and safekeeping of, and access to, the PINs, telephone numbers and any other confidential code Bank may assign. Pursuant to the Security Protocol, any transfer request accompanied by an appropriate PIN will be deemed to have been made by Customer's Authorized Signer.

c) Electronic Recording. If a dispute arises between Customer and Bank with respect to one or more terms of any Wire Transfer request initiated, amended, or confirmed by telephonic communication, then any electronic recording of the telephonic communication maintained by Bank in the ordinary course of business shall be conclusive as to the terms of the Wire Transfer in dispute.

#### 6) Payment Orders.

a) Content of Payment Orders. Customer will supply to Bank any information Bank may reasonably request regarding any Payment Order initiated by Customer, including, without limitation, money amounts, affected accounts, dates of transfer, the Beneficiary's name and account number, the name and routing number or bank identifier code of the Beneficiary's Bank, such additional information as Bank may reasonably request and, if necessary, further evidence of any User's or Authorized Signer's authority to transfer funds or to do any other act contemplated by this Service.

b) Execution of Payment Orders. Customer authorizes Bank to execute and charge Customer's Account(s) with Bank for Payment Orders delivered to Bank in accordance with this Agreement. Bank has no obligation to execute a Payment Order if Customer's Account to be charged has insufficient collected funds to cover the Order. If Bank elects to make any transfer that exceeds the amount of collected funds, Customer shall be liable for any amount transferred in excess thereof, including a Collected Funds Waiver fee and other fees where applicable.

c) Processing Payment Orders. The order in which Bank processes Wire Transfer Payment Orders is determined solely by Bank. Customer does not have the right to reverse, adjust or revoke any Payment Order after it has been received by Bank, provided, however, that Bank will make a reasonable effort to act on such a request by Customer. With respect to a Payment Order already transmitted to the Beneficiary's bank, Bank shall, at Customer's request, request Bank to return funds previously transferred. Customer understands that the receiving institution is under no legal obligation to comply with this request. Bank may use means and routes that Bank thinks in its own discretion are suitable for each outgoing Wire Transfer. Bank sends outgoing Wire Transfers through Fedwire (the funds transfer system owned and operated by the Federal Reserve Banks or other provider).

d) Rejection of Payment Orders. Bank may reject a Payment Order from Customer if such Payment Order is not initiated in accordance with the applicable security procedure, if there is any inconsistency between a Payment Order and information previously supplied to Bank, if Bank is unable to obtain confirmation of such Payment Order satisfactory to Bank, if there are insufficient collected funds in Customer's specified account to fund the Payment Order, or if Bank has other reasonable grounds not to honor the Payment Order. Bank will make a reasonable effort to notify Customer by telephone in such instances; provided, however, that Bank shall not be liable for any failure to provide such notice.

e) OFAC. Customer agrees not to initiate a Wire Transfer Payment Order in violation of applicable federal, state or local law. If the Beneficiary of any Wire Transfer is a person or entity listed on the list of Specially Designated Nationals and Blocked Persons or an OFAC sanctions program, Bank shall not be obligated to complete the transfer and may "block" the funds until such time that OFAC issues a written release to Bank. In addition, if a Wire Transfer into Customer's Account is from a person listed on the OFAC list of Specially Designated Nationals and Blocked Persons or a sanctions program, Bank shall not be obligated to accept the transfer.

**7. International Wire Transfers.** Wire Transfers across country borders are customarily done by Bank through a correspondent bank. Payment to a foreign country is subject to the laws of the foreign country involved. Bank assumes no liability for delays, non-delivery or other events resulting from causes beyond Bank's control. In refunding unexecuted Payment Orders, Bank shall be liable to Customer only to the extent it receives payment from the correspondent bank processing the transfer. From time to time, Bank experiences various difficulties in transferring funds to certain countries. Those difficulties include (but not by way of limitation): (i) excessive delay in applying funds; (ii) incorrect application of funds; (iii) disappearance of funds; (iv) excessively slow response to inquiries; or (v) government restriction on the transfer of such funds. In addition, countries and their subdivisions where the recipient is wired funds charge transfer taxes and other transfer fees that reduce the amount received. Customer hereby acknowledges and assumes any expense in connection with such transfers which may be incurred by Bank in addition to normal and customary charges. Customer is obligated to comply with all laws relating to the transfer of funds for foreign countries, individuals, or agencies. Noncompliance may result in the delay of Wire Transfers, fines equivalent to a percentage of the principal or confiscation of the entire principal amount of the transfer if an attempt is made to transfer funds to a sanctioned individual, agency and/or country.