



TREASURY SERVICES TERMS AND CONDITIONS

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Mutual of Omaha Bank 
TREASURY SERVICES TERMS AND CONDITIONS

Bank offers a variety of treasury management services to its business customers. This Agreement sets forth the terms and conditions applicable to all of the Services offered by Bank. By executing one or more Enrollment Forms requesting one or more Services or by using one or more Services, Customer accepts the terms of this Agreement and acknowledges that this Agreement, each Enrollment Form executed by Customer or its Agent and any Supplemental Documentation govern the Services.

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

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

Sections 1 and 12 of this Agreement apply to all Services. Each of **Sections 2-11** is applicable only to the specific Service described therein. Capitalized terms not defined elsewhere in this Agreement will have the meanings described in **Section 12**.

SECTION 1 - GENERAL TERMS

1.1 Enrollment and Modification

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

B. Modifications to this Agreement: Bank may modify the terms and conditions contained in this Agreement, as applicable to all Services, or may modify the terms and conditions for any particular Service, from time to time by doing any of the following (i) posting the revisions on Bank's website, (ii) by Electronic Communication, or (iii) delivering notice of

the modification to Customer in accordance with Section 1.4.A. The modification will be deemed to be accepted and agreed to by Customer when it uses the Services after Bank has provided notice of the modification pursuant to this Section.

C. Termination: Bank may suspend or terminate any Service provided to Customer for cause without notice if Customer or Customer's Agent (a) does not comply with this Agreement or any other agreement contained in the Account Disclosures or Supplemental Documentation, (b) becomes insolvent or files, or has filed against it, any bankruptcy or other insolvency, reorganization, liquidation or dissolution proceeding of any kind, (c) has a material adverse change occur in its business or financial condition, or (d) fails to provide financial information reasonably requested by Bank; additionally, Bank may suspend or terminate this Agreement or any Service if Bank has reason to believe that Customer or Customer's Agent has engaged in fraudulent or illegal activity. Bank may suspend or terminate a particular Service for cause without notice as more fully set forth in the section of this Agreement applicable to such Service. In addition, Bank may terminate this Agreement for convenience and cease providing any Services at any time, in Bank's discretion, by providing Customer with thirty (30) days' prior written notice. Customer may terminate any Service for convenience by providing at least thirty (30) days prior written notice to Bank. The parties agree that, after any termination, this Agreement and the relevant Enrollment Form(s) will continue to apply to all transactions which were initiated prior to termination and that Sections 1.2, 1.3, 1.6, 2.1.B.II, 2.1.H, 2.1.I.IV, 2.3.E, 3.7.B, 4.6.B, 5.3, 5.8, and 5.9.D.VI and any other terms which, by their nature should survive termination (including but not limited to indemnification and limitation of liability), will survive termination, as applicable.

1.2 Payment Terms

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

A. all reasonable attorneys' fees and other costs and expenses Bank may incur in collecting amounts Customer owes Bank in connection with any Service,

B. the amount of any taxes levied or based on the Service Fees, if any, including without limitation, federal, state or local privilege, excise or sales taxes; and

- C. any third-party expenses incurred on behalf of Customer.

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

1.3 Confidentiality

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

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

1.4 Communication Terms

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

B. Electronic Communication: If Customer provides an e-mail address for itself or its Agent(s) listed on any Enrollment Form, Customer consents and agrees to receive information

and notices from Bank via Electronic Communication. Customer understands that Electronic Communications are inherently insecure due to the possibility of error, delay or observation or receipt by an unauthorized person. Bank may rely in good faith on Customer's Instructions received via e-mail or facsimile that Bank reasonably believes to have been initiated by Customer.

1.5 Information Exchange Services

A. Information Exchange: In the event that Customer obtains electronic access to certain Bank products, services or information as authorized by Bank from time to time in a manner other than through the Internet Cash Management Service described in **Section 4**, this Section governs such access.

B. Establishment and Acceptance of Security Procedures: Customer acknowledges and agrees to the Security Procedures identified on the Enrollment Form and agrees that such Security Procedures are commercially reasonable for Customer. Customer shall be bound by any Instruction, whether or not actually authorized, if issued in its name or by its Agent and accepted by Bank in accordance with the Security Procedures.

C. Information Exchange Security Administrator: The Security Administrator designated by Customer is responsible for establishing access to the Information Exchange Service for additional Users. Customer is responsible for maintaining access to the Information Exchange Service in a secure manner, including without limitation, notifying Bank to remove access to the Information Exchange Service upon the termination of employment of any User or termination of authority of any Agent.

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

E. Related Services: Customer or its Agent is responsible for providing authorization to Bank to grant access to designated officers and employees to the "Association Customer Only" section of Bank's website. The "Association Customer Only" website access may be limited by Bank to certain Accounts and Customers, which limits may be amended by Bank from time to time.

1.6 General Terms

A. Security Procedures: Bank and Customer shall agree to one or more Security Procedures to be used in connection with certain Services. Customer agrees that such Security Procedures are commercially reasonable for Customer, and Customer shall be bound by any Instructions, Entries, Wire Transfer Request, fund transfer, transaction, service change order or any other communication that is acted upon by Bank in accordance with the Security Procedures. Customer acknowledges and agrees that the Security Procedures are not for the purpose of detecting errors in the transmission or content of any information, Wire Transfer Request,

service change order or Instruction transmitted by Customer. If Customer selects certain Security Procedures to use in connection with a Service and the selected Security Procedures provide less protection than other Security Procedures offered by Bank, the Security Procedures chosen by Customer shall be deemed commercially reasonable. Bank reserves the right to audit Customer's compliance with the Security Procedures and to mandate controls or suspend Services until Customer complies with such Security Procedures. Bank may, in its sole discretion, require additional or new Security Procedures and/or change any Security Procedures from time to time. Customer's continued use of a Service after Bank has required new or additional Security Procedures or changed the Security Procedures shall constitute Customer's agreement that such Security Procedures are commercially reasonable for Customer.

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

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

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

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

F. Customer Responsibilities: Customer is solely responsible for **(i)** use of the Services in accordance with the terms of this Agreement, and implementing internal policies and procedures to safeguard confidential information, security codes and User access to the Services; **(ii)** any activity of any kind generated by Customer's computer systems or networks, including fraudulent activity or corruption of Customer's system or corruption or infection of Bank's computer systems or networks; and **(iii)** the provision, repair and maintenance of any equipment used by Customer to access the Services; **(iv)** the protection of any equipment and software used by Customer to access any Service from intrusion or attack through use of commercially reasonable anti-virus and anti-spy programs and/or software; and **(v)** the actions or inaction of its designated Agent(s). Customer shall immediately notify Bank if it believes that the security of any password, identification number or any other means of access to any Service has been compromised or any fraudulent activity described in this **Section 1.6.F (ii)** has occurred.

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

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

I. Indemnification of Bank; Right of Setoff: Customer, including without limitation a Customer acting in its capacity as an Agent, shall indemnify, reimburse or otherwise hold harmless Bank, its affiliated companies and its officers, employees and agents for any and all costs, losses, claims, taxes, expenses, liabilities and damages incurred or sustained by Bank in the performance of Services for Customer (including without limitation Services provided for a principal of a Customer acting in its capacity as an Agent), except to the extent caused solely by the gross negligence or intentional misconduct of Bank. Any claim for indemnification will be promptly submitted by Bank to Customer in writing along with a summary of the facts constituting the basis of such claim. Upon notice to Customer specifying in reasonable detail the basis for such claim, Bank may set off any amount to which it may be entitled under this **Section**

1.6.I or otherwise relating to any of the Services or other terms or conditions of this Agreement against any amounts or obligations owed to Customer, whether under this Agreement or otherwise relating to the Services or pursuant to another agreement between Customer and Bank. The exercise of this right by Bank, whether or not ultimately determined to be justified, will not constitute a breach, event of default under this Agreement or under any other agreement between Bank and Customer. Neither the exercise of nor the failure to exercise any of this right will constitute an election of remedies or limit Bank or any of its affiliated companies and/or officers, employees and agents in any manner in the enforcement of any other remedies that may be available to them hereunder.

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

K. Disclaimer of Bank Warranties, Limitations on Liability: BANK HEREBY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, RELATED TO THE SERVICES, INCLUDING ALL WARRANTIES AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR SUITABILITY OF ANY SERVICES FOR CUSTOMER, OR AS TO ANY EQUIPMENT OR SOFTWARE PROVIDED BY BANK OR THE COMPATIBILITY OF BANK'S SOFTWARE, EQUIPMENT OR COMMUNICATION INTERFACES WITH CUSTOMER. Customer acknowledges that the Services are provided by Bank without representation or any of the warranties discussed above and that Bank is not responsible for determining the accuracy, timeliness or completeness of information provided to Bank by Customer or any third party. **IN NO EVENT WILL BANK BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS OR THIRD-PARTY CLAIMS OR ANY CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS) FROM ANY CAUSE WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATING TO, CONNECTED WITH OR PERTAINING TO EITHER THIS AGREEMENT OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY SERVICES HEREUNDER.**

These limitations will apply whether or not the likelihood of such losses or damages was known or should have been known by Bank, regardless of the legal or equitable theory of liability advanced by Customer. Customer's exclusive remedy for any cause whatsoever and regardless of the form of action (whether in contract or in tort, including negligence) will be limited to the actual, proven damages of Customer that are the immediate and direct result of an action or failure to act by Bank constituting gross negligence or willful misconduct. Bank's liability shall in no event exceed an amount equal to the fees paid by Customer for the Services during the three month period immediately preceding the claim, except to the extent such limitation is expressly prohibited by Applicable Law.

L. Compliance with Law: Customer will (and will ensure its Agents will) comply with all Applicable Laws in connection with the Services, including without limitation, OFAC-enforced prohibitions. Customer shall indemnify and hold Bank harmless for any and all fines and assessments imposed on Bank as a result of any alleged violations of Applicable Laws.

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

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

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

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

ability to subsequently fully exercise the right or power or to exercise any other right or power under this Agreement. The rights and remedies set forth in this Agreement are cumulative and not exclusive of any other rights or remedies available to Bank.

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

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

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

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

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

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

SECTION 2 - AUTOMATED CLEARING HOUSE (ACH) SERVICE

2.1 ACH Origination Service

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

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

B. Security Procedures:

All ACH Entries will be transmitted by Customer via a secure file delivery channel in accordance with the Security Procedures. Customer acknowledges receipt of the Security Procedures and agrees that the Security Procedures apply to the ACH Service and are commercially reasonable procedures for Customer. Customer is strictly responsible for establishing and maintaining security measures and complying with the Security Procedures. Customer agrees to take reasonable steps to maintain the confidentiality of the Security Procedures and any passwords, unique identifiers, codes, security devices, and any related information provided by Bank or established by Customer in connection with the Security Procedures. Customer will immediately notify Bank if it suspects or knows that any Security Procedures or any passwords, unique identifiers, codes, security devices, or any related information have been accessed by or provided to an unauthorized person. Customer will be responsible for unauthorized transfers made in good faith by Bank until Bank has been notified of the unauthorized access and has had a reasonable opportunity to act upon such notice.

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

If any Entry (or request with respect to an Entry) received by Bank was transmitted or authorized by Customer or its Agent, Customer shall pay Bank the amount of the Entry, regardless of whether Bank complied with the Security Procedures with respect to that Entry and regardless of

whether such Entry was erroneous or contained an error that would have been detected if Bank had complied with the Security Procedures.

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

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

D. Rejected and Returned Entries: Bank will have the right to reject any Entry that does not comply with the requirements of this Agreement or for any reason permitted under the Rules. Bank will also have the right to reject any Entry if Customer has failed to comply with the Account balance maintenance obligations under **Section 2.1.E**, has exceeded the Exposure Limits (described in **Section 2.1.H**), has failed to maintain reserve balances as provided in **Section 2.1.H**, of this Agreement, has failed to comply with the Security Procedures, or has failed to meet any obligation to Bank, including payment obligations, pursuant to this Agreement or any other obligation of Customer to Bank. Bank in its discretion may reject any Entry which contains an effective Entry date more than five (5) days after the Business Day such Entry is received by Bank or longer in Bank's discretion. Bank will notify Customer of such rejection no later than the Business Day such Entry otherwise would have been transmitted by Bank or in the case of an "on-us" Entry, its effective date, as long as the effective date is after the Business Day the file was received. Notices of rejection are effective when given. Bank shall have no liability to Customer for a rejection of any Entry or the fact that notice is not given at an earlier time than provided in this section. Except as required by the Rules, Bank will have no obligation to retransmit a returned Entry. Bank will have no liability to Customer for any rejection or return of an Entry or the fact that notice is not given at an earlier time than that provided for in the Rules.

E. Payment With Respect To Entries:

I. Payment Timing: Bank will generally debit Customer's Account for credit Entries (including debit Reversals) on the settlement date, unless Customer is prefunding its Entries. Prefunding means that Customer would pay for all credit Entries by such time before the settlement date, as Bank may specify. At its sole discretion, Bank may at any time without notice require payment before

processing Customer's Entries. Even if Bank has done so in the past, Bank is not obligated to process any Entries without having first been paid by Customer, but, if it does, the amount is immediately due and payable without notice or demand. Bank will generally credit Customer's Account for debit Entries (including credit Reversals) on the settlement date. All such credits are provisional and Bank may charge Customer's Account, as well as any other account of Customer with Bank, for the amount of a returned or rejected electronic debit Entry.

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

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

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

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

III. Bank will inform Customer via Electronic Communication or other communication acceptable to Bank of all notifications of change ("NOC") received no later than two (2) Business Days after the receipt of the Entries. Customer agrees to make the changes submitted within six (6) Business Days of the settlement date of the original Entry or before the next "live" Entry, whichever is later. If an NOC is incorrect, Customer will generate a refused notification of change and deliver it to Bank.

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

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

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

I. Customer Representations, Warranties and Agreements:

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

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

(A) Customer is bound by and has complied with the Rules, including that payment of an Entry by the Receiving Depository Bank to the

Receiver is provisional until receipt by the Receiving Depository Financial Institution of final settlement for such Entry; if such settlement is not received, the Receiving Depository Financial Institution shall be entitled to a refund from the Receiver of the amount credited and Customer shall not be deemed to have paid the Receiver.

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

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

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

J. Discrepancies: Information regarding Entries is made available to Customer on its Account summaries and/or statements provided to Customer by Bank in accordance with Customer's Account agreement(s). Customer agrees to notify Bank promptly of any discrepancy between Customer's records and the information shown on its Account summary. If Customer fails to notify Bank of a discrepancy within thirty (30) days after information concerning an

Entry first became available to Customer, Bank will not be liable for any losses or costs resulting from Customer's failure to give notice and Customer will be precluded from asserting such discrepancy against Bank.

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

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

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

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

O. Third Party Service Providers: If Customer initiates Entries through the use of a third party service provider, the third party service provider shall not be deemed to be the agent or service provider to Bank, but shall serve in such capacity for Customer. Customer shall be deemed to have authorized Bank to follow Instructions provided by the third party service provider to the same extent and pursuant to the same terms that would apply if the Instructions were provided directly by Customer. Customer shall be liable for compliance by the third party service provider with this Agreement and the Rules. Bank shall have no responsibility or liability for the acts or omissions of the third party service provider, and Customer shall indemnify and hold Bank harmless from any losses caused by the acts or omissions of the third party service provider.

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

I. Representations, Warranties, and Covenants. Customer represents, warrants and covenants to Bank as follows with respect to all TEL Entries, making such representations, warranties and covenants as of the date of this Agreement and each time it initiates a TEL Entry:

- (A) As of the time that each telephone authorization is given, Customer has an existing relationship with the consumer or the telephone authorization was given in a telephone call initiated by the consumer to Customer. For purposes of this warranty, “existing relationship” means that there is a written agreement in place between Customer and the consumer for the provision of goods or services or the consumer has purchased goods or services from Customer within the past two (2) years.
- (B) Customer has obtained the consumer’s unambiguous oral authorization to debit the consumer/Receiver’s account in the amount of the TEL Entry.
- (C) Customer either recorded the consumer’s oral authorization or provided written notice to the consumer in advance of the settlement date of the TEL Entry that confirms the oral authorization. Customer will retain the recorded authorization or written notice for a period of no less than two (2) years (or such longer period required by the Rules), and will provide a copy to Bank upon request.
- (D) At a minimum, Customer has disclosed the following specific information to the consumer during the telephone call in which the TEL Entry is authorized: (A) the date on or after which the consumer’s account will be debited; (B) the amount of the Debit Entry to the consumer’s account; (C) a telephone number that is available to the consumer and answered during normal business hours; (D) Customer’s name and confirmation of the consumer’s name; (E) the date of the consumer’s oral authorization; and (F) a statement that the authorization will be used to originate a debit Entry to the consumer/Receiver’s account.
- (E) Customer has received all necessary authorizations, consistent with the requirements set forth above for each TEL Entry submitted in accordance with the Rules.

(F) Customer has used commercially reasonable procedures to verify the identity of the consumer, including the consumer's name, address, and telephone number.

II. Customer has used commercially reasonable procedures to verify that routing numbers are valid.

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

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

I. **Representations, Warranties and Covenants.** Customer represents, warrants and covenants to Bank as follows with respect to all RCK Entries, making such representations, warranties and covenants as of the date of this Agreement and each time it initiates a RCK Entry:

(A) Each re-presented Check is eligible under the Rules to be collected via an RCK Entry and Customer has provided clear and conspicuous notice of its electronic check representment policy in advance of receiving the Check from its customer or other third party.

(B) Customer has no knowledge of the insolvency of the maker of the Check or any other person presenting the Check.

(C) All signatures on the returned item are authentic and authorized, and the returned item is without alteration, is not subject to any claims or defenses will not be presented to the paying bank, and any restrictive endorsement is void or ineffective.

(D) The RCK Entry accurately reflects the Check and any information encoded in magnetic ink is correct.

(E) Immediately upon request of Bank, Customer will provide Bank with a copy of the returned Check.

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

I. **Compliance with Law:** Each IAT Entry will comply with all provisions of this Agreement and applicable Rules.

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

- (A) Customer is in compliance with U.S. law, including, but not limited to, Customer's obligations under programs administered by OFAC and FinCEN.
- (B) The origination of an outbound IAT Entry is in compliance with the laws and payment system rules of the receiving country.
- (C) In the case of an IAT Entry to a non-consumer account, Customer has an agreement with the Receiver whereby the Receiver has agreed to be bound by the Rules.

III. Correspondent Banks: IAT Entries may be processed by Bank through a correspondent bank. Bank assumes no liability for the actions or inaction of such correspondent banks, including but not limited to delays, non-delivery, late returns or other events resulting from processing delays, or for other causes beyond Bank's control. Cancellation or amendment of an IAT Entry involving non-US dollar currency is subject to any rate exchange loss as determined by Bank.

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

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

I. Capability: Bank shall only process WEB Entries from accounts drawn on United States financial institutions that participate in the ACH Network. Bank may, in its sole discretion, terminate Customer's ability to originate WEB Entries at any time without prior notice to Customer.

II. Additional Representations and Warranties: Without limiting Customer's representations and warranties set forth elsewhere in this Agreement, for each WEB Entry, Customer makes the following additional representations and warranties:

- (A) Customer has employed a commercially reasonable fraudulent transaction detection system to screen each WEB Entry.
- (B) Customer has employed commercially reasonable methods of authentication to verify the identity of the Receiver.

- (C) Customer has taken commercially reasonable steps to verify that routing numbers are valid.
- (D) Customer has established a secure Internet session prior to the key entry by the Receiver of any banking information and through the transmission of the data to Customer.
- (E) Customer has and will conduct an annual audit to ensure that the financial information that Customer obtains from Receivers is protected by security practices that include adequate levels of: (1) physical security to protect against theft, tampering, or damage, (2) personnel and access controls to protect against unauthorized access and use, and (3) network security to ensure secure capture, storage and distribution of financial information. Customer will provide evidence of Customer's security audits to Bank upon request.

III. Chargebacks and Fees: Bank shall have the right to charge back to Customer's Account(s) the full amount of any WEB Entry as set forth in the Rules. Bank will assess a fee to the Customer's Account, or, at Bank's discretion, to the account holder(s) for each return related to an eCheck.

IV. Special Termination Provision Regarding Charge Backs: Upon the termination of Customer's Account, Bank may set off or otherwise hold Customer's funds in an amount sufficient to cover any possible returns of WEB Entries for such period that is reasonably determined by Bank.

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

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

I. Without limiting Customer's representations and warranties set forth elsewhere in this Agreement, for each POP Entry, Customer makes the following additional representations and warranties:

- (A) Customer has posted a notice in a prominent and conspicuous location at the point-of-purchase and provided Receiver with a written notice of same: (i) that when a Check is provided as payment, it is authorization for payment as a Check transaction or for a one-time ACH debit to the Receiver's account; and (ii) that funds may be withdrawn from the Receiver's account the same day payment is made.

- (B) Each Check is eligible under Rules to be collected via a POP Entry and the Receiver has not opted out of Check conversion.
- (C) Customer has returned the voided source document to the Receiver after capturing the necessary Check information and the source document was not previously negotiated, voided, or provided by the Receiver for use in any prior POP Entry.
- (D) Customer has obtained the Receiver's authorization and provided a copy of same to Receiver, which: (i) is in writing and signed or similarly authenticated by the Receiver; (ii) is readily identifiable as an ACH debit authorization; (iii) clearly and conspicuously states its terms; and (iv) states that the Check will not be processed.

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

U. ARC and BOC Entries: If Customer elects to initiate ARC and BOC Entries on its Enrollment Form, and Bank agrees to permit Customer to originate ARC and BOC Entries on applicable accounts, without limiting Customer's representations and warranties set forth elsewhere in this Agreement, Customer makes the following additional representations and warranties for any ARC or BOC Entry:

I. Prior to the receipt of each check which is converted into an ARC or BOC Entry, Customer has provided clear and conspicuous notice to the consumer: (i) that receipt of the check is authorization for a payment as a check transaction or for a one-time ACH debit to the consumer's account; (ii) that funds may be withdrawn from the consumer's account the same day payment is made; (iii) that the consumer will not receive the check back from the consumer's financial institution; and (iv) with respect to BOC Entries, of Customer's telephone number.

II. Each check is eligible for collection via an ARC or BOC Entry as a source document under the Rules.

III. The amount of the Entry, the routing number, the account number, and the check serial numbers are accurate and in accordance with the source document.

IV. The source document to which the ARC or BOC Entry relates will not be presented for payment, unless the ARC Entry is returned.

V. Customer has established policies and procedures to destroy the source document as soon as is reasonable and shall use commercially reasonable methods to securely store the source document until such destruction.

VI. Customer shall use commercially reasonable methods to securely store all banking information relating to the ARC or BOC Entry.

VII. Customer shall retain a reproducible and legible image, microfilm or copy of the front of the source document for two years from the settlement date of each ARC or BOC Entry, and shall immediately provide same to Bank upon request.

VIII. For BOC Entries, Customer has employed commercially reasonable procedures to verify the identity of each consumer receiving of BOC Entries, and Customer maintains a working telephone number, answered during Customer's normal business hours, for consumers to make inquiries regarding BOC transactions.

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

2.2 ACH Block Service

This **Section 2.2** sets forth the terms and conditions relating to the Bank's ACH Block Service (the "ACH Block Service"), and is applicable only to Customers who execute an Enrollment Form requesting ACH Block Service (the "ACH Block Service Enrollment Form"). The ACH Block Service as directed by Customer shall allow Customer to give Bank Instructions to restrict the posting of all Debits, all Credits, or all ACH Entries to the Customer's Account as designated by Customer. Further, upon Customer Instruction to Bank, a Customer may authorize certain ACH debit and/or credits to post over the block and Bank will accept such Instruction. In addition, Bank will return, unprocessed, ACH transactions presented against the Customer's Account as instructed on the Enrollment Form. The Bank will not be responsible for any claims of third parties as a result of returning or paying items based upon Customer Instructions.

2.3 Additional Provisions Regarding Third-Party Senders

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

B. Third-Party Sender warrants to Bank that (i) each Originator has agreed to assume the responsibilities of an Originator under the Rules, (ii) Third-Party Sender has executed an ACH agreement with each Originator, and the agreement requires the Originator to comply with the Rules.

C. Third-Party Sender will promptly provide the Bank on demand with any information Bank reasonably deems necessary in order to identify each Originator for which the Third-Party Sender transmits Entries, including without limitation copies of the agreement between Third-Party Sender and the Originators, and shall provide an initial list of Originators upon commencement of this Agreement. Third-Party Sender shall have the ongoing obligation to notify Bank of any new Originators and obtain approval from Bank prior to initiating any Entries on behalf of such Originator.

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

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

SECTION 3 - WIRE TRANSFER SERVICE

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

3.1 Access

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

3.2 Customer Internal Approval Process

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

3.3 Execution of Wire Transfer Requests

Bank will execute Wire Transfer Requests within a reasonable time upon receipt and may process Wire Transfer Requests in any order, as determined solely in the discretion of Bank. Customer will be unable to recall, alter, or otherwise make changes to its Wire Transfer Request

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

3.4 Rejection of Wire Transfer Requests

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

3.5 Limits

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

3.6 Routing/Time Deadlines

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

3.7 Incoming Wire Transfers

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

3.8 Standing Wire Transfer Requests

If permitted by Bank, Customer may establish a standing wire transfer request pursuant to which Customer may establish a specific beneficiary and related information for the purpose of

automatically sending repetitive Wire Transfers (each a “Standing Wire Transfer Request”). Customer shall provide Bank with all information required by Bank to establish the Standing Wire Transfer Request, including without limitation, the beneficiary, beneficiary’s financial institution, the accounts to be debited and credited, the dollar amount to be transferred, the frequency of the order and the date or time period in which the Wire Transfers are to be executed. Customer may terminate a Standing Wire Transfer Request by providing Bank with written notice, or through ICM, provided that Bank shall have a reasonable time to act upon such notice.

3.9 International Wire Transfers

Bank does not directly execute Wire Transfers across country borders, but typically executes such Wire Transfers through a correspondent bank. If Customer submits an international Wire Transfer Request in U.S. Dollars, the correspondent bank or Bank may exchange the funds for the appropriate currency at a current rate of exchange. Customer will be responsible for any applicable currency conversion costs incurred by the correspondent bank or Bank, if any and for any fees, commissions or charges imposed by the correspondent bank. Bank makes no representations or warranties regarding any conversion rate and will not be liable for any currency risk such as sudden change in value incurred in connection with sending funds to the foreign financial institution, or any country risk. Payment to a foreign country is subject to the laws of such country.

SECTION 4 - INTERNET CASH MANAGEMENT SERVICE

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

4.1 Internet Cash Management Access

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

B. Access and Equipment: Bank will provide Customer with access to the ICM Service for the Accounts as authorized by Customer or its Agent. Bank assumes no liability and makes no warranty as to the hours of access and/or the performance of the ICM Service. To utilize the ICM Service, Customer will provide, at its own expense, connection via an Internet service provider, computer hardware, operating systems and software that meet the minimum requirements set by Bank. **Customer acknowledges that it may have multiple Accounts for which it authorizes access to the ICM Service, which may or may not have the same tax**

identification number or social security number. Customer further acknowledges that Customer alone is responsible for monitoring access to such Accounts by its officers, employees, and Agents and that Bank shall have no liability for any Customer employee, Company Administrator, Agent, Agent employee or User gaining unauthorized access to any Accounts or performing unauthorized transfers between any Accounts, or any intentional or fraudulent misconduct.

C. Security; Company Administrator:

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

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

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

D. Stop Payment: Customer authorizes Bank to accept stop payment orders from Customer through the ICM Service, and the transmitted stop payment order will be deemed the equivalent of a written stop payment order in accordance with the Account Disclosures.

4.2 Rejections and Refusals to Execute Instructions

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

4.3 Balance and Transaction Reporting

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

4.4 Account Reconciliation

If Customer requests Account Reconciliation Service, as described in this Section 4.4, on the Enrollment Form, Bank will provide Customer with the ability to reconcile paid items and issued items through Customer's ICM Service. Customer's use of the Account Reconciliation Services does not affect Customer's obligations to report unauthorized signatures, alterations, endorsements or any other unauthorized transaction or discrepancy.

4.5 Account Transfers

At Customer's request through the ICM Service, Bank will transfer funds from a designated Account to another Account on Customer's profile.

4.6 Positive Pay

A. The Service: The Positive Pay Service, described in this Section 4.6, permits Customer to identify exception items and instruct Bank whether to pay or return the items. Bank

strongly advises Customer to use such services as the Positive Pay Service. If Customer fails to use the Positive Pay Service, it may be liable on certain charges and losses that would have otherwise been prevented by proper use of Positive Pay Service. Customer must provide information to Bank on a timely basis via Bank's ICM Service concerning Checks issued, as described in Supplemental Documentation. Each Business Day, Bank will provide Customer a report concerning the Checks presented for payment on the prior Business Day that have been identified as exceptions. Exceptions are determined by comparing Checks presented with the information Customer has provided concerning issued Checks. Customer must notify Bank prior to a cutoff time established by Bank whether Bank should pay or return the exception items. If Customer does not notify Bank prior to the cutoff time, Bank will pay or return the exception items according to the default decision selected by Customer and identified on the Enrollment Form.

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

4.7 Business Bill Pay

A. The Service: The Business Bill Pay Service, described in this **Section 4.7**, permits Customer to designate payees, schedule payments, and view and manage payments. By using the Business Bill Pay Service, Customer authorizes Bank to follow payment instructions submitted to Bank. Bank or its Vendor may make payments to payees by ACH, Check or other method. Customer authorizes Bank or its Vendor to access Customer's Account via ACH in order to debit funds to make payments pursuant to the Business Bill Pay Service. In scheduling a payment, Customer should allow sufficient time for the payment to be processed. Customer is liable for any payment scheduling through the Business Bill Pay Service, whether or not authorized by Customer. Bank is entitled to rely on the information Customer provides with respect to any payment made pursuant to the Business Bill Pay Service and Bank will not be responsible for the Payee's receipt of the transfer, or the proper application of the payment on behalf of Customer. Customer is solely responsible for complying with any payee's requirements for the proper crediting of payments. Customer may not schedule any payment if there are insufficient collected funds in the Account for such payment at the time scheduled, and a fee may be imposed if Customer does so. No payment may be stopped after it has been scheduled; however, upon request of Customer, Bank will attempt to stop a scheduled payment but will have no liability if it is unable to do so. Any attempt to stop a scheduled payment will be subject to applicable fees.

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

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

4.8 Lockbox Image Retrieval

A. The Lockbox Image Retrieval Service: The Lockbox Image Retrieval Service described in this **Section 4.8**, is available to Customer or its Agent who signs a Lockbox Image Retrieval Enrollment Form. With this Service, Customer may conduct a search and review images online for Checks written and deposits received, including where applicable deposited items such as payment or remittance coupons related to the Accounts. The Lockbox Image Retrieval Service may be limited to certain Accounts and Customers.

SECTION 5 - REMOTE DEPOSIT CAPTURE SERVICE

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

5.1 Description of the Service:

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

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

5.2 Capture and Transmission of Data

A. Information to be Captured: For each Truncated Check that Customer transmits to Bank, Customer shall accurately capture and transmit all data contained on the Check necessary to create a Substitute Check, including without limitation, **(i)** an accurate and readable image of the front and back of the original Check, **(ii)** all necessary information from the MICR

line of the original Check that would permit a Substitute Check to be processed on standard Check-sorting equipment; and (iii) all endorsements applied by parties that previously handled the Check in any forward collection or return.

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

5.3 Acceptable Equipment and Licensed Software

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

5.4 Provisional Settlement

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

5.5 Representations and Warranties

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

5.6 Compliance with Applicable Law

Customer shall comply with all Applicable Laws, including, at Customer's own cost and expense, all Applicable Laws of, or relating to, any foreign country in which Customer uses the Licensed Software or Equipment, or processes Items.

5.7 Customer's Covenants

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

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

5.8 Indemnification

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

A. in connection with or related to this Section 5, including, but not limited to all costs, losses, claims, taxes, expenses, liabilities, or damages (including reasonable attorneys' fees) resulting directly or indirectly from (i) transmittal or payment of any Truncated Check,

without regard to whether Customer actually authorized such transmittal, (ii) payment of a fraudulent Check by Bank that would have been detected on the original Check through the Check's security features but otherwise could not be detected because the original Check was transmitted to Bank via a Truncated Check, and (iii) a breach by Bank of its representations and warranties under Applicable Law that is caused, directly or indirectly, by a Truncated Check that would not have otherwise been breached had Customer transmitted the original Check to Bank; and

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

5.9 Equipment and Licensed Software Obtained From Bank

The provisions of this Section 5.9 apply to Equipment and Licensed Software obtained from Bank.

A. Customer's Responsibility for Costs and Risk: Customer shall be responsible for costs incurred in connection with the use, operation or possession of any Equipment (including but not limited to operating supplies, accessories, or other consumables like ribbon, ink, and other supplies) except as otherwise set forth in this **Section 5**. After delivery, all risk of loss associated with the Product, including damage, theft or destruction, and including any claim of injury caused by the Equipment, will be borne by Customer except for normal wear and tear in the ordinary course of use of the Equipment. Bank may, at its option, provide Product Support Services through a third party. Any Product Support Services are described in the Supplemental Documentation and are identified in the Remote Deposit Capture Service Enrollment Form. In its discretion, Bank may **(i)** make changes to the Product; **(ii)** provide service options, attachments or other Equipment or software not part of the Product; or **(iii)** provide emergency or other services not specifically provided for in this Agreement or in Product Support Services.

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

C. Access to Licensed Software: Bank or its Vendor will make Licensed Software available for a reasonable fee to Customer; and in Bank's or Vendor's sole discretion either through the Internet for download or by CD-ROM, or by other electronic means in Bank's or Vendor's sole discretion. If Licensed Software is made available to Customer through the Internet, Bank or its Vendor agrees to use commercially reasonable efforts to maintain the availability of access to the Licensed Software through the Internet, however, Customer acknowledges that access to the Licensed Software or the ability to access the RDCS may from time-to-time be unavailable to Customer, whether because of technical failures or interruptions, intentional downtime for service or changes to the Licensed Software, or otherwise. Customer

agrees that any modification of the means of access to the Licensed Software, and any reasonable interruption or unavailability of access to the Licensed Software shall not constitute a default by Bank under this Agreement or give rise to any liability on the part of Bank or its Vendor.

D. Sublicense of the Licensed Software:

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

II. Pursuant to the Master License, Bank grants to Customer a non-exclusive, non-transferable limited right and sublicense to **(a)** use the Licensed Software solely for Item processing in accordance with the Documentation and solely on Equipment provided by Bank or its Vendor; **(b)** make a reasonable number of copies of and use the Documentation in support of Customer's authorized use of the Licensed Software; and **(c)** copy the Licensed Software for archival or backup purposes, provided that all titles and trademark, copyright and restricted rights notices reproduced on such copies.

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

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

V. In the event of an Infringement Claim, Bank or its Vendor may, but without obligation, at any time in connection with such Infringement Claim, do

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

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

SECTION 6 - LOCKBOX SERVICE

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

6.1 Lockbox Service

Customer or its Agent shall instruct its customers to mail payments to the lockbox address, which shall be a post office box established at a U.S. mail delivery location determined by Bank, and may be utilized by multiple customers of Bank. Customer may request a separate post office box, subject to Bank's approval to provide this service, at a location agreeable to Bank provided that all fees for such separate post office box may be borne by Customer. For purposes of this

Section 6, all Checks submitted to the lockbox must be in a form acceptable to Bank. Bank will not process any payment that includes cash, stock certificates or other items other than Checks. Bank will process the Checks in accordance with this Agreement and applicable Supplemental Documentation. Only Bank and its agents will have exclusive and unlimited access to the mail sent to the lockbox address.

6.2 Acceptable Payees

The names of Acceptable Payees will be specified to Bank by Customer. Bank will only process Checks that may be processed in accordance with Bank's standard practices. Customer warrants that each Acceptable Payee is Customer, its Agent or one of its affiliates. If Acceptable Payee is an affiliate, Customer also warrants that such Acceptable Payee has authorized Checks payable to it to be credited to the Designated Account. Bank may require written authorization from any such affiliate. Bank may treat as an Acceptable Payee any variation of any Acceptable Payee's name that Bank deems to be reasonable. Customer shall be responsible for updating Acceptable Payees and notifying Bank of any discrepancies.

6.3 Processing Checks

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

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

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

D. Stop File Processing: If Customer requests the Stop File Processing option on the Enrollment Form, Bank will use its commercially reasonable efforts to not process any Check received from payors on Customer's active stop list, as provided to Bank from time to time. In such cases, Customer acknowledges that Bank has adopted procedures designed to detect Checks

drawn by such makers; however, Bank will not be liable to Customer for any losses Customer may suffer if Bank fails to detect such Checks.

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

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

G. Correspondence: The Bank will attempt to deliver any correspondence received with a Check by Bank to Customer or Customer’s Agent, if any; provided, however, Bank shall have no liability if such correspondence is not so delivered.

6.4 Information Transmittal

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

6.5 Processing of Merchant Bank Card Payments

Bank may limit this Service to certain Accounts and Customers in its sole discretion.

A. Capability: Bank agrees to provide Customer with the capability to process credit card and debit card payments by mail, phone, or electronic commerce. Bank shall only process card payments from cards issued by United States issuers. Bank may refuse to process card payments from certain credit and debit cards.

B. Charge Backs: Bank shall have the right to charge back to Customer’s Account(s) the full amount of any card payment for so long as the card holder making the card payment has the right to charge back the card payment for any reason authorized by Applicable Law, including but not limited to, the occurrence of any of the following:

I. The card holder disputes the execution of the card payment, the sale, delivery, quality or performance of the payment made, or alleges that a credit adjustment was requested and refused or that a credit adjustment was issued by Bank but not posted to the card holder’s account;

II. Bank reasonably determines that Customer or the card holder has violated any term, condition, covenant, warranty or other provision of the Agreement in connection with a card payment; or

III. Bank reasonably determines that the card payment is fraudulent or that the transaction is not a *bona fide* transaction in the Customer’s or the card holder’s

ordinary course of business, or is subject to any claim of illegality, cancellation, rescission, avoidance, or offset for any reason whatsoever, including, without limitation, negligence, fraud or dishonesty on the part of the Customer or the cardholder or their Agents or employees.

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

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

SECTION 7 - INTERBANK DEPOSIT SERVICE

This **Section 7** sets forth the terms and conditions relating to Interbank Deposit Service and is applicable only to Customers who execute an Interbank Deposit Service Enrollment Form requesting Interbank Deposit Service. The Interbank Deposit Service is provided to Customers located outside of Bank's local service area to provide a convenient location for deposits.

7.1 Interbank Deposit Service

The Interbank Deposit Service provides Customer the ability to make Interbank Deposits into a Deposit Account maintained by Bank at an Interbank Deposit Branch for Customer convenience. The Deposit Account is owned by Bank and Customer is authorized to access the Deposit Account only for the purpose of making deposits. Bank will transfer Interbank Deposits from the Deposit Account to Customer's Designated Account at the beginning of each Business Day following the Business Day the Interbank Deposit was made.

7.2 Processing Interbank Deposits

The Deposit Account is subject to the rules and procedures of the Interbank Deposit Branch. Bank may make debit or credit adjustments to Customer's Designated Account for deposit corrections and any other errors that may occur. Bank or the Interbank Deposit Branch may reject any deposited item that does not comply with the requirements of this Agreement or for any other reason permitted under Applicable Law. Except as required by Applicable Law, neither Bank nor the Interbank Deposit Branch has any obligation to deposit a returned item into the Remote Deposit Account or the Designated Account. In the event an item deposited into the Remote Deposit Account is returned for any reason, Customer authorizes Bank to charge the Designated Account in the amount necessary to cover the returned item and any applicable charges made by the Interbank Deposit Branch.

7.3 Credit Risk

Bank shall have the right to require Customer to provide to Bank, at any time, appropriate financial information to enable Bank to assess the credit risk associated with providing Interbank

Deposit Service to Customer, including requiring any reserves. Customer hereby authorizes Bank to gather credit information regarding Customer from other sources, including one or more credit bureaus.

SECTION 8 - TARGET BALANCE ACCOUNT SERVICE

This **Section 8** sets forth the terms and conditions relating to Target Balance Account Service and is applicable only to Customers who execute an Enrollment Form requesting Target Balance Account Service.

8.1 Target Balance Account Service

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

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

8.2 Rejected and Dishonored Debits

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

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

8.3 Bank Options

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

SECTION 9 - SWEEP SERVICE

This **Section 9** sets forth the terms and conditions relating to Sweep Service and is applicable only to Customers who execute an Enrollment Form requesting Sweep Service. By signing the Sweep Service Enrollment Form and specifying the loan option on the Sweep Service Enrollment Form, Customer requests Bank to apply certain cash balances in the Designated Account at the end of each Business Day to a loan account (“Loan Account”) specified by Customer (the “Loan Sweep”).

9.1 Loan Sweep

A. Loan Sweep Process: Customer requests that any cash balance (for purposes of the Loan Sweep, Bank may require that the balance may be collected funds only) in the Designated Account in excess of the Target Collected Balance be applied to an eligible Loan Account(s). Any transfer of funds from the Designated Account to the Loan Account(s) will not eliminate Customer’s obligation to make payment on the Loan Account(s) as required under the loan documents. Funds transferred pursuant to the Loan Sweep process will be allocated to principal, interest and fees on the Loan Account(s) in accordance with the terms of Customer’s loan documents. Bank may, at its option, establish a minimum amount for each transfer and shall have no obligation to initiate transfer pursuant to the Loan Sweep process if the cash balance exceeding the Target Collected Balance is less than the minimum amount.

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

9.2 Important Notice Regarding Deposit Insurance and Customer’s Sweep Account

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

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

SECTION 10 - DRAWDOWN WIRE SERVICE

This **Section 10** sets forth the terms and conditions relating to Bank’s Drawdown Wire Service (the “Drawdown Wire Service”), and is applicable only to Customers who execute an Enrollment Form requesting Drawdown Wire Service (the “Drawdown Wire Service Enrollment Form”).

10.1 Drawdown Wire Service

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

10.2 Authorization

Customer authorizes Bank to debit the Account for the amount of the Drawdown Request if the information contained in the request is consistent with the information provided to Bank on the Drawdown Wire Service Enrollment Form. The authority granted to Bank shall continue until thirty (30) days after Bank receives written notice from Customer revoking such authority.

10.3 Execution of Drawdown Requests

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

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

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

10.4 Reliance on Account Numbers and Identification Numbers

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

SECTION 11 - CASH VAULT SERVICE

This **Section 11** sets forth the terms and conditions relating to Bank's Cash Vault Service (the "Cash Vault Service"), and is applicable only to Customers who execute an Enrollment Form requesting Cash Vault Service (the "Cash Vault Service Enrollment Form").

11.1 The Cash Vault Service:

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

11.2 Access

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

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

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

11.3 Processing of Transported Items

A. Deposits: Customer agrees to prepare all deposits accurately and in good faith and to follow all procedures described to Customer in the Supplemental Documentation. All Cash and Checks delivered to Bank shall be delivered in a sealed Approved Container, accompanied by a deposit slip listing the contents of the delivery. All Approved Containers must be provided by Bank or, if provided by Customer, must be approved in advance by Bank. Bank will not accept, open or process the contents of any Approved Container which appears to have been tampered with or opened or does not appear to be properly sealed. Any such deposit will be returned to Customer by Carrier. All deposits are subject to verification by Bank. If deposits are

delivered prior to the cutoff time established by Bank, Bank will credit the Designated Account for such deposits in accordance with Applicable Law, subject to later verification and Bank's availability schedule. If deposits are delivered after the applicable cutoff time, Bank will credit the Designated Account for such deposits on the next Business Day or in accordance with Applicable Law. Bank shall verify and correct any provisional credit so as to be consistent with the verified amount. Bank may, at its option, establish a minimum adjustment amount. If Bank establishes a minimum adjustment amount, and a discrepancy is discovered when verifying a deposit, Bank will not adjust the deposit if the discrepancy is less than the established minimum adjustment amount. If the discrepancy exceeds the minimum adjustment amount, Bank will debit or credit the amount of the discrepancy to the Designated Account.

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

11.4 Liability for Transported Items

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

11.5 Investigations

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

SECTION 12 - GLOSSARY OF TERMS

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

“Account” means any deposit account, investment deposit account, reserve account, certificate of deposit, overdraft protection line of credit, commercial loan or any other deposit or loan account that Customer has established and maintained with Bank primarily or exclusively for business-related purposes, as identified in any Enrollment Form.

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

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

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

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

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

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

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

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

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

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

“Bank” means Mutual of Omaha Bank and any branch where Customer maintains the deposit account(s) identified on the applicable Enrollment Form.

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

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

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

“Cash” means United States coin and currency.

“Cash Vault Service Enrollment Form” has the meaning set forth in Section 11.

“Check” means a draft, payable on demand and drawn on or payable through or at a United States office of a bank, whether or not negotiable, that is handled for forward collection or

return, including a traveler's check or cashier's check. An instrument may be a check even though it is described on its face by another term, such as money order.

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

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

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

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

"Drawdown Request" means a request from another financial institution transmitted via FED Wire, SWIFT or other funds transfer service acceptable to Bank, pursuant to which Bank is requested to debit an Account identified by Customer and wire the funds requested to an account maintained at another financial institution.

"Drawdown Transfer" means a transfer of funds pursuant to a Drawdown Request.

"Drawdown Wire Service Enrollment Form" has the meaning set forth in Section 10.

"Electronic Communications" means secured and unsecured electronic mail and facsimile transmissions.

"Enrollment Form" means any properly executed enrollment form

- A. which has been completed by Customer, or its authorized Agent, and
- B. in which Customer requests one or more Services and agrees to comply with the terms, conditions and procedures for a specific Service.

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

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

"Equipment Software" means software incorporated into any Equipment.

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

"Fed Wire" means the Federal Reserve Bank's wire transfer system.

"FINCEN" means the Financial Crime Enforcement Network Agency of the United States Department of Treasury.

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

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

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

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

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

“Interbank Deposit” means, for purposes of Section 7, a deposit made into a Interbank Deposit Bank for transfer to the Customer’s Designated Account.

“Interbank Deposit Account” means for purposes of Section 7, the account held at the Remote Deposit Bank, as identified on the Remote Deposit Service Enrollment Form.

“Interbank Deposit Bank” means, for purposes of Section 7, the local depository bank identified in the Interbank Deposit Service Enrollment Form.

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

“Loan Account” has the meaning set forth in Section 9.

“Loan Sweep” has the meaning set forth in Section 9.

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

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

“NACHA” means the National Automated Clearing House Association.

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

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

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

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

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

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

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

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

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

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

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

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

“Security Procedures” means the security procedures applicable to a particular Service agreed to by Customer and set forth in Bank’s Supplemental Documentation or in an Enrollment Form.

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

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

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

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

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

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

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

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

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

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

“Third-Party Sender” has the meaning set forth in Section 2.3.

“Truncated Check” has the meaning set forth in Section 4.1.

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

“User Manual” means, for purposes of Section 3, collectively, any on-line or printed instructions and any licensing or other related agreements regarding the ICM Service, as may be amended, modified and supplemented from time to time.

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

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

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

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