



# Treasury Management

## Terms & Conditions

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## I. GENERAL PROVISIONS

### 1. Treasury Management Services

(a) Generally. City Bank (the "Bank") offers various Treasury Management Services (individually, each a "Service", collectively the "Services") to its commercial customers (each a "Customer" or "you"). These Services include but are not limited to the following:

- ODFI-Originator ACH Processing Services;
- Positive Pay Services;
- Remote Deposit Capture Services; and
- Business Online Wire Transfer Services.

Many of the Services are available for use through traditional means of financial commerce as well as through the use of Online Banking Services offered by the Bank. The execution of the Treasury Management Services Agreement (the "Agreement") obligates the parties with regard to the general terms and conditions related to use by the Customer of any Service or Services offered by the Bank, regardless of whether such Service is performed traditionally, online or through some combination thereof. Nonetheless, before the Customer begins using any of the Services, the Customer must return a duly authorized and executed copy of the Agreement to the Bank for review and approval.

(b) Enrollment in a Service or Services. Enrollment in any individual Service is subject to bank approval and requires the completion of the Treasury Management Services Request (the "Request"). Enrollment in a Service or Services is accomplished by obtaining, completing and signing the Request, and submitting it to the Bank in person, through email, or by regular mail.

### 2. Accounts

(a) Generally. The Customer agrees to maintain a minimum of at least one (1) commercial checking account ("Demand Deposit Account") with the Bank with funds sufficient to cover the transactions initiated pursuant to the Agreement, and to cover fees required to pay for Services provided thereunder. Customer represents that it is the legal owner of the Demand Deposit Account(s) linked to the Services, and that all the information Customer provides to us in connection with the Services, including Customer's e-mail and contact information, is accurate, current and complete, and that Customer has the right to provide such information to Bank for using the Services. Customer agrees not to misrepresent its identity or its account information. Company will keep its account information up to date and accurate.

(b) Business Purpose. The Customer agrees that only Demand Deposit Accounts, or other deposit accounts, or other asset accounts (individually, a "Deposit Account"; collectively, "Deposit Accounts") established exclusively for business purposes will be used for transactions pursuant to the Agreement, and that in no event will transactions hereunder be conducted using Deposit Accounts of the Customer or its employees, officers, directors, members, or owners that were established primarily for personal, family or household purposes.

(c) Authorization for Transfers to and from Accounts. The Customer expressly authorizes the Bank to debit the appropriate Deposit Account in the amount of any bank transfer initiated by the Customer and pursuant to the Agreement, or initiated by any other person the Customer authorizes to access Deposit

Account(s). The Customer agrees that the Bank: (i) may treat any bank transfer, whether initiated online or otherwise, from a Deposit Account the same as a duly executed written withdrawal, transfer, or check; (ii) may treat any bank transfer to a Deposit Account the same as a deposit by cash or check; and (iii) may treat any bank transfer to a loan account held by the Customer the same as a loan payment to the Bank, all in accordance with the terms of the Agreement and the Customer's agreement with the Bank governing the Deposit Account (the "Deposit Account Agreement") or the Customer's agreement with the Bank governing any such loan account (the "Loan Account Agreement"), as applicable.

- (d) Account Limitations. The Customer's ability to initiate bank transfers between Deposit Accounts may be limited by federal law or by the terms of the applicable Deposit Account Agreement or the applicable Loan Account Agreement. The bank transfers from Deposit Accounts that are savings or money market deposit accounts are limited as required by federal regulation in effect at the time a bank transfer is initiated. The Customer agrees that the Bank may, without notice or other obligation to the Customer, for security reasons or as otherwise expressly provided in this Agreement, the Deposit Account Agreement or the Loan Account Agreement, (a) refuse to make any bank transfer, or (b) refuse to accept a Remote Deposit Capture deposit.

### 3. The Agreement

- (a) Generally. The terms and conditions of the Agreement, including the Request, these Treasury Terms and Conditions, and all attachments, authorizations, schedules and exhibits, together with all amendments or modifications thereto, are cumulative with and in addition to any terms of the Deposit Account Agreements and related Deposit Account signature cards and authorizations, Funds Transfer Agreements, Loan Account Agreements, the applicable Deposit and Loan Account disclosures, the Bank's service schedule, the Bank's Schedule of Funds Availability, any credit account agreements relating to any credit accounts the Customer may have with the Bank (together, the "Bank Agreements, Schedules and Disclosures"), the rules and regulations of any federal or state agency that supervises the Bank's activities or insures accounts at the Bank, and any applicable clearinghouse operating rules and guidelines, including, but not limited to those of the National Automated Clearing House Association ("NACHA"), and any other applicable local clearing house association, all as may be amended from time to time.
- (b) Inconsistencies. To the extent expressly provided for otherwise herein, should any inconsistency exist or arise between the terms of the Agreement, as relates to any Service or Services, and the terms of any other Bank Agreements, Schedules and Disclosures, the terms of the Agreement shall control, but only to the extent of the inconsistency. Furthermore, to the extent expressly provided for otherwise herein, should any inconsistency exist or arise between the General Provisions of the Agreement and the applicable Service specific provisions, the terms of the Service specific provisions shall control, but only to the extent of the inconsistency.
- (c) Amendment. The Bank may amend the Agreement from time to time. To the extent permitted by applicable law, the Bank may amend any term of the Agreement without prior notice or obligation to the Customer: (i) if a service provider changes any term without providing the Bank sufficient prior notice to enable the Bank to timely notify the Customer; (ii) for security reasons; (iii) to comply with applicable law; or (iv) as otherwise expressly provided in the Agreement. Use by the Customer of the Service(s) following the effective date of any amendment(s) shall constitute the Customer's acceptance of and agreement to the amendment(s). If the Customer does not agree to the changes as set forth in an amendment, the

Customer may choose to terminate the Service(s) affected by the amendment prior to the effective date of the amendment by discontinuing further use of the Service and following the procedures set forth in Section 26 of these General Provisions. Unless otherwise provided for herein, the Agreement may not be amended or modified unless agreed to in writing by the Bank.

#### 4. Notices and Instructions

- (a) Generally. Unless otherwise stated in the Agreement, all notices required pursuant to the Agreement and the Services shall be in writing. The Bank shall be entitled to rely on any written notice or other written, electronic or telephone communication believed by it in good faith to be genuine and to have been initiated by an authorized representative of the Customer to the Bank. Any such communication will be deemed to have been authorized by the Customer. The parties agree that the Bank's records of telephonic or electronic instructions shall be conclusive evidence of the actual notice or instructions given by the Customer and recorded by the Bank.
- (b) Data Recording. The Customer consents to the Bank's recording and monitoring of any telephone conversations and online transmissions or communications including, but not limited to, requests or instructions. The Bank, however, has no duty to record or monitor such telephone conversations or online transmissions and communications, and the election to record and/or monitor is within the Bank's sole discretion.
- (c) Delivery of Notices, Disclosures, Amendments or Other Communications by the Bank. The Customer acknowledges and agrees that, to the extent permitted by applicable law, the Bank may deliver all notices, disclosures, amendments or other communications required hereunder to the Customer by e-mail at the Customer's e-mail address as provided to the Bank. To the extent permitted by applicable law, the Customer agrees that each such communication will be binding and enforceable to the same extent as if it were delivered to the Customer in writing by regular mail, branch posting, or in person.
- (d) Electronic Mail Communication. The Customer may send e-mail to the Bank and receive e-mail from the Bank. (i) Communications sent to the Bank over the Internet are considered unsecured unless the information is encrypted with the equivalent of 128-bit encryption technology, or transmitted via a secure session using a commercial reasonable security technology that provides a level of security that is equivalent to 128-bit RC4 encryption technology. (ii) The Customer agrees that unsecured e-mail will not be used to deliver sensitive personal or private information that includes, but is not limited to bank routing numbers, account numbers, Social Security numbers, business ATM & check card numbers, personal identification numbers ("PINs"), home addresses, User IDs, Passwords, ACH entries, or to provide required notices to the Bank pursuant to any agreement the Customer has with the Bank, unless such agreement expressly provides for e-mail notification. (iii) THE CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY REQUEST(S) SENT TO THE BANK THROUGH AN UNSECURED ELECTRONIC NETWORK ARE IN VIOLATION OF BANK AND NACHA POLICY AND PROCEDURES. THE CUSTOMER UNDERSTANDS AND AGREES THAT THE BANK IS NOT LIABLE FOR ANY LOSS OR DAMAGE INCURRED BY THE CUSTOMER WHEN AN UNAUTHORIZED PERSON GAINS ACCESS TO ANY SUCH EMAIL. THE CUSTOMER AGREES TO INDEMNIFY AND HOLD THE BANK HARMLESS IF THE BANK ACTS WITH ORDINARY CARE IN GOOD FAITH BY RESPONDING TO ANY E-MAIL PURPORTED TO BE SENT BY THE CUSTOMER. THE BANK'S IMPLEMENTATION OF ITS NORMAL PROCEDURES REGARDING RECEIPT AND MAINTENANCE OF CONFIDENTIAL INFORMATION CONSTITUTES ITS EXERCISE OF DUE CARE. (iv) E-mail transmitted by the

Customer to the Bank may not be delivered to the Bank immediately. If the Customer needs to contact the Bank immediately to stop a payment, to report an unauthorized use of the Customer's User ID, to report unauthorized access to an account, or for any other reason, the Customer shall contact the Bank by telephone at the telephone number provided herein, or in person. The Bank will not be responsible for acting on or responding to any e-mail request made until the Bank actually receives the Customer's e-mail message and the Bank has a reasonable opportunity to act. (v) The Customer should check its e-mail regularly as the Bank may attempt to notify the Customer by e-mail in the event of any technical difficulties or other occurrence that may affect the Bank's online Services.

- (e) Address for Notification. All notices to be delivered by the Customer to the Bank pursuant to the Agreement can be made to the physical address, postal address, e-mail address, or telephone number indicated below, as applicable pursuant to the terms of the Agreement and the requirements of the notice:

Bank's physical notification address:

City Bank

Attn: Treasury Solutions

5219 City Bank Pkwy.

Lubbock, TX 79407

Bank's postal (i.e. P.O. Box) notification address:

City Bank

Attn: Treasury Solutions

P.O. Box 5060

Lubbock, TX 79408

All notices to be delivered by the Bank to the Customer pursuant to the Agreement can be made to the postal address, e-mail address, or telephone number on file for the Customer, such notification information as may be amended in writing by the Customer from time to time.

## **5. Submission of Information and Documents**

- (a) Delivery of Documents. The Customer agrees to deliver, in a form and content satisfactory to the Bank, such additional executed, or as the case may be, certified, documents required by the Bank from time to time to obtain and to continue to receive the specific Service(s) requested by the Customer, including Deposit Account signature cards, declarations, authorizations, resolutions, implementation documents and updated financial statements.
- (b) Electronic Signatures and Records Disclosure (E-SIGN Disclosure). Customer understands that Customer's Authorized Signer must read this Electronic Records Disclosure carefully and keep a copy for the Customer's records. Customer is agreeing that Bank may, but is not obligated to, use electronic signatures

and obtain electronic signatures from Customer. In order to register for and use the Services, Customer is also agreeing to the electronic delivery of legal disclosures, agreements, instructions, communications, online statements, and other notices related to such services, and Customer is also agreeing to electronic delivery for all other legal disclosures, agreements, instructions and communications relating to Customer's current Deposit Accounts or any future Deposit Accounts Customer has with the Bank. If at some point in the future Customer no longer wants to receive the legal disclosures, agreements, instructions, communications and online statements (if applicable) electronically, then Customer understands that Customer may withdraw their consent for electronic delivery of such items, and that Customer will not be charged any fee for withdrawing their consent, but that doing so will not affect the legal effectiveness, validity or enforceability of electronic disclosures or records that were made available to Customer prior to the implementation of Customer's withdrawal of consent for electronic delivery. Customer also understands that Customer has the right to request that Bank provide to Customer any record that was provided electronically, or any other record, in paper or non-electronic form, although Customer is aware that charges and fees for such non-electronic copies may be charged in accordance with the Bank's current fees as provided by the Bank. To withdraw consent for electronic delivery, to update Customer's contact information, or to request a paper or non-electronic copy of any record or document, Customer must notify Bank in accordance with Section 4(e) of this Agreement. To receive an electronic copy of all required disclosures regarding Treasury Management Services, including related legal disclosures, agreements, instructions, communications and online statements (if applicable), Customer must comply with the system requirements as set forth in this Agreement or any additional documentation provided by Bank to Customer relating to this Agreement. To retain a copy of such materials, Customer's system must have the ability to either download (e.g. to their hard disk drive, diskette, CD-ROM or other storage device) or print portable document format ("PDF") or HTML files. Customer must have a functioning printer connected to a personal computer or other access device, which is able to print the related legal disclosures, agreements, instructions, communications and online statements (if applicable) on plain white 8 1/2 x 11 inch paper. By executing this Agreement, Customer represents and warrant that: (i) Customer has read, understood and agreed to this Electronic Records Disclosure; and (ii) the devices that Customer will use to receive the legal disclosures, agreements, instructions, communications and online statements (if applicable) meet the system requirements to access information and to retain information as stated in this Agreement.

- (c) Provision of Information. Prior to initiating a new Service, the Customer agrees to provide all information which the Bank may request including specifications, test results, check samples, transmissions and documents. In the event that the Bank determines, in its sole discretion, that any specification, test result, sampling, transmission or document does not meet its requirements, the Bank may advise the Customer that the Customer will not be eligible to obtain the Service(s) until requested information that is satisfactory to the Bank is provided by the Customer.
- (d) Authorizations. (i) Customer authorizes the individual(s) named on the Commercial Signature Card to be Authorized Signers and Authorized Administrators (collectively, the "Authorized Parties"). "Authorized Signers" have the authority: to sign the Agreement and any addenda thereof; to accept on behalf of the Customer the terms and conditions governing the use of Services, including acceptance of Security Procedures (as defined below); to enroll in Services; to appoint and remove Authorized Administrators (as defined below); to appoint and remove Contacts (as defined below) to provide the required information to set up and administer Services; to perform the functions of a Contact; to authorize and remove the authorization of individual Users (as defined below) who perform transactions related to a



Service or Services; and to perform transactions related to any Service hereunder. "Authorized Administrators" have the authority: to enroll in Services; to sign addenda to the Agreement as they relate to Services; to appoint and remove Contacts who provide the required information to set up and administer Services; to perform the functions of a Contact; to authorize and remove the authorization of individual Users who perform transactions related to a Service or Services; and to perform transactions related to any Service hereunder. "Contacts" have the authority: to provide instructions to set up and administer the Service or Services assigned to them on the Treasury Management Services Request Form, including the authority to add or remove Deposit Accounts or Service features; to authorize and remove authorization of individual Users who perform transactions related to a Service or Services; to perform transactions related to any Service hereunder; and as solely relating to Online Banking, to perform the functions of an "Administrator" (as defined in the Online Banking Service specific provisions herein), or to delegate such authority to a subordinate to serve as an Administrator with authority to authorize and remove the authorization of individual Users who perform transactions related to a Service or Services; to grant access to specific Deposit Accounts and Service functions; to re-set passwords; to audit Service activities of Users who perform transactions related to a Service or Services; and to perform transactions related to any Service hereunder. "Users" may be appointed by an Authorized Signer, Authorized Administrator or Contact for the purpose of carrying out certain types of transactions related to a Service or Services, and may be designated as Users through any of the Bank's Service-specific User forms or documents. As Online Banking provides online access to a number of Services, the authority for the specific Contact assigned to Online Banking will supersede the authority of other Contacts to the extent necessary to ensure unanimity whenever a Service is provided through Online Banking (i.e. including, but not limited to Online Wire Transfers, ACH, and Positive Pay). The Bank may rely on the Authorization to be a true and correct representation of the Customer's authorizations. (ii) Prior to utilizing any specific Service, the Customer shall furnish the Bank with documentation in form and content satisfactory to the Bank, naming the Customer's employees, agents and third party vendors hired by the Customer to perform any of the transactions required by the Customer under the Agreement and naming those individuals who are authorized to act on behalf of the Customer with respect to the Service (the "Transactional Users"). (iii) THE CUSTOMER AGREES THAT IN THE EVENT THE CUSTOMER DESIRES TO NAME ADDITIONAL AUTHORIZED ADMINISTRATORS OR REMOVE THE AUTHORITY OF AN EXISTING AUTHORIZED ADMINISTRATOR, THE CUSTOMER MUST PROVIDE THE BANK WITH WRITTEN INSTRUCTIONS ADVISING THE BANK OF THE CHANGE IN AUTHORITY SIGNED BY A PERSON NAMED AS AN AUTHORIZED SIGNER ON THE MOST CURRENT AUTHORIZATION. THE CUSTOMER AGREES THAT THE BANK WILL RELY ON THE MOST CURRENT AUTHORIZATION AND THE MOST CURRENT SERVICE RELATED USER AUTHORIZATIONS SUPPLIED BY THE CUSTOMER AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE BANK SHALL HAVE NO LIABILITY FOR UNAUTHORIZED ACTIONS TAKEN OR TRANSACTIONS PERFORMED BY THOSE INDIVIDUALS NAMED AS AUTHORIZED PARTIES ON THE CURRENT AUTHORIZATION OR AS TRANSACTIONAL USERS ON SERVICE RELATED AUTHORIZATIONS. (iv) the Customer understands and agrees that any employees or applicants for employment with Customer who are or may become Authorized Parties, Contacts, Administrators or Users, or may otherwise have any responsibility for handling Customer's financial affairs (including processing, writing or receiving checks or electronic transfers, handling account statements or other financial information, conducting Remote Deposit Capture Services such as scanning or storing Original Checks (as defined herein), or creating, transmitting or storing Substitute Check images, or acting otherwise in a responsible manner regarding Customer's financial affairs) has been asked specifically whether they have ever been convicted of a felony, that a thorough background check of such employee or applicant has been conducted, that a system of reasonable financial controls is in place and that the Customer has instituted a program that

encourages Customer's employees to report fraudulent or dishonest activities to Customer's management.

**6. Security Procedures, Customer's Data Security Obligations, Limitation on Liability and Responsibility for Loss**

(a) Security Procedures under the Agreement. Where required for any Service, the Bank and the Customer will agree in writing to one or more security procedures ("Security Procedures") that must be used by the Bank and the Customer in connection with the Service(s). Security Procedures offered by the Bank are described herein and in documentation related to the applicable Service. As part of the Security Procedures, Bank may employ various authentication technologies. As part of the Bank's "Online Banking Services" for commercial Customers, Bank employs various security and authentication technologies to ensure that Authorized Parties and Users are communicating directly with Bank, and also to ensure that the Customer's computer is communicating with a legitimate Bank computer. Such Bank authentication procedures and technologies include, but are not limited to, use of Customer Online Banking Services User IDs, passwords and other "Additional Authentication Information" ("AAI") that Bank may require Customers to provide at Bank's sole discretion. Such AAI is required as a component of various Online Banking Services authentication procedures that Bank may employ, including, but not limited to, security questions and responses and/or use of other hardware-based and software-based security and authentication tools, programs and procedures. The Customer is responsible for the establishment and maintenance of its internal procedures reasonably adapted to insure the confidentiality and security of Security Procedures. CUSTOMER UNDERSTANDS AND AGREES THAT CUSTOMER WILL BE RESPONSIBLE FOR MAINTAINING SECURITY AND CONTROL OVER ALL USER IDS AND PASSWORDS OF THE CUSTOMER'S AUTHORIZED PARTIES, CONTACTS AND USERS, AND SHALL USE SECURITY FOR SUCH ITEMS COMPARABLE TO THE SECURITY AND CONTROL CUSTOMER WOULD USE FOR CASH, OR A MECHANICAL CHECK-SIGNING MACHINE, BUT IN NO EVENT LESS THAN REASONABLE SECURITY AND CONTROL IN THE CIRCUMSTANCES. If the Customer or its employees or agents have reason to believe that any Security Procedure has or may have become known by unauthorized persons (whether or not employed by the Customer), the Customer shall immediately notify the Bank by telephone and confirm such oral notification in writing to the Bank within twenty-four (24) hours of the oral notification. The Bank will replace the Security Procedures in accordance with the Bank's standard security requirements related to the applicable Service(s). To the maximum extent permitted by applicable law, the Customer will be solely liable for all transactions, including funds transfer instructions and other communications, initiated before the Bank has received such notification and has had a reasonable opportunity to act on such notification. The Bank reserves the right to change any or all of the Security Procedures offered and/or used at any time by giving oral or written notice to the Customer. The Customer agrees that its use of the related Service or Services after the Bank provides notice of such changes constitutes Customer's acceptance of the new Security Procedures. The Customer acknowledges that the purpose of Security Procedures is to authenticate the identity of the person initiating the action, not to detect errors in any transmission or content. The Bank is not agreeing to any security or other procedure for the detection of errors. The Customer represents that for the Service or Services it requests, it considers the Security Procedures to be commercially reasonable with respect to the size, type, and frequency of funds transfers it anticipates issuing and the information which will be transmitted.

(b) Customer's Data Security Obligations. With regard to obtaining any Services under this Agreement, Customer must comply with the Computer (as defined herein) hardware, software, and Security

Procedures requirements as set forth in these General Provisions and/or as set forth in any Service specific provisions or any supplemental information and/or instructions provided by the Bank. The Bank reserves the right as encryption technology develops to impose further reasonable requirements to maintain the appropriate level of security for the Services and transactions contemplated hereunder and the Customer agrees to abide by such requirements. Furthermore, the Customer understands and acknowledges that if Customer does not follow commercially reasonable hardware, software, physical access and physical storage Security Procedures regarding any Customer-owned Data (defined herein), including such data containing the sensitive personally identifiable information ("PII") of any individual, the security of Customer's transactions and/or Customer-owned Data (including sensitive PII) may be compromised. Customer understands, acknowledges and agrees that installation, maintenance and operation of Customer's Computer (hardware and software) and related Security Procedures, including, but not limited to, data security protection, firewalls and anti-virus software, is the Customer's sole responsibility, and that Customer is solely responsible for securing, encrypting, protecting and otherwise safeguarding the Customer-owned Data.

- (c) Limitation on Liability. Customer understands, acknowledges and agrees that the Bank is not responsible for any loss or damages resulting from any errors or failures of the Customer's Computer or data processing systems, including, but not limited to any computer virus or malware attack (such as a keystroke logging program or similar malware), any attack by a person attempting or actually gaining unauthorized access to Customer owned Data, or any Internet-related problems that may be associated with the Customer's access and use of the Services.
- (d) Serious Potential Threat to Customer's Business; Notification to Bank. Customer acknowledges and agrees that the threat of fraud resulting from theft of electronic data is a serious potential threat to Customer's business and, accordingly, Customer will take all reasonable steps to make certain that its Computers and data security systems are protected from unauthorized access or use, and in an event of any unauthorized access or use, Customer will take all reasonable steps to immediately inform Bank of the security breach.
- (e) Responsibility for Loss. If, despite Customer efforts, Customer suffers any damage or loss as a result of Customer's failure to comply with its data security obligations, and regardless of whether such damage or loss results from the activities of Customer's employees, agents, subcontractors or any unaffiliated third party, any such loss or damage shall be the sole responsibility of Customer.

## **7. Suggested Fraud Protection Measures**

Customer should be aware of and acknowledge the ongoing risk of losses resulting from unauthorized items. Bank offers services that provide an effective means for controlling the risk from unauthorized items. These recommended services include:

- Positive Pay Services

These recommended services are available to you upon request. You acknowledge the availability of these Services and their effectiveness for controlling the risk of unauthorized items.

## 8. Business Days, Posting and Funds Availability

- (a) Business Days. Any day on which a majority of the Bank's offices are open to the public for conducting substantially all business functions shall be a "Business Day"; provided, however, that Saturdays, Sundays and federal holidays are not Business Days even if a majority of the Bank's offices are open.
- (b) Posting. Transactions (such as deposits, funds transfers, instructions and entries) related to any Service will be posted to the applicable Deposit Account as provided for in the Bank's then current Schedule of Funds Availability. The Bank may change any cutoff deadline at any time by giving notice, as required by law, of the change to the Customer.
- (c) Funds Availability. Any funds transferred pursuant to a transaction hereunder will be available for withdrawal or advance as provided for in the Bank's then current Schedule of Funds Availability, as amended from time to time, and in accordance with applicable law.

## 9. Honoring Transactions, Instructions and Furnishing Information

- (a) Generally. The Bank will honor the Customer's transactions and instructions (including adjustments and cancellations) only when the Customer has complied with the Agreement. The Bank will be under no obligation to complete any transaction or instruction that: (i) exceeds the Customer's collected or available funds on deposit with the Bank, even if the Bank has done so in the past; (ii) is not in accordance with any condition requested by the Customer and agreed to by the Bank; (iii) the Bank has reason to believe may not be authorized by the Customer; (iv) involves funds subject to a hold, dispute or legal process preventing their withdrawal; (v) violates, in the opinion of the Bank, any provision of any present or future risk control program of the Federal Reserve or any other applicable federal or state law; (vi) does not comply with any other requirement stated in the Agreement or any Bank policy, procedure or practice; and/or (vii) for the protection of the Bank or the Customer, the Bank has reasonable cause not to honor.
- (b) Insufficient Account Balances for Service(s). When a Service requires the Customer's Deposit Account(s) to contain sufficient, good, collected, and available funds to cover the Customer's obligations for the required Service, the Customer agrees to maintain sufficient, good, collected, and available funds in those accounts from which the funds are to be withdrawn or transferred. If there are insufficient funds in the designated Deposit Account to cover the required withdrawal(s), transfer(s), or related fees, except as specifically modified in an applicable implementation document, the Bank may: (i) withhold the Service; (ii) in its sole discretion, elect to dishonor any item or transaction that creates a negative balance and has no duty to notify the Customer prior to dishonoring any overdraft, even if the Bank has paid overdrafts on behalf of the Customer in the past; (iii) in its sole discretion, provide the Service, and the Customer agrees to pay the Bank promptly or on demand the amount of overdraft and any fees or other costs including those set forth in the Deposit Account Agreement; and/or (iv) require the Customer to pre-fund transactions prior to settlement date or effective date. The Bank may, in its sole discretion, on occasion provide a Service against insufficient, good, collected and available funds in Deposit Account(s), but the Bank is not obligated to do so, and any action by the Bank of this nature will not constitute an obligation by the Bank to provide the Service in the future.

## **10. Oral Instructions**

At the Bank's option, the Bank may honor the Customer's oral instructions regarding Service(s). The Customer agrees that the Bank may in good faith rely on any such oral instructions, which purport to come from the Customer (including any Authorized Party, Contact or Transactional User) or the Customer's agent without independent verification by the Bank unless Security Procedures require otherwise.

## **11. Erroneous Instructions**

**CUSTOMER AGREES THAT TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW THE BANK WILL NOT BE LIABLE FOR ANY INSTRUCTION, FUNDS TRANSFER ORDER, AMENDMENT OR CANCELLATION, OR ANY LOSS ARISING THEREFROM, ERRONEOUSLY TRANSMITTED BY THE CUSTOMER OR ANYONE AUTHORIZED BY THE CUSTOMER HEREUNDER OR CONTAINING AN ERROR IN CONTENT AS PROVIDED BY THE CUSTOMER OR ANYONE AUTHORIZED BY THE CUSTOMER HEREUNDER, REGARDLESS OF WHETHER THE BANK FOLLOWED THE SECURITY PROCEDURES AGREED UPON HEREIN OR ANY APPLICATION HERETO.**

## **12. Inconsistent Name and Identifying Number**

If any funds transfer or payment order instruction originated by the Customer describes the intended recipient of funds inconsistently by name and account number, the Customer agrees that payment by the receiving bank (which may be the Bank) may be made on the basis of the account number alone even if that account is not owned by the person or entity named in the funds transfer instruction. If any funds transfer instruction identifies an intermediary bank or the payee's bank inconsistently by name and identifying number, the Customer agrees that the Bank may rely solely on the identifying number as the proper identification of the intermediary bank or the payee's bank even if it identifies a bank different from the bank the Customer identified by name. To the extent permitted by applicable law, the Customer acknowledges and agrees that its obligation to pay the Bank the amount of the funds transfer pursuant to a funds transfer instruction will not be excused in any circumstance described in Section 10 above and that the Customer will reimburse the Bank for any losses or expenses the Bank incurs as a result of the Bank's reliance on the identifying number provided in the funds transfer instruction.

## **13. Account Holder's Liability for Funds Transfers**

The Customer agrees to be bound by any funds transfer, amendment or cancellation to a funds transfer issued in the Customer's name and received by the Bank, whether or not authorized, if the Bank accepts the funds transfer, amendment or cancellation in good faith and in compliance with the Security Procedures agreed to herein. In the event that a funds transfer is unauthorized but effective pursuant to the Security Procedures agreed to herein, the Bank is entitled to enforce or retain payment for the funds transfer from the Customer unless the Customer can prove that the funds transfer was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act on the Customer's behalf with respect to such funds transfer or the Security Procedures; or (ii) who obtained access to the Customer's transmitting facilities or who obtained, from a source controlled by the Customer and without authority of the Bank, information facilitating breach of the Security Procedures, regardless of how the information was obtained or whether the Customer was at fault.

#### **14. Account Reconciliation and Reporting of Discrepancies**

- (a) Generally. The Deposit Account statements provided to the Customer by the Bank will notify the Customer of (i) the execution of funds transfers and all debits or credits to accounts of the Customer held by the Bank resulting from transactions pursuant to the Agreement; and (ii) amounts debited by the Bank from the account(s) for payment of fees for the Services hereunder or other charges pursuant to the Agreement. The Customer agrees that the Bank will not be required to provide any other notice to the Customer of the execution of any funds transfers, debits, credits or charges.
- (b) Notification of Discrepancies. Customer agrees to promptly report to the Bank any discrepancies between the Customer's records and the Bank's records and/or Deposit Account statements and any relevant facts pertaining to potentially unauthorized or erroneous funds transfers of any kind. (i) For funds transfers, such report should be made within thirty (30) calendar days from the date the Customer receives notice from the Bank that the funds transfer was processed or that the Customer's account was debited with respect to the funds transfer. The Customer's failure to notify the Bank of any such discrepancies may result in the Customer forfeiting any interest potentially due on the amount of the unauthorized or erroneous funds transfer due to Customer's failure to provide notification within thirty (30) days as stated herein. (ii) For all ACH transactions that are believed to be unauthorized or erroneous, such report should be made no later than one (1) Business Day following the date of the unauthorized or erroneous entry so that the Bank can return the item to the Originating Depository Financial Institution (the "ODFI") within the two (2) Business Day period required under NACHA Rules. Failure to do so for debits against an account will preclude the Bank from returning the transaction through the ACH system and re-crediting the account. At the Customer's request, the Bank will go outside the ACH system and request a credit from the ODFI based on a violation of the ODFI's warranty that the transaction was authorized.

#### **15. Settlement of Obligations**

To the fullest extent permitted by applicable law, the Customer authorizes the Bank to obtain payment of the Customer's obligations to the Bank under the Agreement from time to time by (i) initiating debit or credit transfers to any of the Deposit Accounts; or (ii) deducting the payment from the amount of any bank transfer. Such obligations include, without limitation, fees owed to the Bank, in conjunction with any of the Services or otherwise, and settlement for funds transfers initiated pursuant to the Agreement. At the time any Deposit Account is closed (whether by the Customer, by the Bank, or otherwise) or any Service is terminated (whether by the Customer, by the Bank, or otherwise), the Customer agrees that all such fees and other obligations will be immediately due and payable to the Bank, and the Customer authorizes the Bank to withhold the amount of any such fees and other obligations from any Deposit Account. Debiting a Deposit Account or deducting payment from the amount of any bank transfer is not the Bank's exclusive remedy under this or any other section of the Agreement, and the Bank will not be deemed to have made an election of remedies by making any such debit or deduction on any one or more occasions.

#### **16. Cooperation in Loss Recovery Efforts**

Except as otherwise stated in the Agreement, in the event of any damages for which the Bank or the Customer may be liable to the other or to a third party with respect to the Service(s), the Bank and the Customer will undertake commercially reasonable efforts to cooperate with each other (as permitted by applicable law) in

performing loss recovery efforts and in connection with any action(s) that the relevant party may be obligated to defend or elect to pursue against a third party.

## 17. Fees

- (a) Generally. Customer agrees to pay the Bank all fees for the Service(s), as provided by Bank at the time Service(s) are activated, or as otherwise provided by Bank and approved by Customer. The Bank reserves the right to change any fee and/or fee schedule at any time and from time to time. Applicable fees do not include, and the Customer will be solely responsible for payment of any sales, use, excise, value added, utility tax, or tariffs relating to the Service(s) provided hereunder, and for all telephone charges, Internet access service charges, tolls, tariffs, and other costs for Online Banking Services initiated by the Customer or the Customer's authorized users.
- (b) Payment of Fees. Any amount(s) due the Bank for the Service(s) as determined by the Bank's account analysis system will be charged as a direct fee debited to the Customer specified Deposit Account. If the Customer-specified Deposit Account has insufficient funds to pay any amount due; the Bank may debit any Deposit Account maintained by the Customer at the Bank. If there are no Deposit Accounts at the Bank with sufficient funds to cover the amount due the Bank, the Customer agrees to pay such amounts directly to the Bank upon demand. The Customer also agrees to reimburse the Bank for any actual expenses the Bank may incur to effect, administer or revoke any Service(s). In the event any fees or taxes are owed to the Bank and are not paid; the Bank shall have no obligation to execute any Service for the Customer, or to continue any Service(s) previously provided to Customer.

## 18. Use of Third Parties

- (a) The Bank's Use of Third Parties. The Bank's ability to provide certain Services depends on its ability to provide access to third party networks and other third party services. In the event the Bank determines, in its sole discretion, that it is unable to provide third party network or services access, the Bank may discontinue the related Service or may provide the Service through an alternate third party network or service, and shall have no liability for the unavailability of such Service.
- (b) The Customer's Use of Third Parties. The Customer shall notify the Bank in writing as specified in Section 4(e) of the name of any third party whom it hires, employs, or to whom it delegates its duties or responsibilities under the Agreement, before that third party initiates any transaction or performs an obligation authorized or required under the Agreement. The Customer agrees that it shall be solely responsible for all acts of any such third party. The Customer shall provide information including financial information which the Bank may, in its sole discretion, require from time to time regarding any third party vendor which the Customer hires, employs, or retains in any manner, to initiate transactions or assume any of the Customer's duties under the Agreement. The Customer understands and agrees that because of the risks involved in certain of the Services that the Customer may utilize, the Bank may refuse, in its sole discretion, to provide such Services to the Customer if the third party retained by the Customer does not meet the Bank's qualification criteria. The Bank's acceptance of any third party retained by the Customer based on the Bank's qualification criteria is not a representation or warranty by Bank regarding the fitness of the third party's capabilities or financial condition, nor is such acceptance by Bank an endorsement of any third party's ability to perform the third party services for Customer. The Customer agrees that it shall not allow any third party to use any Service hereunder or to process any third party's

transactions pursuant to the Services hereunder through the Customer or its accounts without the Bank's prior written consent.

## **19. Proprietary Property**

The Customer acknowledges and agrees that all trademarks, trade names, service marks, copyrights, programs, specifications, software, systems designs, applications, routines, techniques, enhancements, software codes, test keys, security devices, Security Procedures, documentation, manuals, ideas and formulas (collectively, referred to herein as the "Bank Proprietary Property") utilized or developed and provided by the Bank in connection with the Agreement and the Services provided hereunder, whether online via the Bank's web site or otherwise, are proprietary property of the Bank having great commercial value to the Bank. The Customer shall have no ownership interest in the Bank Proprietary Property or other rights related thereto, and the Customer agrees to keep the Bank Proprietary Property confidential at all times. The Customer may use the Bank Proprietary Property only for the purposes for which it was provided by the Bank and shall notify the Bank immediately of any breach of this section of which it becomes aware. The Bank may require the Customer to license specific software in order to receive a particular Service. Unless agreed to the contrary between the parties with regard to certain Services, with such agreement approved by Bank in Bank's sole discretion, upon termination of the Agreement or any applicable Service, such license in Bank's Proprietary Property and any licensed software shall automatically expire and the Customer agrees to immediately cease using any Bank Proprietary Property and any licensed software relating to the Service or Services effected by such termination. Additionally, and unless contrary to prior agreement regarding the software, the Customer agrees to erase any software comprising the Bank Proprietary Property and relating to the Service or

Services terminated to the extent such software is stored in the Customer's computers, and, at the request of the Bank, to return all copies of all items relating to the Bank Proprietary Property which are in the possession of the Customer. Alternatively, and at the Bank's option, the Customer will destroy all copies of all items relating to the Bank Proprietary Property which are in the possession of the Customer and, upon request from the Bank, provide written certification to the Bank that such destruction has occurred.

## **20. Confidentiality**

The Customer and the Bank each agree that all information concerning the other party or parties which comes into its possession in connection with any Service and/or the performance of the Agreement including, but not limited to, software licensed to the Customer by the Bank, user guides, and Security Procedures including security access codes, keys, PINs, template numbers, or any other AAI, will be maintained as confidential and shall not be used or divulged to any other party except as may be appropriate to enable the Bank to provide the Service or as required by applicable law. The Customer agrees that the Bank may share any information concerning the Customer's accounts and account transactions with any of the Bank's affiliates, subsidiaries, parent Customer or service providers and to the extent the Bank determines necessary, with the Customer's third party processor(s), and state or federal regulators, bank examiners or auditors.

## **21. Customer Records, Ownership of Data, Response to Data Security Breach Incidents and Responsibility for Loss**

- (a) Customer Records. The Agreement will not relieve the Customer of any obligation imposed by law, contract, or otherwise regarding the maintenance of records or from employing adequate audit,



accounting and review practices. The Customer shall retain and provide to the Bank upon request all information necessary to remake or reconstruct any deposit, transmission file, or entry for at least ten (10) Business Days following receipt by the Bank of the deposit, transmission file, entry, or other order affecting any of the Customer's account(s); provided, however, that the Bank's records, kept in the ordinary course of business, will be presumed to accurately reflect the contents of the Customer's instructions to the Bank and, in the absence of manifest error, will be binding and conclusive.

- (b) Ownership of Data. The parties understand, acknowledge and agree that all data provided by Customer to Bank (including, but not limited to, electronic images of Substitute Checks retained on any Processing Equipment, Processing Software, or any other processing equipment or software (including Customer's computer) used by Customer in conjunction with Remote Deposit Capture Services), and all data produced, compiled or otherwise provided by Bank to Customer, in any form or format, is the sole and exclusive property of Customer and copies thereof shall be provided to Customer at Customer's request from time to time and at any time ("Customer-owned Data"). Once Customer-owned Data is delivered by Bank to Customer, retrieved by Customer from Bank, or otherwise created as a by-product of a transaction between Customer and Bank and retained by Customer, such Customer-owned Data is solely within Customer's possession and control.
- (c) Response to Data Security Breach Incidents. As stated in Section 6 above, Customer has the sole responsibility for security and protection of Customer-owned Data. In the event of any security breach incident involving any potential or actual unauthorized access or acquisition of Customer-owned Data (e.g., computer hacking, virus attack, or theft or loss of any equipment containing Customer-owned Data), it is Customer's sole responsibility to determine whether Customer has the obligation, under applicable law, to notify potentially affected individuals whose sensitive PII may have been compromised by the security breach incident. Customer must conduct, at its sole cost and expense, any audit and forensic investigation of such security breach incident. Customer bears the sole responsibility for any and all costs of complying with required data breach notifications to individuals, credit bureaus and/or governmental entities as required by applicable law, and any and all costs for credit report monitoring or fraud monitoring associated with such security breach incident.
- (d) Responsibility for Loss. If, despite Customer efforts, Customer suffers any damage or loss as a result of any unauthorized access or data security breach (e.g., computer hacking, virus attack, or theft or loss of equipment or other information containing Customer-owned Data), and regardless of whether such unauthorized access or breach results from the activities of Customer's employees, agents, subcontractors, or any unaffiliated third party, any such loss or damage shall be the sole responsibility of the Customer.

## **22. Representations and Warranties by Customer**

For purposes of this Section 21 and the Agreement, the following definitions apply:

- "Affiliate" means a person who controls, is controlled by, or is under common control with another person.
- "Organization" includes, but is not limited to, a corporation, limited or general partnership, limited liability partnership or limited liability limited partnership, limited liability company, business trust, real estate investment trust, cooperative, association, or other organization, regardless of whether the organization is for-profit, nonprofit, domestic or foreign.

- "Parent" means an organization that, directly or indirectly through or with one or more of its subsidiaries: (a) owns at least 50 percent of the outstanding ownership or membership interests of another organization; or (b) possesses at least 50 percent of the voting power of the owners or members of another organization.
- "Person" includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust partnership, association and any other legal entity.
- "Related Entity" means either (a) a Parent, (b) a Subsidiary, or (c) an Affiliate of Customer.
- "Subsidiary" means an organization for which another organization, either directly or indirectly through or with one or more of its other subsidiaries: (a) owns at least 50 percent of the outstanding ownership or membership interests of the organization; or (b) possesses at least 50 percent of the voting power of the owners or members of the organization.

The Customer represents, warrants and agrees that (i) the execution, delivery and performance by the Customer under the Agreement are within the Customer's powers, have been duly authorized by all necessary action and do not contravene the Customer's governing documents (if any) or any law or contractual restrictions; (ii) no authorization, approval or other act, and no notice to or filing with any governmental authority or regulatory body is required for the execution, delivery and performance by the Customer of the Agreement; (iii) the Agreement constitutes the legal, valid and binding obligation of the Customer and that the Agreement is enforceable against the Customer in accordance with the terms of the Agreement; (iv) no information furnished by the Customer to the Bank in connection with the Agreement is inaccurate in any material respect, contains any material misstatement of fact, or omits any fact necessary to make such statements not misleading, as of the date it is dated, or if not dated, the date it is given to the Bank; and (v) the Customer has not been induced to enter into the Agreement by any representations or statements, oral or written that have not been expressly incorporated herein by reference. The Customer agrees to deliver to the Bank, upon execution of the Agreement and at any time upon the Bank's request, a certified copy of a duly adopted resolution, unanimous consent or other similar corporate document or official record authorizing the execution of the Authorization and Agreement and the granting of authority to the person(s) identified therein.

In addition, in the event that Customer desires to obtain any Services under this Agreement for any of Customer's Related Entities, as Customer shall list such Related Entities in any addendum, exhibit or schedule used in connection with this Agreement, the Customer makes the following additional representations and warranties to Bank each time that Customer lists a Related Entity that is authorized to obtain Services under this Agreement: (x) if Customer is a Parent of any Subsidiary Related Entity listed, that Customer is authorized under applicable governing documents to exercise both the voting power and equity of the Related Entity, and that no third party holds any veto power or approval right over (A) Customer's ability to appoint a majority of the directors, managers or other members of the Related Entity's governing body, (B) Customer's ability to determine the Related Entity's strategy and direction, or (C) Customer's ability to bind the Related Entity to this Agreement; (y) if Customer is a Subsidiary of any Parent Related Entity listed, that Customer has been duly authorized by the Parent to enter into this Agreement, to bind the Parent to this Agreement and to take all necessary actions to obtain Services under this Agreement, and that no third party holds any veto power or approval right over Customer's ability to fulfill Customer's obligations under this Agreement; (z) if Customer is an Affiliate of any Affiliate Related Entity listed, that Customer is duly authorized by its governing documents, or by actions of the Affiliate Related Entity, to enter into this Agreement, to bind the Affiliate Related Entity to this Agreement, and to take all necessary actions to obtain Services under this Agreement, and that no third party holds any veto power or approval right over Customer's ability to fulfill Customer's obligations under this Agreement.

### 23. Compliance with Laws

Bank and Customer each agree to comply with provisions of all applicable federal, state, county or municipal laws, regulations or ordinances, and shall be responsible for obtaining any and all authorizations from any applicable governmental authority that may be required for the party to perform hereunder. Furthermore, both parties agree to comply with applicable federal and state privacy laws and anti-money laundering laws. Customer agrees that it shall not use any Services, including Remote Deposit Capture Services, in any manner that is designed or has the effect of violating or evading any laws with regards to currency controls, money laundering or banking secrecy.

### 24. Limitations of Liability

- (a) Generally. To the extent permitted by law, and except for the remedies provided expressly herein for breach of the Agreement, the Customer agrees that the Bank will have no liability whatsoever for any loss, damage, or claim (collectively, a "Claim") arising out of the performance of or non-performance of any Service in accordance with the terms of the Agreement, EVEN IF SUCH CLAIM ARISES, IN WHOLE OR IN PART, FROM THE BANK'S NEGLIGENCE, but excluding any claim arising from the Bank's gross negligence or willful misconduct. The Bank's duties and responsibilities to the Customer are strictly limited to those described in the Agreement, except with respect to any provisions of the law which cannot be varied or waived by agreement. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE BANK WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS) OR FOR ANY INDIRECT LOSS THAT THE CUSTOMER MAY INCUR OR SUFFER IN CONNECTION WITH THE SERVICES PROVIDED HEREUNDER (EVEN IF THE BANK HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES. Any third party service provider used by Bank is an independent contractor and not the Bank's agent. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BANK AND ITS AFFILIATES AND SUPPLIERS MAKE NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, ABOUT ANY OF THE SERVICES, ANY PROCESSING EQUIPMENT OR ANY PROCESSING SOFTWARE DESCRIBED IN THIS AGREEMENT, AND HEREBY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. To the fullest extent permitted by applicable law, and without limiting the generality of the foregoing, the Bank shall not be liable at any time to the Customer or any other person or entity for loss, charge, fee, penalty, expense or other damage resulting from any failure or delay of the performance of the Bank's responsibilities under the Agreement which is caused or occasioned by any act or thing beyond the Bank's reasonable control, including, without limitation, legal restraint, interruption of transmission or communication facilities, equipment failure, electrical or computer failure, war, emergency conditions, acts of God, fire, storm, or other catastrophe, or inability to obtain or delay in obtaining wire services, Internet access, electronic transfers, or electronic file exchange, or refusal or delay by a service provider or another bank or financial institution. In addition, the Bank shall be excused from any failure or delay in executing a transaction hereunder, if such execution would result in the violation of any applicable state or federal law, rule, regulation or guideline. To the fullest extent permitted by applicable law, the Customer agrees that the Bank shall not have any liability whatsoever for any loss caused by the act, error, or omission of the Customer or any other person, including, without limitation, any service provider, any Internet access service provider, any federal reserve bank or transmission or communications facility or any intermediary or receiving financial institution, and no such person shall be deemed the Bank's agent. The Customer understands and agrees

that the fees charged for the performance of the Service(s) have been established in contemplation of these limitations on liability.

- (b) Statute of Limitations. The Customer agrees that any Claim, action, suit or proceeding against the Bank for damages resulting in any respect from its acts or omissions in its performance of the Service(s) hereunder must be brought within two (2) years from the date of the Bank's alleged act or omission.
- (c) Notification in the Event of Claim. The Customer agrees to immediately notify the Bank of any Claim by the Customer, or any Claim that is made to the Customer by a third party, where an act or omission by the Bank in connection with any Service is alleged to have caused the Customer or such third party to sustain any damages.
- (d) Other Limitations. The Customer agrees that any Deposit Account(s) it may have at the Bank may be subject to additional liability limitations that are described in the Deposit Account Agreement for any such account(s).
- (e) Reporting of Errors. The Customer acknowledges that it is not possible for Services provided by the Bank hereunder to be free of operator, program or equipment error, and that errors in processing and compiling account data may occasionally occur, requiring adjustments. As such, the Customer agrees to review and verify all results and to maintain adequate controls for insuring both the accuracy of data transmissions and the detection of errors. Unless otherwise required by law, the Bank's sole responsibility for reporting errors caused by it will be to reprocess information and reports for the applicable period in question and to submit corrected reports at its own expense to the Customer.

## 25. Indemnification

**TO THE EXTENT PERMITTED BY LAW, THE CUSTOMER AGREES TO INDEMNIFY, DEFEND, RELEASE AND HOLD HARMLESS THE BANK AND ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY DAMAGE, LOSS, OR LIABILITY, INCLUDING WITHOUT LIMITATION FINES, PENALTIES, REASONABLE ATTORNEYS' FEES AND COURT COSTS (COLLECTIVELY, A "LOSS") WHICH RESULT, DIRECTLY OR INDIRECTLY, FROM THE BANK'S PROVIDING SERVICES TO THE CUSTOMER HEREUNDER, EVEN IF SUCH LOSS ARISES, IN WHOLE OR IN PART, FROM THE BANK'S NEGLIGENCE, BUT EXCLUDING ANY LOSS ARISING FROM THE BANK'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, UNLESS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT OR THE APPLICABLE DEPOSIT ACCOUNT AGREEMENT.**

## 26. Specific Performance

The Customer agrees that money damages may not be sufficient remedy for any breach of the Agreement and that the Bank shall be entitled to specific performance in addition to any other remedies, at law or in equity, as a remedy for any breach.

## 27. Termination

- (a) By the Bank with Cause. The Bank may, in its sole discretion, terminate the Agreement in its entirety or with respect to one or more specified Service(s) effective immediately if: (i) the Customer fails to maintain

adequate collected and available balances to cover all transactions, costs and expenses relating to one or more Service(s); (ii) there is an occurrence of a material change in the Customer's credit and/or risk analysis criteria as determined by the Bank in its sole and absolute discretion; (iii) the Bank at any time determines that the Customer or the Customer's third party vendor does not meet the Bank's risk or other qualification requirements; (iv) there is an occurrence of a material change in Customer's credit and/or risk analysis criteria as determined by Bank in its sole and absolute discretion, and Customer refuses to execute the Bank's "Treasury Management Services Guaranty" upon request of Bank; (v) Bank discovers any willful misconduct (including but not limited to writing or knowingly passing bad checks, or types of fraudulent activity) on the part of Customer or any other party with respect to electronic images submitted by Customer if Customer utilizes the Bank's Remote Deposit Capture Services or originated electronic entries if the Customer utilizes the Bank's ACH Services; (vi) the Customer is in default of any terms of a Service specific provisions of this Agreement where such default gives Bank the right to terminate, immediately or otherwise, the Agreement or a specific Service; (vii) the Customer has selected a particular Service, but Customer has not used such Service for a period of time deemed to constitute an inactive Service by Bank (in Bank's sole discretion); or (viii) the Customer is in default of any terms of the Agreement or any other agreement with the Bank. In any of these events, the Bank's sole obligation shall be to provide notice of its termination of the Agreement to the Customer as soon as is commercially reasonable.

- (b) By Either Party for Any Reason. Either party may terminate the Agreement, with or without cause, in its entirety or with respect to one or more specified Service(s) at any time, upon thirty (30) days written notice to the other of its intent to do so.
- (c) Rights and Responsibilities Upon Termination. In the event of termination of the Agreement or any Service hereunder, the rights and responsibilities of the parties shall continue through any applicable settlement period including the Customer's responsibility to pay the Bank for Service(s), and to maintain a Reserve Account as otherwise stated in this Agreement, with respect to transactions processed prior to the effective date of termination. If this Agreement, or any Service, is terminated by Bank, Bank may accelerate all amounts due and to become due under this Agreement, and Customer shall promptly make full payment to Bank of all amounts due and amounts incurred under this Agreement. If Customer utilizes the Remote Deposit Capture Services, termination of this Agreement for any reason shall automatically terminate the limited license to the Processing Software granted in the Remote Deposit Capture Services Section, and Bank has the right to demand immediate return of the Processing Software, and all Documentation (as those terms are defined in the Remote Deposit Capture Services Section). In the event that Customer fails to immediately return such items upon the written demand of Bank, Bank shall have the authority to enter the premises of Customer to remove such items. Any termination of the ACH Services shall not affect any of Bank's rights and Company's obligations with respect to Entries initiated by Company prior to such termination, or the payment obligations of Company with respect to services performed by Bank prior to termination, or any other obligations that survive termination of the ACH Services. COMPANY UNDERSTANDS AND EXPRESSLY ACKNOWLEDGES AND AGREES THAT, IN ADDITION TO THE LIMITATIONS ON LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BANK SHALL NOT BE LIABLE FOR ANY ACTUAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS\_OR FOR ANY INDIRECT LOSS THAT THE COMPANY MAY INCUR OR SUFFER IN CONNECTION WITH BANK TERMINATING COMPANY'S SERVICES IN ACCORDANCE WITH THIS AGREEMENT.

## **28. Governing Law, Venue, Jury Trial Waiver and Class Action Waiver**

The Customer and the Bank agree that any controversy or Claim between the Customer and the Bank, or between the Customer and any of the officers, employees, agents, or affiliated companies of the Bank, arising out of or relating to the Agreement, or any of the transactions contemplated under the Agreement, or any of the Services provided pursuant to the Agreement, or any of the discussions or negotiations leading up to the making of the Agreement, or any relationship that results from any of the foregoing, whether based in contract, or an alleged tort, or on any other legal theory, and whether asserted as an original or amended claim, counterclaim, cross claim, or otherwise, shall be governed by federal law and all applicable substantive laws of the State of Texas (without regard to its conflict of laws principles). The Bank is located in Texas and that is where the Customer opens the Customer account(s). In addition, Bank is subject to certain federal and state regulations, as well as national and local clearing house rules regarding some of the matters addressed in this Agreement, and Bank must comply with these laws, regulations and rules. The Customer agrees that if there is any inconsistency between the terms of this Agreement and any applicable law, regulation or rule, the terms of this Agreement will prevail to the extent any such law, regulation or rule may be modified by agreement. Venue for the resolution of any disputes under this Agreement shall be in the state courts located in Lubbock County, Texas or the federal courts located in the United States District Court for the Northern District of Texas, Lubbock Division. **AS PERMITTED BY APPLICABLE LAW, CUSTOMER AND BANK, FOR THEMSELVES AND EACH OF THEIR RELATED ENTITIES, SUCCESSORS AND ASSIGNS, HEREBY IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY OF ALL DISPUTES, CONTROVERSIES AND CLAIMS BY, BETWEEN OR AGAINST EITHER THE CUSTOMER OR THE BANK WHEN THE DISPUTE, CONTROVERSY OR CLAIM IS TO BE DECIDED BY A COURT. ANY SUCH DISPUTES, CONTROVERSIES, OR CLAIMS SHALL BE RESOLVED BY A JUDGE SITTING WITHOUT A JURY. IF PERMITTED BY APPLICABLE LAW, CUSTOMER AND BANK ALSO WAIVE THE RIGHT TO LITIGATE IN COURT OR AN ARBITRATION PROCEEDING ANY DISPUTE, CONTROVERSY, OR CLAIM AS A CLASS ACTION, EITHER AS A MEMBER OF A CLASS OR AS A REPRESENTATIVE, OR TO ACT AS A PRIVATE ATTORNEY GENERAL.**

## **29. Attorney's Fees**

If either party named herein brings an action to enforce the terms of this Agreement or to declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorney's fees to be paid by the losing party as fixed by the court.

## **30. Assignment**

The Customer may not assign all or any part of its rights or obligations under the Agreement without the Bank's prior express written consent, which may be withheld in the Bank's sole discretion. The Bank may assign or delegate all or any part of its rights or obligations under the Agreement, including, without limitation, the performance of the Services described herein. The Agreement will be binding on and inure to the benefit of the successors and permitted assigns of either party.

## **31. No Third-Party Beneficiaries**

The Agreement is for the benefit of the Customer and the Bank and is not intended to grant, and shall not be construed as granting, any rights to or otherwise benefiting any other person, except as expressly otherwise provided for in the Agreement.

## **32. Other Agreements, Severability, Construction and Governing Law**

If any provision of the Agreement or of any writing used in connection with the Agreement is unlawful or unenforceable, each such provision or writing will be without force and effect without thereby affecting any other provision hereof. No waiver of the provisions herein shall be effective unless in writing and signed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver unless expressly so stated in writing. The headings in the Agreement are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in the Agreement should be construed so the singular includes the plural and the plural includes the singular. The Agreement will be governed by the laws of the State of Texas (without reference to its conflicts of law principles). In addition, any dispute arising from or related to the Customer's accounts with the Bank or the Services provided hereunder shall be governed by applicable federal laws and regulations, Federal Reserve Bank Rules and Operating Circulars, and general commercial bank practices applicable to accounts such as those held by the Customer and Services such as those offered hereunder. Any provision that by its terms or operation is designed to survive termination, expiration or cancellation of this Service shall so survive.

## **II. SERVICE-SPECIFIC PROVISIONS**

### **A. ODFI-Originator ACH Processing Services**

In addition to the Treasury Terms & Conditions, the following provisions apply to the ODFI-Originator ACH Processing Services ("ACH Services"), if you have requested and Bank has approved such ACH Services. In the event of a conflict between the provisions of these ACH Services terms and conditions and the provisions elsewhere in the Agreement, the provisions of these ACH Services terms and conditions will apply.

Company wishes to initiate Credit and/or Debit Entries pursuant to the terms of the Agreement and the Operating Rules and Operating Guidelines that have been adopted by the National Automated Clearing House Association ("NACHA") and ePayResources (the applicable regional payments association) (together with any amendments or revisions thereto, hereinafter collectively called the "Rules"), and Bank is willing to act as an Originating Depository Financial Institution ("ODFI") with respect to such Entries.

Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules. The term "Entry" or "Entries" shall have the meaning provided in the Rules (and such definition includes both Credit and Debit Entries) and shall also mean the data received from Company hereunder from which Bank prepares Entries.

As a condition to the Bank's performance of ACH Services and for good and valuable consideration, including the mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, Company and Bank agree as follows:

#### **1. ACH Services Approval and Underwriting Process**

- (a) Bank Approval and Monitoring of Company's ACH Operations Risk. Company agrees and acknowledges Bank shall provide ACH Services to Company subject to Bank's prior approval. To obtain approval from Bank, Company is required to undergo Bank's screening and risk analysis process regarding Company's proposed ACH operations. In addition, after any initial approval for ACH Services by Bank, Bank shall also, from time-to-time and in its sole discretion (including the occurrence of certain events described in

subsection (c) below), undertake additional ACH operations credit and risk analysis monitoring activities that are deemed necessary, in Bank's sole and absolute discretion, while Bank is providing ACH Services to an approved Company. Company agrees to cooperate with Bank regarding any ongoing risk analysis activities by Bank, including providing financial or other documents in a timely manner upon Bank's request, and taking any risk mitigation or other ACH Entry origination procedures as required by Bank.

- (b) ACH Operations Credit and Risk Criteria. Bank's ACH operations credit and risk analysis shall be based on certain factors deemed relevant by Bank in its sole discretion, including, but not limited to, the following factors: (i) the credit worthiness, financial condition and financial performance of Company, particularly Company's capital adequacy relative to Company's ACH activity volume; (ii) the nature, conduct and geographic location of Company's business, including whether Company engages in certain high-risk ACH activities or transaction environments, or whether certain "Standard Entry Class" ("SEC") codes that Bank either deems to be high-risk or does not allow are present in Company's ACH transactions; and (iii) the historic level and dollar amounts of Company's ACH returns, including (A) any return levels or dollar amounts in excess of generally acceptable ACH return parameters (as determined by Bank in its sole discretion), (B) a sudden increase in Company's ACH return levels, or (C) any ACH return levels in excess of NACHA return rate thresholds that are not reduced within the allowed timeframe under NACHA Rules; and (iv) whether Company adheres to all authorization requirements set forth herein.
- (c) Material Change in Credit and Risk Analysis Criteria. In the event a company approved for ACH Services either fails to satisfy the minimum risk analysis criteria as required by Bank, or if, in the opinion of Bank, Company undergoes a material change in its operations that Bank believes increases the risk of Company's ACH operations, then Bank may, in its sole discretion, take any and all of the following actions: require Company to prefund their ACH activities (as defined in Section 2, Required Prefunding of ACH Credit Entries, below); require Company to establish a Reserve Account (as defined in Subsection (d) below); or terminate ACH Services to Company, generally upon prior written notice from Bank, or immediately if Bank deems immediate termination necessary, in Bank's sole discretion, to comply with the Rules. Events that constitute a material change in a Company's business operations include, but are not limited to: (i) levels of ACH returns that exceed generally acceptable return levels (as determined by Bank); (ii) a significant or sudden increase in Company's ACH return levels as compared to Company's historic ACH return levels; (iii) significant changes in the nature of Company's business, including its product and services lines or transaction environments; or (iv) the occurrence of any other event that Bank believes represents a material change in Company's financial performance or financial condition. Upon learning of any such material change, Bank will inform Company of the issue, and Bank may exercise its right to temporarily suspend Company's ACH Services in order to investigate the issue. After investigation, Bank may invoke its rights to require Company to pre-fund ACH Services or to establish a Reserve Account, or Bank may, in its sole discretion, exercise its right to terminate ACH Services to Company generally upon prior written notice from Bank, or immediately if Bank deems immediate termination necessary, in Bank's sole discretion, to comply with the Rules.
- (d) Reserve Account. Upon written notification by Bank, Company shall immediately establish a separate account funded with an amount required to protect Bank against the risks associated with Company's ACH operations (the "Reserve Account"). Such Reserve Account must be established by the date requested by Bank, and the required Reserve Account amount expressly includes any existing or anticipated Company-related ACH returns, including all fees, costs, fines and penalties assessed against either Company or Bank associated with such Company-related ACH returns. The Reserve Account will



not bear interest, and Company will not have any right or interest in the Reserve Account funds; provided that upon satisfaction of all of Company's obligations under this Agreement, Bank will pay any funds remaining in the Reserve account no sooner than ninety (90) days after the effective date of termination of Company's ACH Services pursuant to the Rules and Federal Reserve Board's Regulation E. Effective upon the establishment of any Reserve Account, Company irrevocably grants Bank a security interest in the Reserve Account and any and all funds in the Account, together with the proceeds thereof. Company also agrees to execute and deliver to Bank such instruments and documents that Bank may reasonably request to perfect and confirm the security interest and Bank's right of setoff in the Reserve Account. Company understands and acknowledges that Company's failure to establish and fund a Reserve Account immediately upon Bank's request shall be grounds for immediate termination of Company's ACH Services provided by Bank, with such termination in Bank's sole discretion.

## **2. Required Prefunding of ACH Credit Entries**

If Company does not meet Bank's minimum credit and risk analysis requirements to become fully approved for ACH Services, Bank may choose to offer Company the option of obtaining ACH Services on a pre-funded basis ("Prefunding"). Bank can also exercise its rights under Section 1, ACH Services Approval and Underwriting Process, to require a Company approved for ACH services to begin Prefunding its ACH Services. If Bank exercises its rights to require Prefunding under this Section 2 and Company does not immediately comply with Bank's request, then such non-compliance shall be grounds for immediate termination of Company's ACH Services provided by Bank, with such termination in Bank's sole discretion. If Company is required to use Prefunding for ACH Services, Company is required to submit the ACH credit Entry file two (2) Business Days in advance of the desired settlement date, unless the Company is initiating a Same Day Entry. If Company's account has funds that are at least equal to the amount of the ACH credit Entry file, then the ACH credit Entry file will be processed as normal on the desired settlement date. However, if Company does not have the necessary funds available in its account, then the ACH system will continue to check for funds each time Bank's operations area sends a batch to the ACH Processor. If funds become available in Company's account regarding an ACH credit Entry file that was previously unfunded, then the ACH system will automatically pick up that ACH credit Entry file in the next batch run. If, however, the ACH credit Entry file is unfunded, then Bank's ACH department will notify the appropriate Bank officer or branch manager to inform such individual that the Prefunding Company is trying to process an ACH credit Entry file without the necessary funds. Bank officer or branch manager will then have the option to contact Company to fund the Account, or to request Bank to "force" the ACH credit Entry file in question through with appropriate approval from Bank management. If neither option is possible, then the ACH credit Entry file will remain pending on Bank's ACH system in suspense until the intended effective date. If the ACH credit Entry file is still not funded or approved before the intended effective date, it will be deleted from Bank's system.

## **3. Delivery of Entries**

- (a) Company shall deliver Entries to the Bank through their assigned Treasury Online Banking credentials or assigned Secure File Transfer Protocol ("SFTP") credentials. Entries shall be deemed delivered to the Bank when the applicable security procedures with respect to submission as set forth herein have been complied with and the submission to the Bank is completed in accordance with the Agreement.

- (b) Effective Date. The Customer shall specify the date on which it desires each batch of Entries to be Settled (the "Effective Entry Date") and indicate whether an Entry will be a Same Day Entry. The Effective Entry Dates specified for all Entries must be Business Days.
- (c) Cutoff Times. The Bank shall establish cutoff times for various types of Entries (each, a "Cutoff Time"). With the exception of Same Day Entries, Debit Entries shall be delivered to the Bank no later than the Cutoff Time one (1) Business Day prior to their Effective Entry Date, and credit Entries no later than the Cutoff Time two (2) Business Days prior to their Effective Entry Date. Same Day Entries must be submitted before the applicable Cutoff Time on the Business Day of their Effective Entry Date. If Entries are delivered to the Bank after the Cutoff Time on a Business Day, the Bank may treat such Entries as having been received on the next following Business Day. Entries delivered to the Bank shall be prepared and submitted in compliance with the formatting and other requirements as set forth in the Rules and in accordance with the provisions of this Agreement.

#### **4. Transmittal of Entries by Company Rules**

Company shall transmit credit and/or debit Entries to Bank in accordance with those procedures described herein, and as provided in the Rules. The Bank has the right to terminate or suspend the agreement for breach of this Agreement or the Rules. The Bank also has the right to audit the Company to verify compliance with the agreement of these Rules. Company must be able to provide an original or a copy of authorization form giving permission to draft customer's accounts within 10 business days upon request. Standard Entry Class (SEC) codes allowed for use are Prearranged Payments and Deposits (PPD) and Corporate Concentration and Disbursement (CCD). International ACH Transactions (IAT) are not permitted and Company acknowledges that entries may not be initiated that violate the laws of the United States. Company also agrees that its ability to originate Entries under this Agreement is subject to the exposure limits in accordance with the Rules and as otherwise set forth in this Agreement, including but not limited to the Account Information/Authorized Representatives/Third Party Processing for ACH Services form. Company acknowledges that it has reviewed a copy of the Rules and that it will comply with the Rules as required by Bank.

#### **5. Security Procedures**

In addition to Security Procedures set forth in the General Provisions of this Agreement, Company shall comply with the Security Procedures set forth in this Section 5 for ACH Services. Company acknowledges that the purpose of such Security Procedures is for verification of authenticity and not to detect an error in the transmission or content of an Entry. No Security Procedure for the detection of any such error has been agreed upon between the Bank and Company.

With respect to any entry to a consumer account pursuant to an authorization obtained via the internet (WEB Entry), Company represents and warrants to Bank that (i) Company has employed a commercially reasonable fraudulent detection system to screen such entry and validate the account to be debited for first time account numbers or changes to account numbers, (ii) Company has used commercially reasonable procedures to verify the identify of the Receiver and to verify routing numbers provided by the Receiver are valid; and (iii) Company will conduct or have conducted annual audits in accordance with NACHA Rules to ensure the financial information it obtains from Receivers is protected by security practices and procedures.

Company acknowledges that the Security Procedures it has been provided with are designed to protect Company against the transmittal of ACH debit or credit Entries which have not been authorized by Company and which may include direct transmission via terminal to terminal delivery of input which will require a user I.D., password, and token. Company agrees that all instructions to transmit ACH debit or credit Entries contained on input data delivered to Bank pursuant to the agreed-upon procedure shall be deemed to have been authorized by Company and Bank shall have no liability with respect to Entries it transmits in accordance with such instructions.

Company is strictly responsible for establishing and maintaining the procedures to safeguard against unauthorized transmissions. Company warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the Security Procedures and any passwords, token, codes, security devices and related instructions provided by Bank in connection with the Security Procedures described in these ACH Services terms and conditions and otherwise in this Agreement. If Company believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Company agrees to notify Bank immediately followed by written confirmation. The occurrence of unauthorized access will not affect any transfers made in good faith by Bank prior to receipt of such notification and within a reasonable time period thereafter to allow Bank the opportunity to establish the necessary operational changes to prevent unauthorized transfers.

Bank is under no duty to act on instructions or requests which Bank reasonably believes may cause Bank to be exposed to any civil or criminal liability.

Company further understands, agrees and acknowledges that in the event that Company either refuses to follow or improperly uses the Security Procedures described in these ACH Services terms and conditions and otherwise in this Agreement, Bank has the right to terminate ACH Services to Company, generally upon prior written notice from Bank, or immediately if Bank deems immediate termination necessary, in Bank's sole discretion, to comply with the Rules.

- (a) Exposure Limits. Subject to the Rules, including applicable limitations on Same Day Entries, the total dollar amount of Entries transmitted by Company to Bank on any one day or any one month ("Exposure Limits") shall not exceed the daily or monthly limitation amounts listed in the Account Information/Authorized Representatives/Third Party Processing for ACH Services form unless approved in advance by Bank by having two (2) Bank officers sign to approve such increase. Company shall not deliver entry data which calls for the origination of any Entry exceeding said Exposure Limits. If any Entry would exceed said Exposure Limits, Bank may, but is under no obligation to, reject the Entry data. In this event, Bank's sole obligation shall be to notify Company, utilizing any method it chooses. Total debit and credits Exposure Limits must be equal in order to initiate a file. The Exposure Limits are additional controls that monitor the amount of ACH Entries initiated in a day and month. Any ACH Entry transmitted to Bank in an amount greater than the Company's Exposure Limit will be declined and not processed.
- (b) Time Restrictions. The Company Administrator shall establish appropriate time frames for users to log in to the Online Banking System to add, edit, or transmit ACH Entries. This Security Procedure is designed to prevent attempted ACH Entries from unauthorized individuals.
- (c) Internet Protocol (IP) Address Restrictions. Company acknowledges and agrees that it is only permitted to transmit ACH Entries from an IP address that is registered on Bank's Online Banking System. If access is attempted from an unregistered IP address, Company's access to the Online Banking System will be blocked.

- (d) Security Tokens. Company is required to use the security token device issued by Bank for ACH Entry approvals within the Online Banking System. The security token will generate a onetime password, which is electronically transmitted and displayed on the security token. Security tokens should not be shared between Administrators or users.
- (e) Dual Controls. Dual Control features require that a user who adds or edits an ACH Entry be different than the user who transmits an ACH Entry. This Security Procedures is designed to provide a strong safeguard against fraud and double check against data entry error.
- (f) Security Software. Company must maintain commercially reasonable security software. The software should, at a minimum, minimize the risk of financial information being captured by cyber criminals.
- (g) The Company is solely responsible for the accurate creation, modification, and deletion of the account information maintained by the Company's personal computer and used for Online Banking money transactions.

The Company is solely responsible for access by its employees of the data files maintained on Company's computer.

- (h) Misc. Company is strictly responsible for establishing and maintaining procedures to safeguard against unauthorized transmissions. Company warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the Security Procedures and any passwords, tokens, codes, security devices and related instructions provided by the Bank. If Company believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Company agrees to notify Bank immediately followed by written confirmation. The occurrence of unauthorized access will not affect any transfers made in good faith by Bank prior to receipt of such notification and within a reasonable time period to prevent unauthorized transfers.

If an Entry (or a request for cancellation or amendment of an Entry) received by Bank purports to have been transmitted or authorized by Company, it will be deemed effective as Company's Entry (or request) and Company shall be obligated to pay Bank the amount of such Entry even though the Entry (or request) was not authorized by Company, provided Bank accepted the Entry in good faith.

Company and Bank agree that all telephone conversations or data transmissions between them or their agents made in connection with this Agreement may be electronically recorded and retained by either party by use of any reasonable means.

Company is responsible for the security of PINs, password and log-in information, tokens, and any other additional authentication information (such as single-use passwords) ("Additional Authentication Information") in its possession and knowledge. Bank will be relieved of liability for any loss incurred if a valid PIN, password, log-in information or Additional Authentication Information is used.

- (i) Company Responsibilities and Liability For Compliance With Security Procedures. As stated in Section 6, below, the Company is responsible for establishing and maintaining its internal procedures reasonably adapted to insure the confidentiality and security of the Security Procedures agreed to by the parties and

set forth herein in order to ensure that Company follows and properly employs the Security Procedures agreed to by the parties and required by Bank. COMPANY UNDERSTANDS AND AGREES THAT COMPANY WILL BE RESPONSIBLE FOR MAINTAINING SECURITY AND CONTROL OVER ITS INTERNAL PROCEDURES WITH REGARD TO THE SECURITY PROCEDURES AGREED TO BY THE PARTIES AND SET FORTH HEREIN, AND SHALL USE SECURITY FOR SUCH ITEMS COMPARABLE TO THE SECURITY AND CONTROL COMPANY WOULD USE FOR CASH, OR A MECHANICAL CHECK-SIGNING MACHINE, BUT IN NO EVENT LESS THAN REASONABLE SECURITY AND CONTROL IN THE CIRCUMSTANCES. FAILURE TO DO SO SHALL RESULT IN THE COMPANY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, BEING SOLELY LIABLE FOR ANY ENTRY, AMENDMENT OR CANCELLATION, OR ANY LOSS ARISING THEREFROM, PURPORTING TO HAVE BEEN TRANSMITTED OR AUTHORIZED BY THE COMPANY.

- (j) The Security Procedures shall apply equally to Entries and requests for cancellation or amendment of Entries.
- i. If an Entry received by Bank was transmitted or authorized by Company, or if an Entry received by Bank purports to have been transmitted or authorized by Company, and Bank has complied with the Security Procedures provided for herein, then, in either case, it will be deemed effective as Company's Entry. If signature comparison is to be part of that Security Procedure, Bank shall be deemed to have complied with that part of such procedure if the signature accompanying a file or Entries bears any resemblance whatsoever to the signature of the Company's authorized representative for submission of Entries.
  - ii. Company is responsible for maintaining the confidentiality of the Security Procedures hereunder and shall promptly report to Bank any breach thereof. Bank shall have no liability for losses occasioned by Company's failure to maintain the confidentiality of its Security Procedures.
  - iii. Bank may change, add or delete any procedures established pursuant to this Agreement, from time to time, upon notice to Company.

## **6. Compliance with Security Procedures**

If an Entry (or a request for cancellation or amendment of an Entry) received by Bank purports to have been transmitted or authorized by Company, it will be deemed effective as Company's Entry (or request) and Company shall be obligated to pay Bank the amount of such Entry even though the Entry (or request) was not authorized by Company, provided Bank accepted the Entry in good faith and acted in compliance with the Security Procedure referred to in these ACH Services terms and conditions with respect to such Entry. If signature comparison is to be used as a part of that Security Procedure, Bank shall be deemed to have complied with that part of such procedure if it compares the signature accompanying a file of Entries (or request for cancellation or amendment of an Entry) received with the signature on file at the Bank of the Administrator of the Company and, on the basis of such comparison, believes the signature accompanying such file to be that of the authorized Administrator. The Company is responsible for the establishment and maintenance of its internal procedures reasonably adapted to insure the confidentiality and security of the Security Procedures agreed to by the parties and set forth in these ACH Services terms and conditions and otherwise in this Agreement in order to ensure that Company follows and properly employs the Security Procedures agreed to by the parties and required by Bank. COMPANY UNDERSTANDS AND AGREES THAT COMPANY WILL BE RESPONSIBLE FOR MAINTAINING SECURITY AND CONTROL OVER ITS INTERNAL PROCEDURES WITH REGARD TO THE SECURITY PROCEDURES AGREED TO BY THE PARTIES

AND SET FORTH IN THESE ACH SERVICES TERMS AND CONDITIONS AND OTHERWISE IN THIS AGREEMENT, AND SHALL USE SECURITY FOR SUCH ITEMS COMPARABLE TO THE SECURITY AND CONTROL COMPANY WOULD USE FOR CASH, OR A MECHANICAL CHECK-SIGNING MACHINE, BUT IN NO EVENT LESS THAN REASONABLE SECURITY AND CONTROL IN THE CIRCUMSTANCES. FAILURE TO DO SO SHALL RESULT IN THE COMPANY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, BEING SOLELY LIABLE FOR ANY ENTRY, AMENDMENT OR CANCELLATION, OR ANY LOSS ARISING THEREFROM, PURPORTING TO HAVE BEEN TRANSMITTED OR AUTHORIZED BY THE COMPANY.

## **7. Processing, Transmittal and Settlement by Bank**

- (a) Except as provided in Section 9 and Section 10, Bank shall (i) process Entries received from Company to conform with the file specifications set forth in the Rules, (ii) transmit such Entries as an ODFI to the ACH Operator, and (iii) settle for such Entries as provided in the Rules.
- (b) With the exception of Same Day Entries, Bank shall transmit such Entries to the ACH Operator by the deadline of the ACH Operator prior to the Effective Entry Date shown in such Entries, provided (i) such Entries are received before Bank's related cut-off time, and (ii) the Effective Entry Date is at least 2 days after such business day, and (iii) the ACH is open for business on such business day. For Same Day Entries, Bank shall transmit the Same Day Entries to the ACH Operator by the deadline of the ACH Operator on the Effective Entry Date shown in such Entries, provided (i) such Entries are received before Bank's related cut-off time, and (ii) the ACH is open for business on such business day. For purposes of this Agreement, Entries shall be deemed received by Bank, in the case of transmittal by electronic transmission, when the transmission (and compliance with any related Security Procedure provided for herein) is completed as provided in Account Information/Authorized Representatives/Third Party Processing for ACH Services form.
- (c) If any of the requirements of clause (i), (ii) or (iii) of Section 7(a) are not met, Bank shall use reasonable efforts to transmit such Entries to the ACH by the next deposit deadline on which the ACH is open for business.
- (d) Cutoff Times. If Entries are delivered late (i.e., after the applicable Cutoff Time), or if the Effective Entry Date specified for the Entries is not a Business Day, then the Bank may reject such Entries or the Bank may, in its sole discretion, use its reasonable efforts to transmit such Entries to the ACH Operator by the next reasonably available deposit deadline of the ACH Operator following the applicable deadline specified in Section 2 of these ACH Services provisions. In no event will the Bank be liable for any loss resulting from any failure of a Receiver's account to be debited/credited for an Entry on its Effective Entry Date which results from late delivery of the Entry to the Bank, or which results from the Effective Entry Date specified for such Entry not being a Business Day.
- (e) Prenotification. Company shall provide Bank three (3) calendar days prior to initiation of any new PPD debit Entries as defined in the Rules or change in any of the required fields which may cause RDFI to reject the Entry for "No Prenotification of File", a prenotification record to include: receiver name, identification number, account number, receiving institution routing transit number, zero dollar amount and any other information required by the Rules or Bank.
- (f) Resubmission of Prenotification. If Company's prenotification record is rejected by a RDFI and Company is so notified, Company must correct the reason for rejection, resubmit another prenotification record,

and wait the prescribed three (3) calendar days before submitting any further Entries for the Receiver in question.

## **8. On-Us Entries**

Except as provided in Section 9, Rejection of Entries, in the case of an Entry received for credit to an account maintained with Bank (an "On-Us Entry"), Bank shall credit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in clauses (i) and (ii) of Section 7(a) are met. If either of those requirements is not met and the Entry is not a Same Day Entry, Bank shall use reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next business day following such Effective Entry Date.

## **9. Rejection of Entries**

Bank may reject any Entry which does not comply with the requirements of Section 4, Transmittal of Entries by Company Rules, or Section 5, Security Procedures, or which contains an Effective Entry Date more than fourteen (14) days after the business day such Entry is received by Bank. Bank may reject an On-Us Entry for any reason for which an Entry may be returned under the Rules. Bank may reject any Entry which does not involve at least one account maintained with Bank. Bank may reject any Entry if Company has failed to comply with its account balance obligations under Section 14. Bank shall notify Company of such rejection no later than the business day such Entry would otherwise have been transmitted by Bank to the ACH or, in the case of an On-Us entry, its Effective Entry Date. Notices of rejection shall be effective when given. Bank shall have no liability to Company by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.

## **10. Cancellation or Amendment by Company**

Company shall have no right to cancel or amend any Entry after its receipt by Bank. However, Bank shall use reasonable effort to act on a request by Company for cancellation of an Entry if such request is made prior to transmitting the Entry to the ACH Processor or, in the case of an On-Us Entry, prior to crediting/debiting a Receiver's account, provided such request is received by Bank at a time and in a manner affording Bank a reasonable opportunity to act on the request and provided the request complies with the Security Procedures for cancellation set forth in Section 5. In no event shall Bank have any liability if such cancellation is not effected. Company shall reimburse Bank for any expenses, losses, or damages Bank may incur in effecting or attempting to affect Company's request for the reversal of an Entry.

## **11. Notice of Returned Entries and Notifications of Change**

Bank shall notify Company ~~by mail or~~ by electronic transmission of the receipt of a returned entry from the ACH Operator no later than 2 business days after the business day of such receipt. Company shall notify the Originator by phone or electronic transmission of receipt of each return Entry no later than 1 business day after the business day of receiving such notification from the ODFI.

Bank shall provide Company all information as required by the NACHA Rules, with respect to each "Notification of Change" ("NOC") Entry or "Corrected Notification of Change" ("Corrected NOC") Entry received by Bank relating

to Entries transmitted by Company. Bank must provide such information to Company within two (2) business days of the Settlement Date of each NOC or Corrected NOC Entry. Company shall ensure that changes requested by the NOC or Corrected NOC are made within six (6) banking days of Company's receipt of the NOC information from Bank or prior to initiating another Entry to the Receiver's account, whichever is later.

Except for an entry retransmitted by Company in accordance with the requirements in Section 3, Bank shall have no obligation to retransmit a returned Entry to the ACH Operator if Bank complied with the terms of this Agreement with respect to the original Entry.

## **12. Payment by Company for Entries**

- (a) Company shall pay Bank the amount of each credit Entry transmitted by Bank pursuant to this Agreement on the date of transmittal by Bank of such Entry as Bank, in its discretion, may determine, and the amount of each On-Us Entry at such time on the Effective Entry Date of such Entry as Bank, in its discretion, may determine.
- (b) Company shall promptly pay to Bank the amount of each debit Entry returned by a Receiving Depository Financial Institution ("RDFI") that was transmitted by Bank pursuant to this Agreement.
- (c) Bank shall pay Company the amount of each debit Entry transmitted by Bank pursuant to this Agreement within one (1) day of the Settlement Date with respect to such debit Entry as Bank, in its discretion, may determine, and the amount of each On-Us Entry within one (1) day of the Effective Entry Date with respect to such Entry as Bank, in its discretion, may determine.
- (d) Bank shall promptly pay Company the amount of each credit Entry returned by an RDFI that was transmitted by Bank pursuant to this Agreement.

## **13. Company Representations, Agreements and Indemnity**

With respect to each and every Entry initiated by Company, Company represents and warrants to Bank and agrees that (a) each person shown as the Receiver on an Entry received by Bank from Company has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry, and such authorization or other customer information has not been shared by Originator or any of Originator's third party service providers for initiating any Entries not authorized by the original authorization, (b) such authorization is operative at the time of transmittal or crediting by Bank as provided herein, (c) Entries transmitted to Bank by Company are limited to those types of Entries set forth in Section 4, Transmittal of Entries By Company Rules of this Agreement, (d) Company shall perform its obligations under this Agreement in accordance with all applicable laws and regulations, including the sanctions laws administered by OFAC; laws, regulations and orders, including, but not limited to, the sanctions laws, regulations and orders administered by FinCEN; and any state laws, regulations or orders applicable to the providers of ACH payment services, and (e) Company shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the provision that payment of an Entry by the Receiving Depository Financial Institution to the Receiver shall be provisional until receipt by the Receiving Depository Financial Institution of final settlement for such Entry. Company 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 Receiving Depository Financial Institution shall be entitled to a refund from the Receiver of the amount credited and Company shall not



be deemed to have paid the Receiver the amount of the Entry. In addition to indemnification provisions contained elsewhere in this Agreement, Company shall indemnify Bank against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or agreements. Company represents and warrants to Bank and agrees that the ACH Services will be used by Company to conduct transactions on behalf of Company and not for third party transactions unless otherwise agreed and approved by Bank. A Third-Party Agreement is required to be executed prior to transmission of any entries by the Company. If Company wishes to utilize the Third-Party ACH Services, a separate agreement will be executed between Company and Bank.

#### **14. Bank Responsibilities, Liability, Limitations on Liability and Indemnity**

- (a) The provisions in this Section 14 shall apply in addition to other limitations of liability and indemnification provisions contained elsewhere in this Agreement. In the performance of the services required by this Agreement, Bank shall be entitled to rely solely on the information, representations, and warranties provided by Company pursuant to this Agreement, and shall not be responsible for the accuracy or completeness thereof. Bank shall be responsible only for performing the services expressly provided for in this Agreement, and shall be liable only for its negligence or willful misconduct in performing those services. Bank shall not be responsible for Company's acts or omissions (including without limitation the amount, accuracy, or timeliness of transmittal or due authorization of any Entry received from Company) or those of any other person, including without limitation any Federal Reserve Bank, courier service, SWACHA, NACHA 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 or third party shall be deemed Bank's agent. Without limiting the foregoing, Bank shall not be liable for any decision to reject Entries or not to process Entries for the reasons provided herein or if Company is in breach of any obligations hereunder; if Bank reasonably believes or has actual notice of commencement of bankruptcy or similar proceedings against Company; or if such processing involves funds, the ownership of which or the right to make withdrawals consisting of, is subject to dispute. To the extent provided for herein, Bank shall not be liable if Company fails to report a breach of confidentiality of Security Procedures. Bank shall not be liable to the extent Company receives the benefit of any Entry, even if such Entry is otherwise erroneous. Company agrees to 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 Company or any other person described in this Section 14(a).
- (b) Bank shall be liable only for Company's actual damages due to claims arising solely from Bank's Obligations to Company with respect to Entries transmitted pursuant to this Agreement. In no event shall Bank be liable for any consequential, special, incidental, punitive or indirect loss or damage which Company may incur or suffer in connection with this Agreement, whether or not the likelihood of such damages was known or contemplated by the Bank and regardless of the legal or equitable theory of liability which Company may assert, including, without limitation, loss or damage from subsequent wrongful dishonor resulting from Bank's acts or omissions pursuant to this Agreement.
- (c) In the event Company authorizes any third party, such as a payroll processing service, to perform obligations of, or services to, Company hereunder, Bank shall have no additional liability to Company occasioned by said agency so long as Bank acted in accordance with instructions hereunder. Company agrees to assume responsibility for any errors or wrongdoing by such third party or any of its employees.

- (d) Without limiting the generality of the foregoing provisions, Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, power failure, war, terrorist attack, emergency conditions or other circumstances beyond Bank's control. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in Bank's otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.
- (e) Subject to the foregoing limitations, any damages or other compensation due Company, resulting from Bank's performance hereunder shall be limited to interest on the funds at issue at the "federal funds rate" paid by Bank at the close of business on each day the error or delay remains uncorrected; provided, however, that if Bank is unable to recover funds from a Receiver who has no claim to all or any part of the funds at issue as a result of Bank's negligence, Bank shall be liable for Company's actual loss, not to exceed the amount of funds that Bank is unable to recover, plus interest. In no event shall Bank be liable to Company for indirect, consequential, special, punitive or exemplary damages.

## **15. Indemnification**

This Section 15 shall apply in addition to indemnification provisions contained elsewhere in this Agreement. In consideration for Bank's making available to Company the services hereunder, Company agrees to indemnify and hold Bank harmless from and against all damages, costs, and expenses (including reasonable attorney's fees and costs of investigation) arising from or in any manner related to (i) Entries processed or related actions taken by Bank in accordance with instructions provided by Company, including but not limited to, actions taken by Bank to cancel Entries; (ii) any decision by Bank not to effect a transfer for any specified reason herein; (iii) a breach of Company's representations under Section 13 hereof; or (iv) a circumstance that would relieve Bank of liability to Company pursuant to this Agreement; (v) acts or omissions of Company's agents; (vi) or otherwise, so long as Bank acts in compliance with this Agreement. Company's obligations under this paragraph shall survive termination of this Agreement.

## **16. Verification**

Bank shall be entitled, at its sole discretion, to seek verification or authentication of any file or Entries by contacting Company by telephone or any other means set forth in any regulation or publication made available to Company or otherwise deemed reasonable by Bank provided, however Bank shall have no obligation to seek verification or authentication. If Bank is unable to obtain any verification or authentication sought by it, Bank may, in its sole discretion, either effect or refuse to effect the Entries.

## **17. Financial Condition and Right to Audit**

Upon Bank's request, Company shall furnish a detailed statement of its financial condition. Company agrees to provide to Bank financial statements and the reports required to be filed with the Securities and Exchange Commission and to provide such other financial information as may be reasonably requested by Bank. Company understands that in providing these ACH services Bank is relying on the truth and veracity of all electronic records transferred by Company to Bank, and warrants that such records accurately reflect original documents that are, or at the time of the creation of the electronic records, were in the possession of Company. Accordingly, Company

agrees that Bank may, upon one (1) banking day notice, have its personnel or auditors and examiners appointed by Bank, inspect Company's premises, equipment, software, and any of Company's records pertaining to the matters set forth in this Agreement or the ACH services, including, but not limited to, Company's compliance with the NACHA Rules. Bank shall make all commercially reasonable efforts to avoid significant disruption of Company's business operations in conducting such audit or inspection, and shall comply with Company's reasonable workplace rules that have been communicated to the audit or inspection personnel in writing. Company understands that Bank must have these audit and inspection rights in accordance with the Rules regarding ODFI.

#### **18. Data Retention**

Company shall retain data on file adequate to permit remaking of Entries for a period of two (2) years following the date of their transmittal by Bank as provided herein, and shall provide such Data to Bank upon its request. Without limiting the generality of the foregoing provision, Company specifically agrees to be bound by and comply with all the applicable provisions of the Rules regarding the retention of documents or any record, including, without limitation, Company's responsibilities to retain all items, source document and records of authorization in accordance with the Rules.

#### **19. Electronic Media and Records**

All electronic media (including, but not limited to, magnetic tapes), Entries, Security Procedures and related records used by Bank for transactions contemplated by this Agreement shall be and remain Bank's property. Bank may, at its sole discretion, make available such information upon Company's request. Any expenses incurred by Bank in making such information available to Company shall be paid by Company.

#### **20. Evidence of Authorization**

Company shall obtain all consents and authorizations required under the Rules and shall retain such consents and authorizations for two (2) years after they expire.

#### **21. International ACH Transactions**

ACH Company is not permitted to originate International Transaction Codes (IAT) to either Consumer or Corporate accounts residing in Bank outside of the territorial jurisdiction of the United States.

#### **22. Confidentiality and Data Security**

Except as required by law and permitted by this Agreement, all information furnished to Company by Bank or obtained in connection with this Agreement including, but not limited to, any system; software; customer records; manuals and any information derived there from including but not limited to any transferred or reformatted information; duplicates and reproduction (each and all collectively the "Bank Data") shall be held confidential and not disclosed by Company to any third party except as Bank may authorize in writing. Company will not disclose, transfer, duplicate, reproduce or retain Bank Data in any form and will not permit or allow any agent, contractor, third party or employee to do so except to the extent necessary to perform the services described in this Agreement. This provision shall survive termination of this Agreement. Company also understands that it must

comply with the NACHA Rules minimum data security obligations for ACH Network participants to protect "protected information" within their possession and control. "Protected information" is defined under the NACHA Rules as "the non-public personal information, including financial information, of a natural person that is used to create or contained within an Entry and any related addenda record." Company should refer to the NACHA Rules regarding the requirements that Company has under the ACH data security framework requirements.

### **23. OFAC and Other Applicable Laws**

Company as an Originator should be aware that it is subject to applicable U.S. law, including sanctions enforced by the Office of Foreign Assets Control ("OFAC"), when initiating ACH Entries. As an Originator, Company will be held to an obligation to originate only lawful ACH transactions. Bank recommends that Company has procedures in place to verify its Entries against the "Specially Designated Persons" ("SDN") list in order to stay in compliance with OFAC and other applicable U.S. laws. The SDN list is available on the OFAC website: <http://sdnsearch.ofac.treas.gov>. The OFAC Compliance Hotline is available for any questions Company may have at: 1-800-540-OFAC (1-800-540-6322).

### **B. Positive Pay Services**

In addition to the provisions above, the following provisions apply to the Positive Pay Services, if you have requested and Bank has approved Positive Pay Services. In the event of a conflict between the provisions of these Positive Pay Services terms and conditions and the provisions elsewhere in this Agreement, the provisions of these Positive Pay Services terms and conditions will control.

#### **1. Coverage of Positive Pay Terms and Conditions**

These Positive Pay terms and conditions govern your use of City Bank's Positive Pay Services (the "Positive Pay Service(s)") for your business accounts with City Bank. City Bank's Positive Pay Services are described in Section 4. Access for the Positive Pay Service will be provided through the Internet. You are responsible for providing your own access to the Internet through the Internet Service Provider of your choice and for any errors, omissions or interruptions of such Internet service. You will be responsible for any fees and charges assessed by your Internet Service Provider. When you use or continue to use the Positive Pay Service described in this Agreement, or authorize others to use or continue to use it, you agree to the these Positive Pay Services terms, as amended from time to time.

#### **2. Description of Positive Pay Service**

- (a) Applicable Accounts. The Positive Pay Service as described in this Agreement will be performed by City Bank and Company, pursuant to the terms of this Agreement, until such time as by mutual negotiation this Agreement is modified, or until such time as this Agreement is terminated as provided for herein.
- (b) Delivery Arrangements and Timing of Positive Pay Service. The Positive Pay Service allows Company to set forth the criteria for which items will be paid from the Company's account(s) through the submission by Company to City Bank of periodic electronic check issue files. Prior to beginning the Positive Pay Service, the Company shall provide City Bank with parameters and layout of the files the Company will transmit to City Bank as part of the Positive Pay Service. Company shall provide an electronic check issue

file to City Bank via the Company's Business Online Banking Service access with City Bank that includes the following information for all checks issued by the Company during the prior issue period: issue date of check(s), check number, account number for each check, amount of each check, and the total amount of the check issue file. If an item is presented to City Bank for payment against Company's account(s), which does not for any reason meet the established criteria in the electronic check issue file, such item shall be deemed an exception. City Bank shall deliver to Company each weekday by approximately 8:00 a.m., except City Bank holidays, availability to the list of such daily exceptions (via electronic delivery through Company's Business Online Banking Services). Company shall review this list of daily exceptions and direct City Bank on which exceptions City Bank should pay or return on behalf of Company on a daily basis. Company shall provide an electronic decision of the reviewed exception list to City Bank, which will include its direction to City Bank to pay or return the excepted items, no later than 2pm CST of the same day such exception list is received. All items noted on the exception list shall be returned or paid pursuant to the Company's instructions. All items Company instructs to return, or any item on the exception list that the Company fails to provide instructions by the 2pm deadline will be returned unpaid.

- (c) Minimum Check Standards and Specifications. Company will ensure that all issued checks will be of minimum American National Standards Institute with respect to character position and formation.
- (d) Rejected Items. City Bank shall promptly notify Company of check quality problems.

### **3. Errors or Unauthorized Transactions and Notice of Claims**

Company will be notified of debits to Company's account(s) listed in Section 4(a) through the Positive Pay Service as set forth in Section 4(b) in addition to the monthly periodic account statements provided to Company by City Bank. Each notice, whether provided by City Bank through the Company's monthly recurring account statement(s), or electronically through Company's use of this Positive Pay Service pursuant to Section 4(b), shall be deemed a "Confirmation". Company agrees to regularly and promptly review and verify each Confirmation, and if Company suspects an error, discrepancy or unauthorized transaction, Company shall immediately report the event by verbally contacting City Bank's Customer Service Department at (806) 792-7101, followed immediately with a written report detailing the problem submitted to City Bank. In any event within thirty (30) days of the earlier of (i) the closing date of the account statement(s) which first reflected the problem, or (ii) the day City Bank first electronically notified Company or otherwise made available (other than via account statement(s)) a Confirmation to Company, Company shall notify City Bank of the error or unauthorized transaction.

If Company fails to notify City Bank within the time frame set forth above, Company will be precluded from asserting subsequent forgeries, alterations or unauthorized transactions by the same person or entity with respect to any of Company's account(s). Without regard to care or lack of care, Company's failure to discover and report any suspected error, discrepancy or unauthorized transaction in connection with any Positive Pay Service or Company's account(s) within sixty (60) days after a Confirmation or other documentation reflecting the problem was made available to Company will bar any claim against City Bank with respect to any such error, discrepancy or unauthorized transaction. Company will notify City Bank immediately of any claim against Company or City Bank made by a third party, that any act or omission by City Bank with any Positive Pay Service has caused such third party to sustain any damage. Company acknowledges that the reconstruction of an event causing Company to suffer damages becomes difficult and may be inaccurate more than one (1) year following the occurrence of such event. Accordingly, City Bank and Company agree that any claim, action or proceeding against the other for damages arising from or in any way related to an act or omission of the other in connection

with the Positive Pay Service or the performance of the Positive Pay Service, including any claim based on negligence, must be brought within one (1) year from the date of such act or omission. Company and City Bank will cooperate with the other in any loss recovery effort related to the performance of the Positive Pay Service and will assist the other in the defense or prosecution of any claim, action or proceeding brought by or against a third party related to the Positive Pay Service.

#### **4. No Representations or Warranties of City Bank**

City Bank shall not be responsible for the errors, acts or omissions of others, such as communications carriers, correspondents or clearing houses through which City Bank may perform their obligations under this Agreement or receive or transmit information in performing their obligations under this Agreement. Further, City Bank shall not be responsible for any loss, liability or delay caused by wars, failures in communications networks, labor disputes, work stoppages, legal constraints, fires, power surges or failures, earthquakes, civil disturbances, acts or omissions of the U.S. Postal Service or the Internet Service Provider of Company's choice for transmission of the electronic information called for in this Agreement, or for other events beyond City Bank's control. CITY BANK MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE POSITIVE PAY SERVICE IT IS TO PERFORM UNDER THIS AGREEMENT OTHER THAN THOSE EXPRESSLY SPECIFIED IN THIS AGREEMENT.

#### **5. Limitation of Liability**

This Section 5 applies in addition to any limitation of liability provisions contained elsewhere in this Agreement. In the event that any party to this Agreement suffers or incurs any losses and liabilities as a result of or in connection with its or any other party's performance or failure to perform its obligations under this Agreement, the affected parties will negotiate in good faith in an effort to reach a mutually satisfactory allocation of such losses and liabilities, it being understood that City Bank will not be responsible for any losses and liabilities due to any cause other than its own negligence or breach of this Agreement, in which case its liability shall be limited to direct money damages in an amount not to exceed (i) in the case of City Bank's failure to pay an item from the account(s) based on any payment(s) which should be paid pursuant to this Agreement, interest on the amounts that should have been paid from the account(s) pursuant to this Agreement, at a rate equal to the cost of funds (at a reserve adjusted daily interest rate which City Bank will determine) for the time period such amounts are not paid from the account(s), but in no event beyond the end of the sixty (60) calendar day notice period referred to in Section 5 of this Agreement; (ii) in the case of City Bank's payment of an item that should not have been paid pursuant to this Agreement, the amount of the item that should not have been paid, subject to the notification requirements referred to in Section 5 of this Agreement; or (iii) in the case of any other action or failure to act by City Bank (other than City Bank's actions or failure to act referred to in clause (i) and (ii) of this Section 5), an aggregate amount, for any calendar year, equal to the fees charged or incurred for the Positive Pay Service in the month in which the losses and liabilities occurred. Company agrees to indemnify City Bank against all losses and liabilities suffered or incurred by City Bank as a result of third party claims arising out of or related to the Positive Pay Service. Without limiting the foregoing, Company shall indemnify and hold City Bank harmless for all losses and liabilities suffered or incurred by City Bank as a result of any claim by a third party payee of any item that is returned pursuant to this Agreement. The limitation of City Bank's liability and Company's indemnification of City Bank set out above will not be applicable to the extent any losses and liabilities of any party to this Agreement are directly caused by City Bank's gross negligence or willful misconduct. IN NO EVENT WILL CITY BANK BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES, WHETHER ANY CLAIM IS

BASED ON CONTRACT OR TORT, WHETHER THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN TO CITY BANK, AND REGARDLESS OF THE FORM OF THE CLAIM OR ACTION, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM OR ACTION ALLEGING GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FAILURE TO EXERCISE REASONABLE CARE OR FAILURE TO ACT IN GOOD FAITH.

## **6. Limit of City Bank and Other Providers' Responsibility**

City Bank agrees to make reasonable efforts to ensure full performance of the Positive Pay Service. City Bank will be responsible for acting only on those instructions sent through City Bank's Business Online Banking Services (as defined in the Business Online Banking Services Agreement between City Bank and Company) which are actually received and cannot assume responsibility for malfunctions in communications facilities not under its control that may affect the accuracy or timeliness of messages you send. City Bank is not responsible for any losses or delays in transmission of instructions arising out of the use of any Internet Service Provider or caused by any browser software. Any information you receive from City Bank can only be provided on a best efforts basis for your convenience and is not guaranteed. City Bank is not liable for any deficiencies in the accuracy, completeness, availability or timeliness of such information. City Bank is not responsible for any computer virus or related problems, which may be attributable to the Business Online Banking Services, the Positive Pay Service or to any services provided by any Internet Service Provider.

### **C. Remote Deposit Capture Services**

In addition to the general Digital and Online Banking Services provisions contained above, the following provisions apply to the Remote Deposit Capture Services ("RDC Services"), if you have requested and Bank has approved the RDC Services. In the event of a conflict between the provisions of these RDC Services provisions and the general Digital and Online Banking Services provisions contained in this Agreement, the provisions of these RDC Services terms and conditions will control.

#### **1. Governance of Remote Deposit Capture Services, Terms and Conditions**

These RDC Services terms and conditions, along with the Agreement and other agreements between you and Bank, govern your use of the Bank Remote Deposit Capture Service, defined in Section 3 (Service). These RDC Services terms and conditions do not cover the conversion of Substitute Checks to ACH Entries. Customers wishing to convert Substitute Checks to ACH Entries must obtain permission from Bank and enroll in ACH Services under this Agreement.

#### **2. Accepting These Remote Deposit Capture Services Terms and Conditions**

When you use the RDC Services, or authorize others to use them on your behalf, you acknowledge and understand that you also agree to these RDC Services terms and conditions, and that you cannot begin using the RDC Services until you have indicated your agreement as instructed via Bank's Online Banking Services. In addition, you provide Bank with your express consent permitting us to contact you as necessary to provide the RDC Services. Such activities may include, but are not limited to, providing account alerts, confirming account activity, confirming remote deposit capture deposits, or undertaking fraud prevention or servicing.

### **3. Service**

Subject to the terms and conditions herein, Company subscribes to, and Bank agrees to provide, the RDC Services to be used by Company in accordance and compliance with the Check Clearing for the 21st Century Act ("Check 21"). The Service enables Company to create and submit electronic check images (also known as Image Replacement Documents ("IRDs")) to the Bank, for deposit to Company's account(s) listed in the Authorized Internet Business Banking Remote Deposit Capture Limits document, in lieu of the Original Checks received in the ordinary course of business from which such check images were obtained. The dollar amount, as well as the number of deposit transactions transmitted by Company on any single Business Day, shall not exceed the limits set forth in the Authorized Internet Business Banking Remote Deposit Capture Limits document for each account, as determined by Bank in its sole discretion. Items exceeding Company's daily limit must be delivered to Bank for processing or held until the next Business Day for transmittal.

Bank reserves the right to add or remove various components of the Service in Bank's sole discretion. Some of the activities listed above may not be available for certain accounts or customers. We reserve the right to modify the scope and type of activities offered via the Service at any time in our sole discretion. We also reserve the right to refuse to make any transaction you request through the Service for a variety of reasons as set forth in the Agreement.

Bank retains the ability to either approve or deny your use of the Service in Bank's sole and absolute discretion. If Bank approves you to use such Service, then by using such Service, you agree to the applicable provisions set forth in these RDC Services terms and conditions, you agree to pay any fees that Bank may charge in conjunction with such Service, and you understand and agree to the meanings of the defined terms set forth in these RDC Services terms and conditions and any related documentation made available to you by us for use with the Service.

In the event of any unforeseen issues or failure of this product for the Service, your deposits can be made in person at any Bank branch or by mailing deposits to:

City Bank

ATTN: Treasury Management Department  
PO BOX 5060

Lubbock, TX 79408

### **4. Use of Email Address**

We may send messages relating to the Service to the e-mail address we have on file for you and notify you that responses to your payment inquiries or customer service inquiries are available, or as otherwise described any applicable agreements governing the Service. Bank will not, however, include any account numbers, access codes or similar non-public personal information in any e-mail response to you. If, for any reason your e-mail address changes or becomes disabled, please contact Bank immediately so that we can continue to provide you with automated messages.



## **5. Processing Equipment and Processing Software**

All deposits shall be captured via equipment and software approved and authorized by the Bank. The Services Company subscribes to may consist of multiple features, such as web-enabled data entry screens, file transfers, and uploads.

Bank reserves the right as encryption technology develops to impose further reasonable requirements to maintain the appropriate level of security for the Service and transactions contemplated hereunder, and you agree to abide by such requirements. Furthermore, you understand and acknowledge that if you do not implement and follow your own commercially reasonable hardware, software, physical access and physical storage Security Procedures regarding any of the data owned by you, which includes such data containing your sensitive personally identifiable information ("PII") of any individual, the security of your Service may be compromised. The equipment shall be used solely for the performance of the Service, and solely for the benefit of Company and no third party.

For avoidance of doubt, you understand, acknowledge and agree that all data provided by you to Bank (including, but not limited to, Electronic Images or Substitute Checks) retained on any processing equipment, processing software, or any other processing equipment or software, and all data produced, compiled or otherwise provided by Bank to you, in any form or format, is your sole and exclusive property and copies thereof shall be provided to you at your request from time to time and at any time. Once such data owned by you is delivered by Bank to you, retrieved by you from Bank, or otherwise created as a byproduct of a transaction between you and Bank and retained by you, such data owned by you is solely within your possession and control.

In connection with the Services, Company agrees to comply with the Security Procedures set forth in Section 9 (Security Procedures) of these RDC Services terms and conditions.

## **6. Copyrights, Other Intellectual Property and User Conduct**

Except where otherwise expressly noted or as noted below, all contents of the Service are the sole and exclusive property of Bank, its subsidiaries or affiliates, or third parties with whom Bank utilizes to provide any portion of the Service. The posting of the contents of the Service neither constitutes a waiver of any of Bank's proprietary rights or any other party's proprietary rights, including but not limited to, copyrights, trademarks, service marks, patents, and other intellectual property, nor a transfer by implication, estoppel, or otherwise of any such rights or of any license to the Service user or to any third party. Contents of the Service are protected by United States and international copyright laws, both as individual works and as a collection and by United States and international trademark laws. You agree not to delete any copyright, trademark or similar notice from any contents you obtain from the Service.

Bank and you acknowledge and agree that, in the event of any third-party claim that the Service or your possession or use of the Service infringes that third party's intellectual property rights, Bank and its third-party service providers are solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

## 7. Information Regarding Remote Deposit Capture Transactions

For the purposes of this section and other provisions relating to the Service, any capitalized term not otherwise defined herein has the definition ascribed to it under Check 21. If you have met, in our sole discretion, the conditions we have established for use of the Service to make deposits via Electronic Images, we will provide for acceptance for deposit to your account(s) the Electronic Images of Original Checks for collection as allowed under these RDC Services terms and conditions and the Agreement.

### (a) Prohibited Transactions, Procedures and Retention of Original Checks.

- (i) Prohibited Transactions. Company agrees not to use the Service to deposit or otherwise process:  
(i) non-cash items; (ii) items drawn on foreign banks or payable in other than U.S. money; (iii) items without preprinted magnetic ink routing numbers; (iv) items for which Company is not a holder in due course; (v) Substitute Checks, except those which have been returned to Company for any reason; (vi) items payable to any person or entity other than Company (i.e. no third-party deposits); (vii) items containing apparent alterations to any of the information on the front of the check or item, or which you know or suspect (or should know or suspect) are fraudulent or otherwise not authorized by the owner of the account on which the check or item is drawn; (viii) items dated more than six months prior to the date of deposit; (ix) items prohibited by Bank's current procedures relating to the Service or which are not acceptable under these RDC Services terms and conditions; (x) Original Checks or other items previously converted to a Substitute Check; (xi) checks or items that are Remotely Created Checks (as defined in Reg. CC); or (xii) Checks or items prohibited by the Agreement, or checks or items which are otherwise not acceptable under the terms of your account(s).
  
- (ii) Processing of Remote Deposit Capture Deposits. Company shall submit check images to Bank in such format, and with such associated check information, as Bank may require periodically, utilizing Accredited Standards Committee X9's Specifications for Electronic exchange of Check and Image Data (DSTU X9.37-2003). Bank reserves the right to reject any single check image or group of check images for any reason, before or after it/they appear on Bank's system. All checks submitted through the Service must be properly endorsed by Company prior to transmittal. Items transmitted without being properly endorsed are subject to rejection by Bank. Company agrees to inspect and verify the quality of the check images, ensuring that the check images of the front and back of the Original Check are legible before capturing the image via the Service. Specifically, Company warrants the following: (i) the check image is an accurate representation of the information contained in the Original Check, and the check image includes all endorsements from the Original Check; (ii) each check image contains a record of all MICR line information required for a substitute check, and the check image satisfies all of the requirements of the Check 21 Act and Regulation CC; (iii) the Original Check, a duplicate check image, or any copy of the Original Check or check image will not be deposited by Company with Bank; and (iv) the Original Check, a duplicate check image, or any copy of the Original Check or check image will not be presented, transferred or returned such that Bank or any other person will be asked to make a payment based on a check or check image that has already been paid. Bank has no responsibility or liability for any fees incurred due to the rejection of transmitted items for missing/incomplete endorsements. Unless the Bank notifies Company otherwise, Bank provides same day credit to

the applicable account for all items transmitted by Company and received by the Bank within the timelines established by the Bank.

Electronic Images shall be deemed received by us for deposit based upon time of receipt as well as successful receipt of Electronic Images that are complete, usable, and adhere to the standards discussed above. If any Electronic Image is not complete, is not usable, or does not adhere to the standards, the Electronic Image may not be processed by us, in which event your deposit will be adjusted and notification provided. You understand we will process only your Electronic Images that comply with the standards discussed above and are Sufficient Image Copies, and we will use commercially reasonable efforts to present these Sufficient Image Copies for collection under the Check 21 framework. The daily cut-off time for Remote Deposit Capture deposits is 6:00pm Central Time. Such daily cut-off times may be adjusted by Bank in its sole discretion from time to time upon notice to you. If the deposits are not received by the end-of-day cutoff time, Bank will not guarantee that deposits will be processed that day. Bank may accept these deposits and they will be processed on Bank's next Business Day. Bank shall give provisional credit for deposits subject to revocation of credit for deposits as provided in Regulation CC and the Uniform Commercial Code. The availability of funds for deposits via the Service is set forth in these RDC Services terms and conditions.

Should a Drawee Financial Institution return an item to us unpaid, we will charge your respective account for such returned item and may either (i) return the item to you, or (ii) re-present it to the Drawee Financial Institution before returning it to you. Items may be returned as Image Exchange Items, rather than Substitute Checks. Should a Drawee Financial Institution or other third party make a claim against us or seek re-credit with respect to any Electronic Image, we may provisionally freeze or hold aside a like amount in your account pending investigation and resolution of the claim.

Bank may reject any entry which does not comply with the requirements set forth herein, including for failure to comply with its account balance obligations or failure to comply with the Security Procedures. Bank shall notify Company by phone or electronic transmission, including email and fax, or such rejection no later than the Business Day such deposit would otherwise have been transmitted by Bank to the Federal Reserve. Notices of rejection shall be effective when given. Bank shall have no liability to Company by reason of the rejection of any such deposit or the fact that such notice is not given at an earlier time than that provided for herein.

Company's deposit of a check image is subject to the Bank's verification and final inspection process. The Bank may at any time deposit a check image or return all or part of a deposit of multiple check images to the Company without prior notice. The Bank is under no obligation to inspect or verify a check image to determine accuracy, legibility, or quality of the check image or MICR line information associated with the check image, or for any other purpose. The Bank may, however, correct or amend MICR line information associated with a check image to facilitate processing of the check image or a substitute check created from that check image.

Company shall have no right to cancel or amend any deposit after its receipt by Bank. However, if such request complies with the Security Procedures, Bank shall use reasonable efforts to act on

a request by Company for cancellation of a deposit prior to transmitting it to the Federal Reserve, but shall have no liability if such cancellation is not implemented. Company shall reimburse Bank for any expenses, losses, or damages Bank may incur in implementing or attempting to implement Company's request for the reversal of a deposit.

You understand and acknowledge that we are relying on the truth and veracity of all Electronic Images submitted for deposit via the Service by you to us, and you warrant that such Electronic Images accurately reflect Original Checks that are, or at the time of the creation of the Substitute Checks, were, in your possession. You also understand that issues regarding returned item collection, returned deposit, and other issues regarding deposit of Items not specifically addressed in these RDC Services terms and conditions shall be governed by the terms and conditions of the Agreement.

- (iii) Retention and Security of Original Checks. Company shall retain each Original Check for no longer than sixty (60) days after an Electronic Image of the check has been created and transmitted to the Bank. Company agrees to make any Original Check (or Sufficient Copy of the front and back of the Original Check) available to Bank within seventy-two (72) hours of Bank's request to aid in the clearing and collection process or to resolve claims by third parties with respect to any check. Such checks must be securely stored (e.g., in a locked cabinet) to prevent unauthorized access to the items until they are destroyed. Company understands that in all cases it is solely responsible for safeguarding all items it retains during the reasonable period of time described above from destruction, alteration or theft in accordance with the provisions of these RDC Services terms and conditions. Company will use commercially reasonable methods to destroy Original Checks to render them unusable or otherwise unreadable (e.g., shredding) no less than 30 days following the date an Electronic Image of the Original Check was created and transmitted to the Bank.

(b) Funds Availability Regarding Remote Deposit Capture Deposits.

- (i) Your Ability To Withdraw Funds. These provisions apply only to demand deposit checking accounts where deposits are made via the Service. You agree that Electronic Images submitted via the Service are not subject to the funds availability requirements of the Federal Reserve Board's Regulation CC. Our policy is generally to make funds from the Service available to you on the first Business Day after the day we receive your deposit. Funds that are deposited using the Service will not be deemed "received" by us until we have received an Electronic Image that meets all of the requirements for deposits (including all requirements to create a Substitute Check) stated in these RDC Services terms and conditions and in the Agreement. Once the funds are available, you can withdraw the funds in cash and we will use the funds to pay items and transactions drawn on your account. If you make deposit via the Service by the cut-off time of 6:00pm Central Time on a day that is not a Business Day, we will consider such deposit made on the next Business Day we are open. **In some cases your funds may be held at which time you will be notified.**

- (c) Company Representation and Agreements; Indemnity. With respect to each and every deposit initiated by Company, Company represents and warrants to Bank and agrees that to the best of Company's knowledge (a) each deposit is made payable to the Company (b) any necessary authorization is operative at the time of transmittal or crediting/debiting by Bank as provided herein, and (c) Company shall perform

its obligations under these RDC Services terms and conditions in accordance with all applicable laws and regulations, including the sanctions laws administered by OFAC and the Bank Secrecy Act. In addition to other indemnification under these RDC Services terms and conditions, Company also shall indemnify Bank against any loss, liability, or expense (including attorney's fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or agreements.

By depositing Electronic Images with Bank via the Service, you give us the same warranties and indemnities that we, as a reconvert bank, would give under applicable law or regulation. You understand and acknowledge that all of the warranties deemed given by a depositor of a check to a bank under the Uniform Commercial Code ("UCC"), as applicable from time to time in the State of Texas, shall also apply to any Electronic Image of an Original Check the same as if such Electronic Image or Substitute Check were a paper check within the meaning of the UCC as adopted by the State of Texas ("Texas UCC"). Accordingly, except to the extent that any warranties deemed given under the Texas UCC are expressly superseded by the Check 21 Act or the Check 21 regulations, you understand that you are deemed to give us all the same warranties you would have given under the Texas UCC for the deposit of an Original Check by transferring to us: (a) any Substitute Check; (b) an IRD or other item purporting to be a Substitute Check; or (c) any Electronic Image that purports to contain a Sufficient Copy of an Original Check or a Substitute Check. Such warranties also include the warranty that the Electronic Image we convert to a Substitute Check meets the requirements described in § 229.51(a)(1) – (2) of the Check 21 Regulation (found at 12 CFR §229.51(a)(1) – (2)) for legal equivalence. The above warranties are deemed given to Bank and any person, company or bank to which Bank transfers, presents or returns any of the Images included in such electronic file as a Sufficient Image Copy or that purports to be a Sufficient Image Copy created by Bank or any subsequent bank receiving a copy of such image. Company represents that it shall permit no third parties to use the Service to deposit Original Checks to Company's account.

- (d) Limitation on Liability. In addition to the provisions contained in these RDC Services terms and conditions, liability shall not exceed the sum of the amount of any loss suffered by the Company as a result of a breach of warranties under Regulation CC (12 CFR Part 229) up to the amount of any substitute check, interest and expenses (including cost and reasonable attorney fees and other expenses of presentation) related to the substitute check reduced by any amount that the Company receives and retains as a re-credit. Furthermore, such liability shall be further reduced by the amount of any damages incurred as a result of the negligence or bad faith of the Company. Without limiting the generality of the foregoing provisions, Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission of communication facilities, equipment failure, war, emergency conditions, or other circumstances beyond Bank's control.

In addition, Bank shall be excused from failing to transmit or delay in transmitting a deposit if such transmittal would result in Bank having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in Financial Institution's reasonable judgment otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. In such event, Company shall be responsible for having a contingency plan in place including temporarily depositing original, paper items at any branch facility of Bank.

Subject to the foregoing limitations, Bank's liability for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average Federal Funds rate at the Federal Reserve Bank

of Dallas for the period involved. At Bank's option, payment of such interest may be made by crediting the account resulting from or arising out of any claim of any person that Bank is responsible for any act or omission of Company or any other person described in the foregoing agreement.

- (e) Company Responsibilities. Company will maintain at least one or more accounts at Bank eligible for the transactions conducted via the Service. With regard to the Service, Company will inspect and verify the quality of Electronic Images, ensuring that the Electronic Images of the front and back of the Original Checks are legible for all posting and clearing purposes by Bank. The Company's applicable account will be charged for any deposited check that is later returned to Bank owing to an actual or alleged breach of any warranty made in these RDC Services terms and conditions. Company will assist in the installation and implementation of any changes and upgrades to the Service as required by Bank to ensure compliance with regulatory changes and developments, or to protect the integrity and security of such Service. Company will use the Service to enter, process, and transmit Original Checks in accordance with procedures and transmission deadlines outlined in these RDC Services terms and conditions. Company will verify Bank's receipt of its Remote Deposit Capture deposits by reviewing deposits that have been posted to the designated accounts, in addition to cooperating with Bank in any investigation and resolving any unsuccessful or lost transmissions. Company will comply with all Security Procedures outlined in these RDC Services terms and conditions and the Agreement and agrees not to bypass, override or disable any security mechanisms in the processing software or processing equipment. Company will cooperate with Bank in providing information and access to Company records in the event of lost, mistaken, incomplete, or unusable Electronic Images, or in the event of claims of fraud, alteration, counterfeit or otherwise. Unless Company obtains express, written permission from Bank, Company may not perform the Service for any third party, and any attempt to do so shall automatically terminate these RDC Services terms and conditions, except for any provisions of these RDC Services terms and conditions that are expressly to survive such termination.

## **8. Security Procedures**

Unless otherwise subject to the provisions of Regulation E for consumer customers, you are responsible for all payments, transfers or other transactions you authorize using the Service. If you permit other persons to use your equipment to access the Service, you are responsible for any transactions they authorize.

In addition to the other Security Procedures contained in this Agreement, you agree to the following Security Procedures in connection with the RDC Services.

The Bank grants access to the Remote Deposit Capture Service to perform transactions authorized in the Authorized Internet Business Banking Remote Deposit Capture Limits.

Company agrees to have in place and in effect such software, procedures, and systems as comply with security best practices for transmission of sensitive data. These shall include, at a minimum, appropriate firewalls, anti-virus programs, spyware detection, patches (e.g., Microsoft and Adobe) and anti-phishing & mal-ware programs. Additionally, Company agrees to maintain mechanisms to ensure Company's software, procedures, and systems stay up to date.

Prior to execution of these RDC Services terms and conditions, Company shall:

- Adopt and maintain appropriate disaster recovery and business resumption policies and procedures
- Adopt and maintain safeguarding and security policies and procedures that comply with applicable laws, regulations, and regulatory pronouncements, including the Gram-Leach-Bliley Act and its implementing regulations
- Provide Bank with copies of such policies and procedures upon request

Company shall provide Bank with immediate written notice of any breach of its computer systems or of any unauthorized use or disclosure of, or access to, any Confidential Information of Bank of which Company is aware. Such written notice shall include a reasonably detailed summary of the nature of the unauthorized use, disclosure, or access, as well as its effect or anticipated effect on Bank and any corrective actions taken or to be taken by Company. Company expressly agrees to take appropriate actions promptly upon becoming aware of any such breach or unauthorized use, disclosure, or access.

Bank may implement safeguards on Company deposits according to settings included as part of the operating software (currently known as Velocity). Safeguards may be placed restricting the frequency of deposits, the number of transactions transmitted on a single Business Day, and/or the total dollar amount of deposits transmitted on a single Business Day. Limitations may also be placed on merchant accounts at the level of the Company or office location.

In the event Company exceeds the limitations and safeguards placed on the account, the transmitted deposits will be subject to review by Bank. The transmitted deposit may be designated "no action", "suspend", or "declined". "No action" permits the submission of the deposit but is intended to create awareness of deposit activity. "Suspend status" requires Bank to review and take action on the transmitted deposit, and "declined status" results in the transaction being immediately declined at the time of input/capture.

Exceptions will be generated for all transactions submitted by Company to Bank that cause a violation of the established limits, pursuant to the Company's Velocity settings. Company's Velocity settings may be created and/or edited as deemed necessary by Bank. Suspended transactions generated due to violation of Velocity limits will be subject to review and action by Bank.

- (a) Velocity Security Settings. Company shall be subject to Velocity Security Settings set forth in the Authorized Internet Business Banking Remote Deposit Capture Limits document, as part of the operating system software. Velocity settings may be added and/or edited as deemed necessary by Bank. Deposits subject to Velocity Security Settings may require Bank approval for submission or may be declined at the time of input or capture. These security settings are for the express purpose of safeguarding Company and Bank against potential fraud or other risks that may arise from time to time as part of the Service.
- (b) Transaction Settlement/Delivery Timeframes. All deposits utilizing distributed transaction processing should be received by the Bank prior to the end-of-day cutoff time. If the deposits are not received by the required timeframe, the Bank cannot guarantee that deposits will be processed that day. The Bank may accept these deposits and they will be forwarded to the Federal Reserve no later than the Bank's next regularly scheduled delivery time. The end-of-day cutoff time for deposits is shown below:

**END-OF-DAY CUTOFF TIME: 6PM CENTRAL TIME**

## 9. Provisional Settlement

Bank shall give provisional credit as provided in this Agreement subject to revocation of credit for deposits as provided in Regulation CC and the Uniform Commercial Code as it applies to deposits.

## 10. Virtual Endorsement

Company hereby authorizes and directs Bank to electronically endorse all Image Replacement Documents ("IRDs") sent by Company to Bank using the Services or which are otherwise sent by any person using the equipment of the Company to transmit IRD files to the Bank with the Company's user ID and password. Company agrees that Company will remain primarily responsible to endorse all checks which it presents to the Bank as an IRD. In the event that the Company does not endorse a check prior to converting the check to an IRD, the Company authorizes and directs the Bank to electronically endorse the check "Pay to the order of City Bank 111301737 For deposit only *Company's Name* and deposit account #" and to deposit the IRD into the Company's Account. The Bank will only electronically endorse checks in this manner that are made payable to the Company. The Company agrees to not send IRDs through the Services to the Bank without endorsement that are not made payable to the Company.

Company hereby represents and warrants to the Bank as follows:

- (a) The Company is the "endorser" of all IRDs transmitted through the Services, for all purposes, regardless of whether the Bank electronically endorses the IRD pursuant to this Addendum;
- (b) The Bank is acting as the Company's authorized agent or representative when the Bank electronically endorses an IRD without a prior endorsement from the Company and the electronic signature is binding on the Company under Section 3.402 of the Texas Business and Commerce Code; and
- (c) The Bank shall not be liable on the instrument as an endorser and the Bank is not the endorser on any instrument transmitted hereunder, the Company is.

In addition to, but not in replacement of, the indemnity provisions contained elsewhere in this Agreement, the Company agrees to assume all responsibility and liability on any IRD electronically endorsed by City Bank under the terms of these RDC Services terms and conditions, and shall indemnify and hold Bank and all of its officers, directors, employees, agents, attorneys, shareholders, successors, assigns, affiliates, and subsidiaries harmless against any loss, liability, or expense (including attorney's fees and expenses) resulting from or arising out of any breach of any of the foregoing representations, warranties, or agreements and/or from any liability resulting from or arising out of any endorsement made by Bank to an IRD pursuant to these RDC Services terms and conditions.

Company acknowledges that checks that are not made payable to Company are not to be deposited through the Services to Company's Account. However, if a check that is not payable to Company is converted to an IRD and is deposited through the Services to Company's Account, then in that event, Company agrees and authorizes the Bank to chargeback such check to the Company's Account if the check is returned for a missing or improper endorsement and the Company shall bear all responsibility therefore. Additionally, if City Bank becomes aware that a check that is sent through the services is



improperly endorsed by either the Company or the Bank, then in that event Company authorizes and agrees that City Bank may place a hold on the funds represented by such check and not make such funds available to the Company until such time as the Company provides the Bank written documentation from the maker and original payee of the check that such check will not be returned. In this regard, Company specifically acknowledges and agrees that a check deposited into Company's Account that is not payable to Company, regardless of whether such check is endorsed by Company or by Bank hereunder, shall give the bank "reasonable cause to doubt the collectability" of such check for purposes of 12 CFR § 229.13 and authorizes the Bank to make the funds represented by such check unavailable for purposes of the Bank's funds availability policy. To the extent permitted by law, Company waives any further notice that the bank will extend the time when funds will be available to the Company for the foregoing reasons. Bank shall make the funds available upon receipt of written confirmation from the maker and original payee of the check that such check will not be returned.

Company agrees to pay Bank additional charges for the electronic endorsement services provided in connection herewith, as provided by Bank, and as amended from time to time. All fees for Services are subject to change upon thirty calendar days' prior written notice from Bank to Company.

#### **11. Processing, Transmittal and Settlement by Bank**

Except as provided in Section 8 (Information Regarding Remote Deposit Capture Transactions), Bank shall (i) process deposits received from Company, (ii) transmit such deposits to the Bank's correspondent Federal Reserve Bank as an electronic check image or IRD (under Check 21), (iii) settle for such deposits as provided by Bank in the procedures listed in Section 9 (Security Procedures) of these RDC Services terms and conditions.

Bank shall transmit or complete the necessary batch authorization of such deposits by the delivery date deadline of the deposits as set forth in Section 9 (Security Procedures) of these RDC Services terms and conditions prior to the effective entry date provided (i) such deposits are received by Bank's related cut-off time on a Business Day as set forth herein, (ii) the effective entry date is at least one day after such Business Day, and (iii) the Federal Reserve is open for business on such Business Day. For purposes of these RDC Services terms and conditions, entries or deposits shall be deemed received by Bank in the case of transmittal by electronic transmission, when the transmission (and compliance with any related Security Procedure provided for herein) is completed as provided herein. Deposits transmitted after the Bank's related cut-off time, or not in compliance with the requirements of this paragraph, shall be transmitted by the Bank on the Business Day that next follows the Business Day in which such deposit complies with this paragraph.

#### **12. Reporting Unauthorized Transactions and Liability for Unauthorized Transactions**

To report unauthorized transactions on any of your accounts, please notify the Bank in accordance Section 13 of the General Provisions of this Agreement

#### **13. Company Financial Responsibility Requirements**

This Section shall apply in addition to other indemnification provisions contained elsewhere in this Agreement. As a condition precedent to the provision of Services to the Company: (1) Company shall provide two (2) of guarantors who personally guarantee the full and complete performance due from Company to Bank under these RDC Services terms and conditions, specifically including, but not limited to: performance of all obligations of

Company under the Agreement and any liability of Company to Bank for the Services or under the Agreement; (2) such guarantors shall indemnify and hold Bank harmless from any and all liability incurred by Bank under the Agreement; (3) Company shall maintain insurance coverage in amounts and in forms as Bank shall in its sole discretion determine, which provides insurance coverage for any liability of Company to Bank under these RDC Services terms and conditions, including but not limited to liability of Company to Bank for the use of the Services by Company's employees, whether authorized or not.

In addition to the other termination rights under the Agreement, Bank may terminate the Agreement at any time, if in its sole discretion it is unsatisfied with the financial status of any guarantor and/or if insurance coverage is not maintained by Company.

Company agrees to provide to Bank annual financial statements prepared by Company's certified public accountant and quarterly un-audited financial statements, tax returns and other financial information as requested by Bank.

Furthermore, Company understands and agrees that Bank may obtain one or more credit, business or trade reports on Company from time to time in connection with the Services and may obtain one or more consumer credit reports on any required guarantor. Bank may also investigate Company's or guarantor's background, income, credit or credit worthiness, assets or other matters as it deems reasonably necessary or appropriate.

#### **14. Company Representations, Agreements and Indemnity**

This Section shall apply in addition to other indemnification provisions contained elsewhere in this Agreement. Company agrees to learn how to use the Service from the instructions contained within the Service, and agrees to contact us at if Company has any questions about or problems with the Service. If the Service is modified, Company is responsible for understanding how to use any modifications. Company may not copy (other than a copy for personal or business use), modify, distribute, transmit, display, perform, reproduce, transfer, resell, lease, rent, distribute access to or republish any of the contents of the Service without the prior written consent of Bank, which may be withheld in its sole discretion. Unless otherwise subject to the provisions of Regulation E for consumer customers as further described in the Agreement, Bank will not be liable to Company for any losses caused by Company's failure to properly use the Service or Company's equipment.

Company agrees not to use the Service in any way that would: (a) infringe any third party's copyright, patent, trademark, trade secret or other proprietary right or rights of publicity or privacy; (b) be fraudulent or involve the sale of counterfeit or stolen items, including, but not limited to, use of the Service to impersonate another person or entity; (c) violate any applicable law (law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination, false advertising, anti-money laundering or bank secrecy); (d) be false, misleading or inaccurate; (e) create liability for us or our affiliates or service providers, or cause us to lose (in whole or in part) the services of any of our service providers; (f) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (g) potentially be perceived as illegal, offensive or objectionable; (h) interfere with or disrupt the computer networks connection to the Service; (i) interfere with or disrupt the use of the Service by any other user; or (j) use the Service in such a manner as to gain unauthorized entry or access to the Bank's computer systems or the computer systems of others.

Company also represents and warrants to Bank that it has all requisite power and authority to enter into these RDC Services terms and conditions, that entering of these RDC Services terms and conditions, and execution of the corresponding application incorporating the same, has been duly and validly authorized by all necessary

action. Furthermore, the individual or individuals who execute the application for the services contemplated under these RDC Services terms and conditions on Company's behalf is each duly authorized by Company to do so, that any transaction contemplated hereby will not be in violation of state or federal law, and that all formalities will be followed with respect to each transfer of funds, including but not limited to, proper authorization of individual transactions and any record keeping requirements with respect thereto.

#### **15. Bank Responsibilities, Liability, Limitations on Liability and Indemnity**

This Section shall apply in addition to other limitations of liability and indemnification provisions contained elsewhere in this Agreement. Bank will provide access to the processing equipment and software for the Service. Bank will also provide maintenance and support for the Service to ensure the accurate delivery of the Service, including, but not limited to:

- Corrections, contingent or alternate work methods, and repairs to any know system bugs or errors.
- Modifications, enhancements, or updates that Bank elects to make generally available to its customers.
- Telephone and email support during Bank's normal business hours.

Bank will provide the required user ID and password to Company in order to engage in the Services. Bank will provide related documentation as well as training materials and support reasonably required for Company's use of the Services.

- (a) In the performance of the services required by these RDC Services terms and conditions, Bank shall be entitled to rely solely on the information, representations, and warranties provided by Company pursuant to these RDC Services terms and conditions, and shall not be responsible for the accuracy or completeness thereof. Bank shall be responsible only for performing the services expressly provided for in these RDC Services terms and conditions, and shall be liable only for its gross negligence or willful misconduct in performing those services.

Bank shall not be responsible for Company's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal, or authorization of any deposit received from Company) or those of any other person, including, without limitation, any Federal Reserve Bank, or transmission or communications facility, and no such person shall be deemed Bank's agent.

- (b) In addition to any other limitation on liability of the Bank and its third-party service providers as stated in these RDC Services terms and conditions, IN NO EVENT WILL BANK, OR ANY OF ITS OFFICERS, DIRECTORS, SHAREHOLDERS, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS, LICENSORS, OR THIRDPARTY SERVICE PROVIDERS BE LIABLE FOR ANY CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, FILES, PROFIT OR GOODWILL OR THE COSTS OF PROCUREMENT OF SUBSTITUTE OF GOODS), INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE SERVICE. THE AGGREGATE LIABILITY OF BANK AND OUR THIRD-PARTY SERVICE PROVIDERS UNDER THESE TERMS OF USE SHALL NOT EXCEED FIVE HUNDRED DOLLARS. Because some states do not allow the exclusion or limitation of liability for consequential damages, the above limitations may not apply to you.
- (c) Without limiting the generality of the foregoing provisions, Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission of

communication facilities, equipment failure, war, adverse weather, terrorism, emergency conditions, or other circumstances beyond Bank's control.

In addition, Bank shall be excused from failing to transmit or delay in transmitting a deposit if such transmittal would result in Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in Bank's reasonable judgment otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. In such event, Company shall be responsible for having a contingency plan in place including temporarily depositing original, paper items at any branch facility of the Bank.

- (d) Subject to the foregoing limitations, Bank's liability for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average Federal Funds rate at the Federal Reserve Bank of Dallas for the period involved. At Bank's option, payment of such interest may be made by crediting the account resulting from or arising out of any claim of any person that Bank is responsible for any act or omission of Company.

#### **D. Business Online Wire Transfer Services**

In addition to the provisions above, the following provisions apply to the Business Online Wire Transfer Services, if you have requested and Bank has approved the Business Online Wire Transfer Services. In the event of a conflict between the provisions of these Business Online Wire Transfer Services terms and conditions and the provisions elsewhere in this Agreement, the provisions of these Business Online Wire Transfer Services terms and conditions will control.

Unless otherwise defined in this Agreement, the terms used in these Business Online Wire Transfer Services terms and conditions shall have the same meaning as set forth in Article 4A of the Uniform Commercial Code ("Article 4A") as adopted in the state in which your account is located. Except as modified by this Agreement, Article 4A governs any wire transfers made to or from Company's account(s), including online wire transfers. However, a wire transfer of funds initiated by Company may be made through Fedwire. If Fedwire is used in a wire transfer, such wire transfer will be governed by Federal Reserve Board Regulation J, subpart B, as in effect at the time of the transfer.

In addition to the other provisions regarding liability and indemnification in this Agreement, Company agrees to hold Bank harmless and indemnify Bank, as further detailed in this Agreement, from any loss that occurs if your online wire transfer instructions are incomplete, ambiguous, or incorrect. Bank is not required to seek clarification from anyone regarding ambiguous instructions. If Bank cannot complete a wire transfer (e.g., because of an ambiguity), Bank will notify Company orally or in writing by the end of the next business day.

##### **1. Company Bound by Online Wire Transfer Request**

Company agrees to be bound by any online wire transfer request, amendment or cancellation of such wire transfer request issued in Company's name and received by Bank, whether or not authorized, if Bank accepts the wire transfer request in good faith and in compliance with Bank's Security Procedures that have been disclosed to Company and that Company has accepted as commercially reasonable by entering into this Agreement and by

entering into the Business Online Banking Services Agreement. In the event that a wire transfer is unauthorized but effective pursuant to the Security Procedures agreed to in this Agreement, Bank is entitled to enforce or retain payment for the wire transfer from Company unless Company can prove that the wire transfer was not caused, directly or indirectly, by a person: (i) entrusted at any time with duties to act on Company's behalf with respect to such wire transfer or the procedures herein; or (ii) who obtained access to Company's transmitting facilities or who obtained, from a source controlled by Company and without authority of Bank, information facilitating breach of the wire transfer procedures, regardless of how the information was obtained or whether Company was at fault.

## **2. Wire Transfer Processing and Cut-off Times**

Bank may transfer funds through an Intermediary Bank or wire transfer system that is different from that shown in Company's instructions. If Bank receives Company's wire transfer request after Bank's processing cut-off time, or on Saturday, Sunday or a federal holiday, Bank may process it on the next wire transfer business day. A delay may also occur if an Intermediary Bank or the Beneficiary Bank is not accepting wire transfers (e.g., due to a local holiday).

## **3. Cancellation or Amendment of Wire Transfer Request**

Company has a right to cancel or amend its wire transfer request provided that Company's cancellation or amendment is received prior to the time the wire transfer is sent by Bank. Cancelled wire transfer requests may not be subject to redeposit to Company's account on the same day. Delays in wire returns may occur. In addition to the other provisions regarding liability and indemnification in this Agreement, Company agrees to hold us harmless and indemnify us, as further detailed in this Agreement, from all claims and damages, however, if Bank attempts (successfully or otherwise) to comply with Company's cancellation or amendment request.

## **4. Customer's Responsibility to Review Statements and Wire Confirmations**

If a Company's wire transfer is made from an account with us, it will be reflected on the Company's next periodic statement. Company may receive a written notification by mail. However, if Company cannot immediately confirm its wire transfer, Company agrees to notify us immediately if Company notices any discrepancy between its statement and the wire transfer or if Company discovers a problem with your transfer. Company agrees to examine each confirmation or statement upon the earlier of either (i) receipt of confirmation, or (ii) generation of Company's statement. If Company fails to notify Bank of any discrepancy or other problem within ten (10) business days of such review, Bank shall not be liable for any loss or liability in connection with the transfer or transfers reflected on the confirmation or statement. If Company fails to notify Bank of any such discrepancy or objection within 10 business days following receipt of the confirmation advice or account statement, whichever is sooner, Company expressly agrees that Bank shall not be liable for any loss or liability with respect to such discrepancies or objections. Company's failure to notify us of any such discrepancies within 10 business days may also result in Company forfeiting any interest potentially due on the amount of the unauthorized or erroneous wire transfer.

## **5. Online Wire Security Procedures**

Company shall submit wire transfer requests pursuant to the Security Procedures and process outlined in this Agreement. In addition, as part of Bank's Security Procedures, Bank may, but is not required to, request written, signed instructions from Company, which may be delivered in person, by fax or via e-mail to the Bank. When an Authorized Signer or Authorized Administrator submits a wire transfer request, Bank may call the Authorized Signer or Authorized Administrator back at the telephone number established by Company and on file with Bank to verify the wire transfer request. This callback may be recorded, and Bank has the option, but not the obligation, to request verification of wire transfer requests from an individual other than the individual initiating the transfer. Bank may also require that the Authorized Signer or Authorized Administrator who initiates, cancels or amends a wire transfer request be different from the Authorized Signer or Authorized Administrator who receives a callback to confirm the wire transfer request. If Bank does attempt to call an Authorized Signer or Authorized Administrator but are unable to reach such Authorized Signer or Authorized Administrator, Bank may refuse to make the transfer until Bank has received appropriate confirmation from the Authorized Signer or Authorized Administrator. Company agrees in such case that Bank will not be liable to Company or any payee in the event Bank refuses to make the wire transfer. Bank may, in its sole discretion and as part of its Security Procedures, require that Company adopt and implement processes or procedures to provide Bank with additional authentication information in addition to user name and password information, including, but not limited to, use of devices such as out-of-wallet challenge questions, physical or software tokens, or other such additional methods or devices designed to authenticate Company or Company's Authorized Signers or Authorized Administrators ("Additional Authentication Information" or "AAI"). Company and its Authorized Signers and Authorized Administrators are solely responsible for maintaining and safeguarding their user names, passwords and any AAI that Bank may require. If Company becomes aware that any of the user names, passwords or AAI of it or its Authorized Signers is lost, stolen, compromised or is otherwise defective, Company shall contact Bank immediately at **1-800-687-2265**.

## **6. Payment for Services**

Company agrees to pay Bank's applicable fees for the wire transfer services. In addition to paying such fees for the Service as may be imposed from time to time, Company agrees to reimburse Bank for any direct or indirect wire transfer charges or expenses incurred by Bank, including, but not limited to, any access charge from a communications system, transfer commissions or correspondent bank charges.

## **7. Dollar Limitations**

The total dollar amount ("Exposure") of wire transfer requests transmitted by Company to Bank on any one day shall not exceed any limitations set forth by Bank, unless approved in advance by Bank. Company shall not deliver wire transfer requests which call origination of any wire transfer exceeding said limits. If any wire transfer request would exceed said limits, Bank may, but is under no obligation to, reject the wire transfer request. In this event, Bank's sole obligation shall be to notify Company, utilizing any method it chooses.

## **8. Company Representations, Agreements and Indemnity**

With respect to each and every wire transfer request initiated by Company, Company represents and warrants to Bank and agrees that (a) each person shown as the Receiver on a wire transfer request has authorized the wire

transfer request prior to its submission to Bank and such authorization is and shall remain in effect until the Receiver's account is debited or credited, and (b) each wire transfer request transmitted to Bank conforms to Company's obligations under this Agreement, the Rules, and all applicable laws and regulations. Company agrees to be bound by the Rules as in effect from time to time, including without limitation the provision thereof making payment of a wire transfer request by the Receiving Depository Financial Institution ("RDFI") to the Receiver provisional until receipt by the RDFI of Final Settlement for such wire transfer request. Company specifically acknowledges that it has received notice of the Rules 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 Company shall not be deemed to have paid the Receiver the amount of the wire transfer request. Company shall indemnify Bank against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or agreements.

## **9. Indemnification**

This Section shall apply in addition to indemnification provisions found elsewhere in this Agreement. In consideration for Bank's making available to Company the services hereunder, Company agrees to indemnify and hold Bank harmless from and against all damages, costs, and expenses (including reasonable attorney's fees and costs of investigation) arising from or in any manner related to (i) wire transfer requests processed or related actions taken by Bank in accordance with instructions provided by Company, including but not limited to, actions taken by Bank to cancel wire transfer requests; (ii) any decision by Bank not to effect a wire transfer for any specified reason herein; (iii) a breach of Company's representations under this Agreement; or (iv) a circumstance that would relieve Bank of liability to Company pursuant to this Agreement; (v) acts or omissions of Company's agents; (vi) or otherwise, so long as Bank acts in compliance with this Agreement. Company's obligations under this