Cash Management Services

Terms and Conditions

Business Banking

Thank you for choosing U.S. Bank Cash Management Services. This document provides product information, disclosures and descriptions of the Cash Management Services ("Services") available at U.S. Bank. Other documents may become part of our Agreement depending on the Services selected. Please read all documents carefully; they will govern the Services provided to you, the Customer.

Customer shall not be bound by the terms and conditions for specific Services to the extent Customer is not using such Service(s).

U.S. Bank National Association
Member FDIC
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1. Definitions.

a. “Agent” means any director, officer, employee, representative, affiliate, third-party vendor or any other person or automation acting on behalf of the Customer with the actual, implied or apparent authority of Customer. Bank may rely on any grant of authority until it receives written notice of its revocation and is given a reasonable amount of time to act upon such notice.

b. “Bank” means U.S. Bank National Association and each subsidiary or affiliate of U.S. Bank that provides Services to Customer.

c. “Business Day” means any day on which a majority of Bank’s offices are open to the public for substantially all banking functions. Saturdays, Sundays, federal or state holidays or any day recognized by a Federal Reserve Bank as a holiday shall not be considered a Business Day, even if Bank’s offices are open.

d. “Customer” means the business entity, and any parent company, subsidiary, affiliate or commonly owned entity, for whom Bank provides a Service.

e. “Service” or “Services” means one or more cash management services offered by Bank.

2. Other Agreements, Laws and Regulations. These terms and conditions and the U.S. Bank Cash Management Service Agreement are collectively referred to herein as the “Agreement”. The Services are provided to Customer subject to the following other documents, laws and regulations, which are hereby incorporated into and made part of this Agreement:

a. the U.S. Bank Cash Management E-Form Application;

b. the setup materials, user guides, and any supplement thereto required by Bank to implement a specific Service (referred to in the Agreement as the “Implementation Documents”);

c. the most current Cash Management Services fee and availability schedule and other fee disclosures provided to Customer, including account statements;

d. the provisions of the then current deposit account agreement and accompanying disclosures, which govern deposit accounts and other depository services;

e. the Uniform Commercial Code, as enacted in the State of Minnesota;

f. any applicable automated clearinghouse operating rules, including, without limitation, the National Automated Clearing House Association Operating Rules and Guidelines (the “NACHA Rules”), the Real-Time Payments Operating Rules, and the rules promulgated by the Electronic Check Clearing House Organization (the “ECCHO Rules”) and The Clearing House; and

g. federal, state and local laws and regulations applicable to Bank or Customer, including, without limitation, Regulation CC promulgated by the Board of Governors of the Federal Reserve System, 12 CFR Section 229.1, et seq. (“Regulation CC”), all Operating Circulars promulgated by the Board of Governors of the Federal Reserve System, and the regulations overseen by the Office of Foreign Assets Control (“OFAC”).

3. Change of Terms. Bank may change the terms of this Agreement at any time upon reasonable written or electronic notice to Customer or by any other method permitted by law. Customer’s continued use of the Services after the effective date of any change to the terms shall be deemed Customer’s consent to the revised terms. Any other variations to this Agreement must be in writing and executed by Bank. In the event performance of the Services in accordance with the terms of this Agreement would result in violation of any present or future statute, regulation, government policy, or relevant clearing or central bank agreements or settlement systems to which Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation, policy, agreement or systems, and Bank shall incur no liability to Customer as a result of such violation or amendment. No course of dealing between Bank and Customer will constitute a modification of this Agreement or constitute an agreement between the Bank and Customer regardless of whatever practices and procedures Bank and Customer may use.

4. No Third-Party Beneficiaries/Third-Party Claims. Services provided by Bank are for the sole and exclusive benefit of Customer, and no other persons or organizations shall have any of the rights and remedies arising under this Agreement. Customer agrees to indemnify, defend and hold Bank harmless from and against any and all claims, demands, expenses, losses, liabilities and damages of third parties of any nature whatsoever, including, without limitation, reasonable attorney fees and court costs at trial or appeal arising directly or indirectly from any Service delivered to Customer pursuant to this Agreement.

5. Images. Bank may create a microfilm, optical disk, or other electronic image of the Agreement or Implementation Document. Bank may store the electronic image of such Agreement and/or Implementation Document in its electronic form and then destroy the paper original as part of Bank’s normal business practices, with the electronic image deemed to be an original

6. Foreign Account Tax Compliance Act. If a payment made by either party under this Agreement is or could become subject to the U.S. Federal withholding tax imposed by Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended (“FATCA”), then (i) each party shall provide to the other party such information, and shall disclose to the applicable governmental authorities such information, as may be required in order for such party to comply with all applicable requirements of FATCA and to determine that the other party has complied with FATCA, and (ii) a party that fails to comply with FATCA shall indemnify the other party for all costs, damages, and liabilities arising out of such party’s failure to comply with FATCA. Customer is responsible for providing Bank with all necessary documentation to establish that payments to Customer are exempt from FATCA withholding.

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

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

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

3. Representations and Warranties. Customer and Bank each represent and warrant to the other, as of the date this Agreement is entered into and at the time any Service is used, performed, that: (a) it is validly existing and in good standing under the laws of the jurisdiction of its organization; (b) it has all requisite power and authority to execute and deliver, and to perform its obligations under, this Agreement and each Service used or performed by it; (c) this Agreement has been duly authorized and executed by it and constitutes its legal, valid and binding obligation; (d) any consent or authorization of any governmental authority or third party required to be obtained by it in connection with this Agreement or any Service used or performed by it has been obtained; and (e) the Services received are for business use only and are not primarily for personal, family or household use. In addition, Customer represents and warrants to Bank that this Agreement will not violate: (i) any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on Customer; or (ii) the provisions of any agreement to which Customer is a party or is subject, or by which it, or its assets, is bound, or conflict with or constitute a default thereunder.

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

5. Fees. Unless otherwise agreed to by Bank in writing, Customer shall pay Bank the fees, charges and assessments set forth for the Services provided in the most current Cash Management fee schedules and other fee disclosures provided to Customer (including account statements), plus additional fees and expenses for extraordinary Services. The price schedule for each Service shall be deemed accepted by Customer upon provision of the Service to Customer. In addition, Customer shall pay Bank the amount of any taxes levied or assessed on fees charged pursuant to this Agreement, including, without limitation, real estate taxes, use taxes, and sales taxes. In the event that taxes are assessed on fees charged, Customer shall, upon request, provide to Bank any such information as Bank may require to perform any such review. Customer’s failure to meet such standards or provide such information or assistance when requested shall constitute a breach of this Agreement and shall permit Bank to cease providing Services upon written notice to Customer.

6. Deposit Accounts. Most Services require that Customer maintain one or more deposit accounts with Bank. All checks, wire transfers, ACH payments and other items deposited into such accounts are provisionally credited and taken subject to later verification by Bank and Bank’s receipt of final settlement. Deposited items that are deposited and later returned unpaid will be charged against the account without prior notice. Customer agrees to pay Bank for any overdraft or overpayment in any of Customer’s accounts. Customer authorizes Bank to charge any account Customer maintains with Bank for any amount remaining due under this section.

7. Security Interest. Customer grants to Bank a consensual possessory security interest in Customer’s deposit accounts maintained with Bank and the funds held therein to secure payment of all of Customer’s obligations under this Agreement.

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

9. Authorized Signers and Users. Customer shall appoint certain Authorized Signer(s) in the U.S. Bank Cash Management Service Agreement or in such other format or document as may be agreed by Bank. Customer agrees that Authorized Signers shall be authorized to act on behalf of Customer in all actions taken under this Agreement and may enter into all transactions contemplated in this Agreement, including, without limitation, selecting Services for the benefit of Customer, appointing initial system administrator(s), and signing additional documentation that may be necessary to implement Services and giving instructions with regard to any Service, including, without limitation, wire transfers, ACH transfers and other electronic or paper transfers from or to any account Customer maintains with Bank. The Authorized Signer(s) or Customer’s designated system administrator(s) shall appoint Agents to access or use the Services provided for the benefit of Customer ("Authorized Users"). Authorized Users may act on behalf of Customer for a particular Service in accordance with the relevant Implementation Documents or other document(s) establishing the Authorized Users’ responsibilities or in accordance with the authority granted by Customer. Customer may revoke the authority of or change the Authorized Signers at any time upon written notice. Customer shall be responsible for all transactions executed by Authorized Users.

10. Forms Approval and Service Implementation. Bank reserves the right to approve or reject any form of Customer’s checks, drafts, deposit slips and similar documentation. Prior to initiating a new account or Service, or at any other necessary time, Customer agrees to provide all information and conduct any test that Bank may reasonably request, including, without limitation, completing Implementation Documents and signature cards, providing corporate resolutions and other documents, and assessing test tapes and transmissions. Customer represents that Services will not commence or continue until such time as an approved item or test is provided to Bank and determined by Bank to be satisfactory. Customer shall be responsible for initial product installation, whether or not Bank provides telephone or on-site installation support.


a. Introduction. Bank and Customer shall agree to one or more security procedures that must be used in connection with certain Service(s). Customer acknowledges and agrees that it has been informed of and understands Bank’s security procedures, and that such security procedures are commercially reasonable. Customer agrees to be bound by any payment order, transaction or service change order that is acted upon by Bank in accordance with such security procedure. Customer understands that the security procedures are not intended for the purpose of detecting errors in the transmission or content of information controlled by Customer. If Customer selects certain security procedures to use in connection with a Service and those security procedures provide less protection against unauthorized transactions or activity than other security procedures...
procedures offered by Bank in connection with such Service, the security procedures selected by Customer shall be deemed commercially reasonable to the same extent as the security procedures offered by Bank that provide greater protection. Bank reserves the right to issue new security procedures and/or to cancel or change any security procedures by giving verbal or written notice to Customer. Bank also reserves the right to periodically audit Customer's security procedures and information technology processes, and to mandate controls or suspend Services until Customer complies with such security procedures.

b. Access. Customer shall be solely responsible for designating authorized access to Services. Access to Services shall be controlled through the use of user IDs, personal identification numbers, passwords, digital certificates/signatures, biometric authentication, private keys or other security devices ("Codes"). Customer is solely responsible for maintaining its own internal security and agrees to use the utmost care in selecting any company, individual or automation given access to one or more of the Services. Codes that are assigned to individual Authorized Users shall not be shared with any other person, including other Authorized Users and Customer shall not disclose any information regarding the Services that an unauthorized user would find helpful to obtain access to all or part of any Service. Customer assumes all risk of accidental disclosure or inadvertent use of any Codes, whether such disclosure or use arises out of Customer's negligent or deliberate acts or otherwise. If Customer or its Agents has reason to believe that any security procedures or Codes have or may become known by unauthorized persons, whether or not empowered by Customer, Customer shall immediately provide Bank with written notice identifying the Codes involved and the actions Customer has taken or proposes to take to correct the unauthorized use. Customer agrees that all confidential information concerning the other party or parties shall be maintained in strictest confidence and shall not be used or divulged to any unauthorized person, unless authorized by Customer. Customer shall ensure that computers and other equipment have the necessary compatibility and format to interface with Bank's systems, including, without limitation, the ability to support the Bank's security procedures. Customer agrees to install upgrades and other system enhancements within a reasonable time after being requested to do so by Bank. Customer acknowledges that such Electronic Transmissions are inherently insecure communication methods due to the possibility of error, delay and observation or receipt by unauthorized personnel. Bank may rely in good faith on Customer's instructions regarding how and to what number or email address Electronic Transmissions should be sent and may rely on any Electronic Transmission that it reasonably believes to have been initiated by the Customer. Should Customer elect to send or receive unsecured Electronic Transmissions to or from Bank, Customer assumes all risks, and Bank shall not be liable for any loss, that results from the nonreceipt, disclosure, alteration or unauthorized access of any such unsecured Electronic Transmission.

c. Confidentiality. Customer and Bank represent, warrant and mutually agree that all confidential information concerning the other party or parties that comes into its possession in connection with any of the Services will be maintained in strictest confidence and shall not be used or divulged to any other party unless (i) it may be necessary or advisable for the due performance of any of the Services or as required by applicable law. Bank shall maintain physical, electronic, and procedural safeguards to keep Customer's confidential information secure. Customer's obligation to maintain the confidentiality of all security procedures shall survive the termination of any Service or this Agreement. Customer acknowledges that certain Services may involve the handling of confidential consumer information that may be subject to privacy laws and regulations, including unauthorized access or breach notification regulations. Customer agrees to notify Bank immediately if Customer sends or receives protected health information that requires the execution of a business associate agreement.

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

e. Fraud prevention measures. Bank offers certain products, Services and security procedures, such as Positive Pay, account blocks or filters, and multi-factor authentication, that are designed to detect or deter fraud. Failure to use such products, Services or security procedures could substantially increase the likelihood of fraud. If Customer fails to implement any of these products, Services or security procedures, or if Customer fails to follow these or other precautions reasonable for its particular circumstances, Customer agrees that, except with respect to liability, loss or damage caused by Bank's own lack of good faith or failure to exercise ordinary care: (i) it will be precluded from asserting any claims against Bank for paying any unauthorized, altered, counterfeit or other fraudulent item that such product, Service, security procedure or precaution was designed to detect or deter; (ii) Bank will not be required to re-credit Customer's account or otherwise have any liability for paying such items; and (iii) Customer will pay all costs and expenses incurred by Bank for all efforts undertaken by Bank to recover any losses incurred by Customer.

12. Unsecured Electronic Transmissions and Instructions. Bank shall transmit to Customer information related to Services via secure electronic transmissions. If Customer elects to send or receive instructions or reports from Bank via unsecured electronic means, including, without limitation, facsimile transmission, voice mail, unsecured email, pager or other unsecured electronic telephonic methods ("Electronic Transmission"). Customer acknowledges that such Electronic Transmissions are inherently insecure communication methods due to the possibility of error, delay and observation or receipt by unauthorized personnel. Bank may rely in good faith on Customer's instructions regarding how and to what number or email address Electronic Transmissions should be sent and may rely on any Electronic Transmission that it reasonably believes to have been initiated by the Customer. Should Customer elect to send or receive unsecured Electronic Transmissions to or from Bank, Customer assumes all risks, and Bank shall not be liable for any loss, that results from the nonreceipt, disclosure, alteration or unauthorized access of any such unsecured Electronic Transmission.

13. Account Blocks and Filters. ACH debit blocks and check blocks prevent ACH debits and check blocks from posting to Customer's account. ACH filters and check filters enable Customer to set various criteria to authorize certain transactions to post to Customer’s account while excluding others. If an ACH debit or check filter is established by Customer, any ACH debit entry or check presented that does not specifically meet the criteria will be dishonored or sent back to the originator of the transaction. Customer acknowledges that the effectiveness of the filters is dependent on the accuracy and timeliness of the information provided by Customer. In addition, Customer acknowledges that payments to certain Bank-approved vendors cannot be blocked and that certain ACH transactions such as returns, settlements or adjustments cannot be blocked per NACHA Rules. If Customer desires to modify a block or filter setting, Customer shall notify Bank at least 72 hours in advance of the changes taking effect.

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

15. Transactions on Non-Business Days/Cutoff Times. Transactions, deposits, payment orders, entries or other requests by Customer received by Bank on a non-Business Day, after established cutoff deadlines, or during a maintenance window may be treated by Bank as received on the next Business Day or may not be processed at all. Bank may change any cutoff time or other deadline at any time. Bank will make a reasonable effort to notify Customer of any changes in advance.

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

17. Inconsistent Name and Account Number. If Customer or third party acting on Customer’s instruction initiates a fund transfer instruction or payment order (“Payment Order”) to Bank that describes the person to receive the proceeds of such Payment Order (the “Beneficiary”), the Beneficiary’s bank, or an intermediary bank by name and an account or other identifying number, Bank and subsequent parties to the Payment Order may rely on and act solely on the basis of such number, even though the name and number do not agree and even though Bank and subsequent parties know or have reason to know of the inconsistency. Customer’s obligation to pay the amount of the Payment Order to Bank is not excused in such circumstances. With respect to incoming Payment Orders that do not include an account number recognizable to Bank, Bank may return the Payment Order to the sending financial institution without incurring any liability to Customer.

18. Intercompany Services/Authority to Transfer or Commingle Funds. In the event that Customer lists entities in a Supplement to the Cash Management Services Agreement or in any other document, or otherwise requests Bank to provide Services to a parent company, subsidiary, affiliate, or other commonly owned company, Customer agrees that it shall be jointly and severally liable for such company’s obligations under this Agreement. Customer hereby represents and warrants to Bank that any and all transfers and commingling of funds required or permitted by any Service or requested by Customer, and all other aspects of the performance hereby by Bank and Customer, have been duly authorized by all necessary parties, including, without limitation, the account holder of each account, and that Customer has obtained and shall maintain in its regular business records and make available to Bank upon reasonable demand, for a period of seven (7) years after termination of the Service, adequate documentary evidence of such authorization from the account holder of each account, executed by the duly authorized officer(s) of each such account holder in accordance with that account holder’s bylaws and/or board resolutions. Customer further represents and warrants that each transfer or commingling of funds authorized hereunder is not in violation of any agreement, bylaw or board resolution of Customer or any of its affiliates or subsidiaries, nor is it in violation of any applicable federal, state, local law, regulation, of any decree, judgment, order of any judicial or administrative authority. Each representation and warranty contained herein shall be continuing and shall be deemed to be repeated upon Bank’s effecting each transfer and commingling of funds authorized hereunder.

19. Customer Records. This Agreement and the performance of Services by Bank shall not relieve Customer of any obligation imposed by law, clearinghouse rules (including the NACHA Rules and ECCHO Rules), or by contract regarding the maintenance of records, or from employing adequate audit, accounting and review practices as are customarily followed by similar businesses. In addition, Customer shall 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 receipt by Bank of the deposit, file, entry, transmission or other order affecting an account.

20. Account Communications and Review Period. Customer agrees to regularly and promptly review and verify all statements, reports, check payment records, wire transfer instructions, confirmations, adjustments, charges, and other transactions (“Account Communications”). Customer may receive or access Account Communications electronically, including without limitation, delivery by posting to a password protected website or database. Customer acknowledges that a notification of Account Communication provided by Bank through electronic delivery is deemed to constitute good and effective delivery when posted by Bank, regardless of whether Customer actually or timely receives or accesses such Account Communication. Unless a different review period is specified elsewhere in this Agreement, Customer shall, within a reasonable time, which in no event shall be greater than thirty (30) calendar days following the day Bank first mails, electronically transmits or otherwise makes data available to Customer (“Review Period”), notify Bank of any error or discrepancy between Customer’s records and any Bank notice or statement, or any transaction or transfer Customer believes was not authorized. If Customer fails to notify Bank of such unauthorized transaction within the Review Period, Customer agrees that the failure to report any such errors or unauthorized transactions shall relieve Bank of any liability for the unreported erroneous or unauthorized transaction. In accordance with NACHA Rules, Customer must report an unauthorized ACH debit entry to the Customer’s account by the established deadline on the Business Day following the settlement date of the unauthorized entry. Otherwise, Customer’s sole recourse is to the originator of the transaction.

21. Monitoring and Recording Communications. Customer acknowledges and agrees that Bank, or anyone acting on Bank’s behalf, may monitor and/or record any communication between Customer, or its Agent, and Bank, or anyone acting on Bank’s behalf, for quality control and other purposes. Customer also acknowledges and agrees that this monitoring or recording may be done without any further notice to Customer or its Agent. The communication that may be monitored or recorded includes telephone calls, cellular or mobile phone calls, electronic mail messages, text messages, instant or live chat, or any other communications in any form.

22. Limitation of Bank’s Liability for Services. Customer acknowledges that Bank’s fees for Services are very small in relation to the amounts of transfers initiated through these Services and consequently Bank’s willingness to provide such Services is based on the liability limitations contained in this Agreement. In addition to greater limitations on Bank’s liability that may be provided elsewhere in this Agreement, Bank’s liability related to any Service shall be limited exclusively to actual proven damages arising directly from its own gross negligence or willful misconduct. BANK WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR SIMILAR LOSSES OR DAMAGES, WHETHER OR NOT THE LIKELIHOOD OF SUCH LOSSES OR DAMAGES WAS KNOWN BY EITHER PARTY AT THE TIME CUSTOMER FIRST OBTAINS SERVICES FROM BANK, OR AT THE TIME ANY INSTRUCTION OR ORDER IS GIVEN TO BANK PURSUANT TO ANY SERVICE, AND WHETHER SUCH LOSSES OR DAMAGES ARISE FROM TORT, CONTRACT, LOSS OF INVESTMENT OPPORTUNITY, LOST OR REDUCED PROFITS, OR OTHERWISE. Bank’s maximum liability for any loss of interest shall be calculated using a rate equal to the average Federal Funds rate at the Federal Reserve Bank of New York for the period involved. Notwithstanding the foregoing, Bank shall not be liable for or be excused in such circumstances, in whole or in part, by the action or inaction of Customer, or any Agent or employee of Customer, whether or not such action or inaction constitutes negligence or a breach of this Agreement. Bank shall not be liable for any damage, cost, loss, liability or delay caused by a force majeure event, including but not limited to, accident, strike, labor dispute, fire, flood, war, riot, terrorist act, government restrictions, exchange or market rulings, extraordinary market volatility, suspension of trading, equipment breakdown, electrical, telephone, Internet or mechanical failures, acts of nature, any cause which is attributable to a third party, or any other cause or event that was beyond Bank’s reasonable control. Customer agrees that the fees charged for the performance of the Services shall be deemed to have been established in contemplation of these liability limitations.

23. Dispute Resolution.

a. Governing Law. Except as otherwise provided herein, this Agreement shall be governed by the laws of the State of Minnesota, without regard to conflicts of law principles.

b. Jury Trial Waiver. To the fullest extent permitted by law, Bank and Customer hereby agree to waive trial by jury in any judicial proceeding involving, directly or indirectly, any matter (whether in tort, contract or otherwise) in any way arising out of, related to or connected with these Services or this Agreement. Bank and Customer represent and warrant to each other that this jury trial waiver is knowingly, willingly and voluntarily given.

c. Jurisdiction and Venue. Customer consents to the jurisdiction of the courts of the State of Minnesota, waives any argument that such venue is inconvenient and agrees to bring litigation commenced in connection with
this Agreement in either the District Court of Hennepin County or the United States District Court, District of Minnesota, Fourth Division.

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

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


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

b. Third-Party Vendors. Customer agrees that Bank may, at its sole discretion and at any time without notice to Customer, engage third-party vendors to provide a Service, or portions thereof, to Customer, or to support Bank in its provision of a Service to Customer. Customer acknowledges that Bank’s third-party vendors may perform certain functions offshore. Some Services and/or computer equipment and software are provided to Customer by a third-party vendor selected by Customer who is unaffiliated with Bank. In those cases, the third-party vendor is acting as Customer’s Agent rather than an agent of Bank, and Customer agrees to be bound by such third party’s acts or omissions. Bank does not warrant and shall not be responsible for Services provided by unaffiliated third-party vendors. Customer authorizes Bank to disclose to any third-party vendor of Customer or Bank information concerning Customer to the extent required to deliver the requested Service.

25. Notices. All written notices to Bank shall be delivered or mailed to the address designated by Bank. Notices, including but not limited to, Account Communications sent to Customer shall be delivered or mailed to Customer’s current lead account address or other known address if deemed more appropriate by Bank under the circumstances. Notices may be delivered to some Customers in electronic format, including posting to Bank’s website, delivery via facsimile to a number on file, or delivery to an electronic mail address on file or used by an Authorized Signer or Authorized User.

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

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

28. Assignment. In addition to section 24 above, Bank may at any time assign or delegate its rights and duties under this Agreement. Customer may not assign or transfer its rights or obligations hereunder to any other person or entity without Bank’s written consent, which consent shall not be unreasonably withheld.

29. Termination. Any Services may be terminated by either party upon 30 days’ prior written notice to the other. Bank may also terminate or suspend any Services immediately without notice to Customer if any of the following occurs: (a) Customer becomes insolvent or files, or has filed against it, any bankruptcy or other insolvency, reorganization, liquidation or dissolution proceeding of any kind; (b) a material adverse change occurs in Customer’s business or financial condition; (c) Bank has reason to believe that Customer has engaged in fraudulent or illegal activity; (d) Customer fails to maintain balances in accounts sufficient to cover overdrafts; (e) Customer violates, or is in default under, the terms of this Agreement or any other agreement with Bank; (f) Customer fails to comply with security procedures or fails to provide information reasonably requested by Bank; (g) Bank determines it is impractical or illegal to provide any Services because of changes in laws, regulations or rules; (h) Bank, in good faith, is unable to satisfy itself that any Services have been properly authorized by Customer; or (i) Bank, in good faith, deems itself insecure. Notwithstanding any termination, the terms of this Agreement shall apply to all transactions which have been initiated prior to termination.
III. TERMS APPLICABLE TO ALL INTERNET-BASED SERVICES

1. Introduction. Bank offers a number of Services over the Internet. If requested by Customer and agreed to by Bank, Bank will grant Customer access to one or more of Bank's Internet Services in the manner established by Bank. Customer agrees that its use of Services from time to time offered by Bank via the Internet (collectively, the "Internet Services") shall be governed by:

(i) this Section and all other relevant sections of this Agreement, including, without limitation, sections governing the specific Services that are offered online;

(ii) the other agreements, laws and regulations described in Section I.2 of this Agreement; and

(iii) the applicable Terms of Use, as defined in Section III.2 below.

2. Terms of Use. Bank may post terms or rules of use ("Terms of Use") governing Customer's use of the Internet Services on Bank's website(s) for accessing such Services. Such Terms of Use shall supplement and amend the terms set forth in this section. In the event of a conflict between the Terms of Use and the rules set forth in this Agreement, the Terms of Use shall govern. Customer is responsible for establishing an internal procedure for reviewing the Broadcast Message page on a regular basis to obtain timely notice of changes to the Terms of Use. In the event that a specific Internet Service does not have Broadcast Message capability, Customer will be notified of any changes in accordance with Section II.25 hereof. Neither Bank nor Customer will contest the validity, enforceability, or admissibility of hard copy printouts of the Terms of Use for any website or notices of changes to such Terms of Use provided in accordance with this section. Copies of such Terms of Use or notices, if introduced as evidence in tangible form in any judicial or administrative proceeding, will be admissible to the same extent and under the same conditions as other business records originated and maintained in documentary form.

3. Security Procedures. Customer agrees to use the Internet Services in accordance with the security procedures established by Bank. Bank reserves the right to reject any transaction or Service request that is not made in accordance with such procedures. Customer shall at all times use a Web browser that supports the level of encryption used by Bank as part of its security procedures. Due to emerging technologies and ensuring changes in security practices, Bank reserves the right to supplement or change its security procedures from time to time upon reasonable notice to Customer. Customer acknowledges and agrees that, notwithstanding the contrary set forth in the Agreement, in matters of security, reasonable notice may be less than a day's notice or even, in some cases, notice after the fact. Customer is solely responsible for maintaining a secure work environment to ensure against the use of Internet Services by unauthorized individuals or unauthorized automated access. Security procedures to be followed by Customer include, without limitation, informing Authorized Users that any passwords should not be shared, securing physical access to the terminals used for Internet Services when an Authorized User has logged in to an application or system and, if applicable, identifying secure methods for controlling authorized automated access to an application or system.

4. System Administrator. Customer shall designate one or more System Administrator(s). The System Administrator shall be responsible for setting up Internet Services and for establishing internal security procedures related to such Internet Services, which may be made available through applications or systems offered by Bank, including, without limitation, accepting delivery of software, system-wide configuration of Bank accounts, appointing Authorized Users, establishing authority levels, authorization requirements, and payment limits, and distributing and resetting IDs, passwords and other internal security devices related to the Internet Services. Customer represents and warrants to Bank that any actions taken by the System Administrator in relation to the Internet Services including, without limitation, the appointment of Authorized Users and the access, automation and privileges granted to such Authorized Users, are duly authorized by Customer.

5. Other Customer Responsibilities.

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

b. Use of Internet Services. Customer shall use its access to Internet Services and websites operated by or on behalf of Bank only to conduct its business through or with Bank and agrees to limit access to those Agents who require access to Internet Services.

c. Antivirus Protection. Customer agrees to run antivirus software before transmitting data to or through any website. Customer may use any commercially available, industry recognized antivirus software of the type that detects and disinfects viruses automatically, without the need for the Customer to execute virus scanning for each file manually. Customer shall update its antivirus software on a regular basis and in no event less than once every week.

d. Anti-malware Protection. Bank may offer complimentary anti-malware software for use with certain Services that is designed to detect, deter or destroy different types of malware. Failure to install anti-malware software offered by Bank could substantially increase the likelihood of fraud and other losses. If Customer fails to install software offered by Bank, Customer agrees that, except with respect to losses caused by Bank's own lack of good faith or failure to exercise ordinary care, it will be precluded from asserting claims against Bank for any losses caused by malware which such software would have detected, deterred or destroyed. Bank will not be required to re-credit Customer's account or otherwise have any liability for such losses.

e. Network Security. Customer agrees to install and utilize current industry-standard network security for its information technology systems that access Services via the Internet. Network security protection includes, but is not limited to, firewalls and intrusion detection systems. For certain Services, Bank may require Customer maintain specific network security protection in order to access the Services.

6. Disclaimer of Warranties. BANK PROVIDES ALL INTERNET SERVICES ON AN "AS IS," "AS AVAILABLE" BASIS AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE INTERNET SERVICES OR THE CONTENT OR SECURITY OF ANY WEBSITE. BANK DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, BANK DOES NOT WARRANT THAT THE OPERATION OF ANY WEBSITE WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER IS RESPONSIBLE FOR TAKING APPROPRIATE PRECAUTIONS AGAINST DAMAGE TO ITS OPERATIONS WHICH COULD BE CAUSED BY INTERRUPTIONS OR MALFUNCTIONS OF ANY WEBSITE AND ASSUMES THE RISK OF SUCH OCCURRENCES.
The following are additional terms and conditions applicable to specific Services offered by Bank. Bank may change the number or type of Services offered at any time. Customer shall not be bound by the terms and conditions for the specific Services to the extent Customer is not using such Service(s).

A. INFORMATION REPORTING AND TRANSACTION SERVICES

Information reporting and transaction services may be provided by Bank to Customer through SinglePoint Essentials® or other applications or systems as may be introduced by Bank ("System(s)"). The System may also be used by Customer to automate many of the Services offered by Bank and also may provide access to other Bank systems that initiate transactions. Customer agrees that such use of the System shall be governed by this Section and all other relevant sections of this Agreement.

1. Introduction. If requested by Customer and agreed to by Bank, Bank will grant access to Bank’s System(s) in the manner agreed to by Bank. Customer agrees to be bound by any terms of use and license agreements associated with these Systems.

2. Information Reporting. Bank is authorized to store, process, transmit and make available through Bank’s agencies and Systems and through third party data processing providers (“Providers”) information regarding accounts designated by Customer. Bank or Providers will transmit to Customer information regarding its account(s) and/or other financial data through the System on a periodic basis. Customer may elect to receive data through one or more delivery mechanisms, including, without limitation, the Internet, facsimile, CD-ROM or secure email or other data transmission options supported by Bank. Section II.12 shall apply in the event Customer elects to receive facsimile reports via an Electronic Transmission. Balance and related information for Customer’s account(s) held at other financial institutions may be made available by these financial institutions or Providers that input information into Bank's System. Bank will use reasonable care in submitting data into the System but assumes no responsibility for the accuracy or timeliness of the account information and other financial data supplied by other financial institutions or Providers. Bank will make every reasonable effort to deliver information by the mutually agreed upon time but does not guarantee a specific delivery time. Accordingly, Bank’s responsibility to Customer with respect to the delivery of information shall be to deliver such work as close to the agreed time as may be reasonably practicable.

3. Transaction Services. Customer may use SinglePoint Essentials® or other similar System to access cash management transaction Services offered by Bank for which Customer has enrolled. Depending on the type of Service or System feature offered by Bank and selected by Customer, access to the transaction Services may include, but are not limited to, ACH, cash vault, check payables, wire transfer payments, book transfers, positive pay services, investments, loan services, trust services, letter of credit services, adjustments, returns and exceptions management, receivables management, transaction research and annotation, and system administration. Customer agrees that use of the System for transaction Services shall be governed by this Section IV.A and all other sections of this Agreement that are applicable to the product or Service being accessed.

4. Loan Account Advances. To the extent that any credit extended to Customer by Bank is established to provide overdraft protection to any deposit account covered by this Agreement, Bank shall not be required to process any loan advance request: (i) in an amount less than the minimum amount established by Bank; or (ii) if any default exists under any credit agreement with Bank, or this Agreement, or Bank is otherwise excused or prohibited under any credit agreement or applicable law from making an advance.

5. Security Procedures/System Administrator. Customer agrees to operate the System in accordance with Sections III.3 and III.4 of this Agreement.

6. Manuals. Bank will provide Customer with a manual in electronic format that will set forth the applicable System's policies and procedures with which Customer agrees to comply. Bank may, without prior notification, make amendments to any manual. Bank owns or has obtained all proprietary rights to the manuals and Customer agrees not to duplicate, distribute or otherwise copy Bank’s manuals without Bank’s prior written consent. Any manual will at all times remain the property of Bank and Bank reserves the right to request Customer to return all printed copies of such manual within thirty (30) days of termination of this Service.

7. Customer Responsibilities. Customer will purchase (from Bank, in some cases) and provide all equipment and software necessary to use the applicable System in accordance with this Agreement. Bank shall have no responsibility and makes no warranties for such equipment or software. Customer agrees to use the System solely to conduct its business with Bank and agrees to limit access to those Agents who require access to the System. Customer agrees that in addition to other limitations to Bank’s liability elsewhere in this Agreement, Bank shall not be liable for any loss or damage arising directly or indirectly from the following:

a. any inaccuracy or incompleteness in the input of an order or instruction from the Customer;

b. any failure by Customer to obtain a confirmation of an order or instruction;

c. any cancellation or attempted cancellation by Customer of an order or instruction.

8. International Information Reporting. If requested by Customer and agreed to by Bank, Bank may provide incoming international information reporting through Providers or via SWIFT, which shall be governed by the terms of this Section IV.B, other applicable sections of this Agreement, and other applicable agreements or law. Bank shall receive the international information reporting data through Providers or via SWIFT from Customer’s account-servicing Bank (“Servicing Bank”) and shall display such data to Customer using SinglePoint Essentials or other similar System. If Customer makes a request to Bank for an off-schedule international information report from the Servicing Bank, Customer agrees that Bank shall have no liability if the Servicing Bank does not support the off-schedule request or does not respond to the request in a timely manner.
B. ACH SERVICES

1. Introduction. If requested by Customer and agreed to by Bank, Customer or its Agent may initiate credit or debit Automated Clearing House (“ACH”) transactions (“Entries”) for payments (“Credit Entries”) and/or collections (“Debit Entries”) on Business Days to its accounts or the accounts of others (“ Receivers”) in accordance with Bank’s security procedures and this Agreement. Bank will act as an Originating Depository Financial Institution (“ODFI”) with respect to such Entries. Bank will process Entries directly, through one or more clearinghouses, or through the mechanism selected by Bank. Customer’s rights and obligations with respect to such Entries are governed by applicable law and the NACHA Rules, as amended from time to time. Customer acknowledges that it shall be bound by the then-current version of the NACHA Rules, and agrees not to initiate any Entry in violation of the NACHA Rules or applicable federal, state, or international law, regulation or clearinghouse rules, including, without limitation, Regulation E of the Board of Governors of the Federal Reserve System, regulations promulgated by the Office of Foreign Assets Control, FinCEN, rules governing the Canadian, Mexican and European payments systems and Operating Circular 4 of the Federal Reserve Bank (collectively referred to herein as the “Rules”). Customer acknowledges and agrees that Bank shall have the right to examine Customer’s books, records and systems to ensure Customer’s compliance with the Rules and this Section IV.B and that Bank shall further have the right to suspend Services if Bank determines, in its sole and absolute discretion, that Customer is not complying with the Rules and/or this Section IV.B. Customer acknowledges that a copy of the NACHA Rules is available through NACHA at current NACHA prices. Bank shall have the right, in its sole discretion, to terminate in its sole discretion and at any time, and for any reason, Services if Bank reasonably determines that it is provided solely for Customer’s benefit, or is not provided solely for Customer’s benefit, or is not provided in accordance with the then-current version of the Rules and this Section IV.B. Customer acknowledges and agrees that such a security procedure is commercially reasonable and that Customer’s failure to use this procedure substantially increases Customer’s risk of an unauthorized ACH file.

2. Entry Origination/Processing Dates/Deadlines. Customer may initiate Entries in the manner and format agreed to by Bank. ACH files transmitted to Bank shall be in an unbalanced file format. Bank has the right to restrict the standard entry class (“SEC”) codes utilized by Customer. If notified by Bank of such restriction, Customer must cease use of the SEC code and the underlying transaction type. Customer agrees that all Entries (regardless of SEC Code) that involve the storage, exchange or transmission of banking information via unsecured electronic networks shall be encrypted or transmitted via a secure session, using a commercially reasonable security technology that complies with regulatory guidelines. Bank will establish a deadline for the receipt of Entries from Customer (“Deadline”). Bank may establish different Deadlines for Entries depending on the method of delivery employed by Customer and all such Deadlines are subject to change. Bank must receive Customer’s Entries at or prior to the Deadline for the Entries to be processed on the Business Day of receipt. Entries received after the Deadline, Entries that contain an Effective Entry Date that is invalid or stale, or Entries that are ineligible for Same Day ACH, will be processed on the next Deadline, which may be the next Business Day. Entries with settlement dates of more than thirty (30) calendar days from receipt will not be processed unless prior arrangements have been made. If Customer has opted-in for Same Day ACH, Customer acknowledges that any Entry using the current day’s date as the Effective Entry Date that is submitted to the ACH Operator prior to the Deadline shall carry the Same Day ACH fee. If Customer has not opted-in for Same Day ACH and submits an Entry prior to the Deadline using the current day’s date as the Effective Entry Date, Customer acknowledges that such Entry shall be processed on the next Business Day.

3. Content and Secondary Authorization. In submitting any Entry, Customer shall be responsible for providing all information required by Bank. Customer bears sole and exclusive responsibility to verify that the information set forth in Entries submitted to Bank is authentic, accurate and conforms to the Rules. The Services hereunder are only designed to respond to information provided by Customer. Accordingly, any inaccuracy in any information provided by Customer may result in unintended processing by Bank. Bank bears no responsibility for detecting or reporting any error in data supplied by Customer and shall not be liable to Customer for any information provided by Customer with respect to an Entry which is inaccurate, incomplete or otherwise incorrect. Bank strongly recommends that Customer utilize a second individual to review and approve ACH files prior to submission to Bank. Customer acknowledges and agrees that such a security procedure is commercially reasonable and that Customer’s failure to use this procedure substantially increases Customer’s risk of an unauthorized ACH file.

4. Entry Limits and Payment. Customer agrees to comply with any applicable per transaction or aggregate Entry limits established by the Rules. Customer shall be held to all times maintain a settlement account with Bank for the purpose of funding Customer’s Entries (“Account”). The total dollar amount of Entries initiated by Customer through Bank under all ACH Services and pending on a given day shall not exceed the lesser of collected or available balances in the Account or an exposure limit should one be established by Bank (“Exposure Limit”). Establishment of an Exposure Limit should not be interpreted or construed by Customer as a commitment or agreement to provide any credit or loans to a Customer and is subject to modification or termination at any time by Bank. Customer shall pay Bank for all Entries and authorizes Bank to charge its Account or any other account with Bank in the amount of such Entries. Bank shall have the right in its sole discretion to reject any or all Entries initiated by Customer without notice if Bank has reason to believe that there will be insufficient available funds on the relevant settlement date, even if Bank may have received a deposit or may otherwise be funding such account with insufficient available funds in the Account. Customer will receive funds for any Debit Entry on the ACH settlement date. Bank shall credit the Account in any amount payable to the Customer, subject to Bank’s right to make adjustments in accordance with this Agreement. Bank may establish, monitor and periodically review Customer’s Exposure Limit and Customer’s compliance thereof, and may, in Bank’s sole discretion, cease processing Entries based on such review.

5. Prenotification. To the extent permitted by the Rules, Customer may elect to send a prenotification that it intends to initiate an Entry to a particular account in accordance with the procedures set forth in the Rules or by Bank. The prenotification can be returned or result in a Notification of Change (“NOC”). If the prenotification is returned, Customer shall research the problem and make any necessary corrections before transmitting another Entry. If the prenotification results in a NOC, Customer shall make the required change prior to initiating another Entry or issue a Refused NOC. Bank offers an optional Service that allows Bank to track Customer’s NOC on Customer’s behalf. If Customer selects this option, Bank shall only manage the changes to the routing numbers, account numbers and transaction codes.

6. Notification of Change (“NOC”). A NOC is created by the Receiving Depository Financial Institution (“RDFI”) to notify Customer (via Bank) that previous or valid information contained in a prenotification is outdated, or information contained in a prenotification or live transaction is erroneous or improperly formatted and should be corrected. Bank offers NOC Manager, which is a Service that allows Bank to track Customer’s NOC on Customer’s behalf. NOC Manager only manages the changes to routing numbers, account numbers and transaction codes. Bank, in its sole discretion, may require that Customer enroll in NOC Manager as part of ACH Services provided to Customer.

7. Data Breach Notification. Customer may have gathered personal or financial information of its customers for the purpose of initiating ACH transactions. Such information may include, without limitation, the customer’s bank account number together with the bank routing number, or the customer’s name together with the customer’s social security number or tax identification number. Customer agrees to immediately report to Bank any loss, theft or unauthorized access of such information (“data breach”) by or from Customer, its Agent, or third-party service provider, if circumstances indicate that the misuse of such information has occurred or is reasonably possible. Customer acknowledges that Bank may have an obligation to report any data breaches to NACHA and other affected parties, and agrees to establish appropriate procedures to prevent, detect, investigate and report data breaches. If applicable to Customer, Customer agrees to render electronically stored account numbers used in the initiation of Entries unreadable in accordance with the requirements and effective dates specified by NACHA.

8. ACH Secured Funds Entries. Bank may, at any time, and in its sole discretion, require Customer to prefund some or all Credit Entries that Customer desires to initiate. Customer acknowledges and agrees that
such funds are held solely for the benefit of Bank and that Customer will not be entitled to earn any interest thereon. Upon initiation of such Credit Entries, Bank is authorized to immediately charge the Account (in the total amount of such Entries. If ACH Secured Funds is used to initiate Debit Entries, funds will be credited to the Account on the settlement date of the transaction. However, such funds shall not be available for withdrawal from the Account for two Business Days, or such other period as determined by Bank, after the settlement date.

9. File Confirmation System. Customer shall at all times comply with applicable file confirmation procedures and any security procedures established by Bank. Such procedures are solely for the purpose of verifying the origination of Entries by Customer or Bank's receipt of the ACH file and/or batch (but not for errors in transmission or content).

a. Control Totals. If Customer elects to provide Bank with the total dollar value of Entries and any other necessary information ("Control Totals"), Customer must telephone Bank’s Interactive Voice Response system or input Control Totals through SinglePoint® Essentials each time it originates Entries. After Bank receives Customer’s ACH file, Bank will compare the information in the ACH file to the Control Totals. If the information matches the Control Totals, Bank will process the ACH file. Bank will notify Customer if the Control Totals do not match the information in the ACH file, or if Bank receives an ACH file without receiving Control Totals or vice versa. Bank will not process an ACH file unless it receives conforming Control Totals before established Deadlines.

b. Confirmation of Receipt. If Customer elects not to provide Bank with Control Totals but elects to receive a confirmation report or file, Bank shall provide Customer with a confirmation that Bank received Customer’s ACH file and/or batch. After Customer receives the confirmation report or file, Customer will compare the confirmation information to Customer’s ACH transmission information. If the information does not match, Customer shall notify Bank before Bank’s established deadline, failing which, Bank shall process Customer’s ACH file and/or batch. Customer acknowledges that the confirmation report or file is for the sole purpose of verifying Bank’s receipt of the file and does not signify any validation of data. Customer bears sole responsibility for any inaccurate or incomplete information provided to Bank if Customer fails to notify Bank prior to Bank’s processing of Customer’s file.

10. Rejected and Returned Entries, Unauthorized Entries. Bank may reject any Entry that is not initiated in accordance with this Agreement. In the event that an Entry is rejected, or returned by an ACH processor, for any reason whatsoever, it shall be Customer’s responsibility to reinitiate the Entry. Bank will give Customer or its designated Agent notice of any rejected or returned Entry in the manner agreed to by the parties. Bank is authorized to debit/credit the Account for Entries that are returned to Bank. Unless the return is caused by Bank’s failure to properly execute an Entry, Bank has no obligation to pay Customer interest on the amount of any returned Entry debited from the Account. A Receiver may, in some cases, have the right to have an unauthorized or erroneous Debit Entry credited to its account. Customer agrees that Bank may deduct the amount owing to the Receiver from Customer’s Account upon Bank’s receipt of proper notice from the Receiver’s bank. Bank may charge back against Customer any Debit Entry that is returned or reversed by the RDFI.

11. ACH Redeposit Service. If requested by Customer and agreed to by Bank, Bank will reinitiate (maximum of two times) each Debit Entry returned for insufficient or uncollected funds.

12. Amendment of Entries. Customer does not have the right to delete, reverse or amend any Entry (each, an “Adjustment Request”) after it has been received by Bank. If Customer sends Bank an Adjustment Request via internet, secure email, or fax in accordance with the terms of this Agreement, Bank will make reasonable efforts to act on the Adjustment Request. All Adjustment Requests must be received by Bank prior to the established deadlines, and even if the Adjustment Request is made in a timely manner, Customer acknowledges that an Adjustment Request may prove unsuccessful (for example, if it is returned by the RDFI for non-sufficient funds). Customer agrees to indemnify Bank in connection with any Adjustment Request in accordance with applicable law.

a. Internet Option. If Customer has selected the Internet Option, Customer may use SinglePoint® Essentials to transmit information to Bank for the purpose of amending ACH files. Customer agrees to comply with any applicable software agreement, user guide and any established security procedures.

b. Secure Email Option. If Customer has selected the Secure Email Option, Customer may send an Adjustment Request to a designated shared mailbox at Bank.

c. Fax Option. If Customer has selected the Fax Option, Customer may transmit an Adjustment Request to Bank via facsimile to a designated facsimile number. Customer acknowledges that the Internet and Secure Email Options are substantially more secure than the Fax Option. Customer agrees to be bound by any instructions submitted via the Fax Option, whether or not authorized, issued in its name and accepted by Bank in accordance with the agreed procedures.

13. Customer Representations/Indemnity. Customer represents and warrants to Bank that each Entry: (i) complies with the terms of this Agreement and the Rules; (ii) does not breach any warranty of Customer or Bank contained in this Agreement and the Rules; (iii) complies with applicable state, federal and international laws and rules, including, without limitation, the Electronic Funds Transfer Act, Regulation E and regulations overseen by the Office of Foreign Assets Control; (iv) is accurate, timely, and authorized; and (v) that any Debit Entry is for a sum that on its settlement date is due and owing from the Receiver to Customer or is a correction of a previously transmitted erroneous Credit Entry. With respect to each ACH Entry (regardless of SEC Code), Customer is deemed to make to Bank any representation or warranty that Bank makes, under applicable law and the Rules to any person, RDFI, or any other transferee. Receiver authorizations shall expressly authorize Bank to transmit corrective entries to Receiver’s accounts to correct a prior Entry and shall authorize Customer to release to Bank all information concerning its Receivers that is required by Bank to recover such Entries. Customer shall immediately cease initiating Entries upon receiving actual or constructive notice of the termination or revocation of the Receiver’s authorization. Customer will retain each authorization received by Customer for such period of time as may be required by the Rules or applicable law and shall provide Bank with copies of such authorizations upon request. Customer will indemnify, defend and hold Bank harmless from and against any and all claims, demands, expenses, losses, liabilities, and damages, including without limitation, NACHA fines, reasonable attorney fees and court costs at trial or on appeal that arise directly or indirectly out of any Entry initiated by Customer in violation of this Agreement and the Rules.

14. Re-presented Check Entries. NACHA Rules allow Customer to initiate an Entry to collect certain checks that have been returned unpaid for insufficient or uncollected funds (“RCK Entry”). In the event that Customer initiates a RCK Entry to Bank for check collection purposes, Customer agrees that such RCK Entry will comply with all provisions of this Agreement and applicable Rules and makes the following additional representations and warranties regardless of which entity initiates the RCK Entry on its behalf:

a. Each check is eligible under NACHA Rules to be collected via an RCK Entry.

b. Customer has no knowledge of any insolvency and it has good legal title to the returned item.

c. All signatures on the returned item are authentic and authorized, and the returned item is without alteration, not subject to claims or defenses, and will not be presented to the paying bank.

d. The RCK Entry accurately reflects the item and any information encoded after issue in magnetic ink is correct. (RCK Entries cannot be used for collection fees.)

e. Any restrictive endorsement placed on the item is void or ineffective.

f. Customer has provided clear and conspicuous notice of its electronic check representation policy in advance of receiving the item to which the RCK Entry relates.

g. The Customer will provide to Bank immediately upon request a copy of the front and back of the returned item, provided that the request is made within seven (7) years of the settlement date of the RCK Entry.

15. Internet-Initiated Entries. NACHA Rules allow Customer to initiate a Debit Entry to a consumer Receiver’s account pursuant to an authorization
obtained from the Receiver via the Internet ("WEB Entry"). In the event that Customer initiates a WEB Entry to Bank, Customer agrees that such WEB Entry will comply with all provisions of this Agreement and applicable Rules and makes the following additional representations and warranties regardless of which entity initiates the WEB Entry on its behalf:

a. Customer has employed a commercially reasonable fraudulent transaction detection system to screen each WEB Entry. As of the effective date specified by NACHA, a commercially reasonable fraudulent transaction detection system must include, at a minimum, validation of the account number to be debited for each Web Debit Entry. This validation must be completed for the first use of such account number as well as each time there is a change in such account number.

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 commercially reasonable secure Internet session prior to the key entry by the Receiver of any banking information and through the transmission of the data to Customer. If regulatory requirements or technological advancements drive the commercially reasonable standard to change, Customer agrees to comply with the new standard.

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 proof of Customer's security audits to Bank upon request. Any such information provided to Bank shall be kept confidential except as required to be disclosed by applicable law, rule or regulation. Bank may cease processing Entries for Customer if Bank in its sole discretion determines that Customer's security procedures are inadequate.

16. Telephone-Initiated Entries. NACHA Rules allow Customer to initiate a Debit Entry to a consumer Receiver's account pursuant to the Receiver's oral authorization and banking information obtained via the telephone ("TEL Entry"). In the event that Customer initiates a TEL Entry to Bank, Customer agrees that such TEL Entry will comply with all provisions of this Agreement and applicable Rules and makes the following additional representations and warranties regardless of which entity initiates the TEL Entry on its behalf:

a. Receiver Authorization. Customer shall obtain the Receiver's explicit authorization prior to initiating a Debit Entry to the Receiver's account. In the event that Customer obtains the Receiver's authorization verbally, Customer will either tape record the Receiver's oral authorization or provide, in advance of the settlement date of the Entry, written notice to the Receiver that confirms the oral authorization. Customer agrees that, at a minimum, the following specific information is disclosed to, and acknowledged by, the Receiver during the telephone call:

(i) the date on or after which the Receiver's account will be debited;
(ii) the amount of the Debit Entry to the Receiver's account;
(iii) the Receiver's name;
(iv) the account to be debited;
(v) a telephone number that is available to the Receiver and answered during normal business hours for customer inquiries;
(vi) the date of the Receiver's oral authorization;
(vii) a statement that the authorization obtained from the Receiver will be used to originate an ACH debit to the Receiver's account;
(viii) for recurring TEL entries, the amount of recurring transactions; and
(ix) for recurring TEL entries, the timing (including the start date), number, and/or frequency of the electronic fund transfers.

Customer shall retain either the original or a duplicate tape recording of the Receiver's oral authorization or a copy of the written notice confirming the Receiver's oral authorization for two years from the date of the authorization and shall immediately provide same to Bank upon request.

If Customer chooses to provide the Receiver with written notice confirming the Receiver's oral authorization, Customer will disclose to the Receiver during the telephone call method by which such notice will be provided.

b. Security Procedures. In addition to all other representations and warranties contained in this Agreement and the Rules, Customer also represents and warrants the following each time it delivers a TEL Entry to the Bank that it has (a) utilized a commercially reasonable security procedure to verify the identity of the Receiver, including name, address and telephone number; and (b) further that Customer has established commercially reasonable procedures to verify the accuracy of the RDFI's ABA routing and transit number.

17. Accounts Receivable and Back Office Conversion Entries. NACHA Rules allow Customer to utilize ACH to collect consumer check payments received via U.S. mail or at a dropbox location ("ARC Entry"). NACHA Rules also enable Customer to convert during back office processing checks presented either at the point of purchase or a manned bill payment location ("BOC Entry"). In the event that Customer initiates an ARC or BOC Entry to Bank, Customer agrees that such ARC or BOC Entry will comply with all provisions of this Agreement and applicable Rules and makes the following additional representations and warranties regardless of which entity initiates the ARC or BOC Entry on its behalf:

a. Prior to the receipt of each check, Customer has provided clear and conspicuous notice to the Receiver: (i) that receipt of the check is authorization for a payment as a check transaction or for a one-time ACH debit to the Receiver's account; and (ii) of Customer's phone number for inquiries regarding BOC Entries.

b. Customer shall provide a copy of the notice to the Receiver at the time of the transaction if Receiver presents the check in-person.

c. Each check is eligible as a source document under NACHA Rules to be collected via an ARC or BOC Entry.

d. Customer shall use a reading device to capture the Receiver's routing number, account number, and check serial number from the source document (unless Bank has agreed to do so on Customer's behalf for retail lockbox services).

e. The amount of the entry, the routing number, the account number, and the check serial number are in accordance with the source document.

f. The source document to which the ARC or BOC Entry relates will not be presented for payment.

g. 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.

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

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

j. For BOC Entries, Customer has employed commercially reasonable procedures to verify the identity of each Receiver of BOC Entries.

k. For BOC Entries, Customer maintains a working telephone number that is answered during Customer's normal business hours for Receiver inquiries regarding BOC transactions.

18. Point of Purchase (POP) Entries. NACHA Rules allow Customer to initiate a Debit Entry to a Receiver's account for in-person purchases made by check at the point-of-purchase ("POP Entry"). In the event that Customer initiates a POP Entry to Bank, Customer agrees that such POP Entry will comply with all provisions of this Agreement and applicable Rules and makes the following additional representations and warranties regardless of which entity initiates the POP Entry on its behalf:

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 NACHA Rules to be collected via a POP Entry and the Receiver has not opted out of check conversion.

c. Customer has used a reading device to capture the Receiver's routing number, account number, and check serial number from the source document.

d. Customer has provided a receipt to Receiver containing the Originator name, telephone number, date of transaction, transaction amount, check serial number of the source document, merchant number, terminal city and state; and Customer has not included the Receiver's complete account number or complete identification number on such receipt.

e. 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.

f. 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.

19. International ACH Transactions (IAT) Entries. NACHA Rules allow Customer to initiate or receive international payment transactions transmitted via the ACH network.

a. In the event any part of an Entry originates from, or is transmitted to, a financial agency office located outside the territorial jurisdiction of the United States that handles the payment transaction ("IAT Entry"), Customer agrees that such IAT Entry will comply with all provisions of this Agreement and applicable Rules. Customer acknowledges that an IAT Entry is ineligible for Same Day ACH. Customer also makes the following additional representations and warranties regardless of which entity initiates the IAT Entry on its behalf:

   (i) Customer is in compliance with U.S. law, including, but not limited to, Customer's obligations under programs administered by OFAC and FinCEN.

   (ii) The origination of an outbound IAT Entry is in compliance with the laws and payment system rules of the receiving country.

   (iii) 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.

   (iv) IAT Entries may be processed by Bank through a correspondent bank. Bank assumes no liability for delays, non-delivery, late returns or other events resulting from processing delays by the correspondent bank or for other causes beyond Bank's control. Cancellation or amendment of an IAT Entry involving non-U.S. dollar currency is subject to any rate exchange loss as determined by Bank. Customer agrees to sell any canceled or amended Entry to Bank at the then current applicable foreign currency buy rate.

b. Remittance Transfer Provider. If Customer is at any time classified as a Remittance Transfer Provider under Regulation E, Customer represents, warrants and agrees that:

   (i) Customer shall be responsible for performing and complying with the requirements of 12 CFR Part 1005, including, but not limited to, providing disclosures to the consumer (sender), the error resolution procedures, the provision of any remedies to the consumer, and the cancellation and refund of remittance transfers;

   (ii) Bank is acting as an agent and not as a Remittance Transfer Provider when performing activities on behalf of Customer; and

   (iii) Even if Bank is deemed a Remittance Transfer Provider under applicable law, Customer shall take all actions necessary to comply with the obligations of a Remittance Transfer Provider.

Customer agrees to indemnify and hold Bank harmless from and against any and all loss, liability, damage, costs and expenses (including attorneys’ fees) that Bank may sustain in reliance on Customer’s representations and warranties set forth in this Agreement or the Rules.

20. Third-Party Vendors. If Customer initiates Entries through a third-party vendor or processor ("Vendor"), Vendor is the agent of Customer and not of Bank. If Customer uses a Vendor, Customer shall be deemed to have authorized Bank to follow the instructions of such Vendor to the same extent and under the same conditions as would apply if the instructions came direct from Customer and Customer shall be responsible for insuring that such Vendor fully complies with the Rules and this Agreement. Bank is not responsible for the acts or omissions of Vendor and Customer agrees to be liable for and hold Bank harmless from, any losses caused by the acts or omissions of Customer’s Vendor.

21. Third-Party Sender. If Customer is transmitting Entries as a third-party vendor or processor on behalf of originators ("Third-Party Sender"), Customer agrees to be bound by the applicable terms provided in this Agreement and the Rules. Customer warrants to Bank that the originator has agreed to assume the responsibilities of an Originator under NACHA Rules and that ACH Entries shall not be initiated in violation of laws of the United States. Customer represents that it has executed an ACH agreement with each Originator and that the agreement binds the Originator to the NACHA Rules. Customer shall provide Bank with the list of Originators, copies of the agreements, and other information deemed reasonably necessary to identify the Originators within two (2) Business Days of Bank’s request. Bank reserves the right to review the list of Originators for which Customer is transmitting the Entries and to reject any in Bank’s sole discretion. As Third-Party Sender, Customer agrees to indemnify, defend and hold Bank harmless from and against any and all claims, demands, expenses, losses, liabilities, and damages, including reasonable attorney fees and court costs at trial or on appeal that arise directly or indirectly from the failure of the Originator to perform its obligations as an Originator under NACHA Rules. Customer further agrees to assume all applicable responsibilities, warranties and liabilities of the ODFI, as specified in the NACHA Rules. Customer shall cooperate fully and respond within two (2) Business Days to any inquiry from Bank relating to potential NACHA Rule inquiries or violations.

22. ACH Positive Pay Service. ACH Positive Pay Service assists Customer in detecting fraud by electronically matching incoming ACH transactions to authorizations that Customer can create and manage online. If ACH Positive Pay Service is selected by Customer, Customer shall designate the account(s) maintained at Bank that are to be used with the ACH Positive Pay Service ("ACH Positive Pay Account"). Customer shall create authorizations for incoming ACH Credit and/or Debit Entries that it desires to post to the ACH Positive Pay Account. Customer shall provide Bank with the list of Originators, copies of the agreements, and other information deemed reasonably necessary to identify the Originators within two (2) Business Days of Bank’s request. Bank reserves the right to review the list of Originators for which Customer is transmitting the Entries and to reject any in Bank’s sole discretion. As Third-Party Sender, Customer agrees to indemnify, defend and hold Bank harmless from and against any and all claims, demands, expenses, losses, liabilities, and damages, including reasonable attorney fees and court costs at trial or on appeal that arise directly or indirectly from the failure of the Originator to perform its obligations as an Originator under NACHA Rules. Customer further agrees to assume all applicable responsibilities, warranties and liabilities of the ODFI, as specified in the NACHA Rules. Customer shall cooperate fully and respond within two (2) Business Days to any inquiry from Bank relating to potential NACHA Rule inquiries or violations.
C. WIRE TRANSFER SERVICES

1. Introduction.
   a. Governing Law. Bank sends outgoing and receives incoming wire transfers through Fedwire (the funds transfer system owned and operated by the Federal Reserve Banks or other provider in accordance with Section II.24.A). All funds transfers are governed by this Agreement, Subpart B of Regulation J of the Federal Reserve Board, OFAC regulations, and all other applicable international, federal, state and local laws and regulations. Customer agrees not to initiate or receive a wire transfer payment order in violation of applicable federal, state or local law.

   b. Authorized Users. Customer will designate to Bank in the form required by Bank those individuals authorized to instruct Bank regarding wire transfer Services including without limitation, individuals authorized to initiate payment orders and select advice methods, confirmation methods, and any or all authorizations and instructions that may be requested by Bank. Bank may rely on any such authorization until it has been revoked in writing by Customer. Bank shall have a reasonable time to process any revocation received pursuant to this section.

2. Routing/Time Deadlines. Bank may use any means of transmission, funds transfer system, intermediary bank, clearinghouse or route that Bank reasonably believes is suitable for any outgoing wire transfer. Bank will establish from time to time one or more deadlines after which Bank will not accept an incoming payment order to be processed on the day of receipt.

   Payment orders received after Bank’s established deadline, during a maintenance window, or on any non-Business Day, including any Saturday, Sunday, holiday or any day that Bank’s wire department is not open will be rejected. Payment orders received during a maintenance window, including the end-of-day maintenance window, will not receive a notice of rejection.

3. Payment Orders.
   a. Communication. Customer may communicate a payment order to Bank by the means and manner agreed to between the parties.

   b. Content of Payment Orders. Customer will supply to Bank any information Bank reasonably requests regarding any payment order initiated by Customer, including, without limitation, money amounts, affected accounts, dates of transfer, the beneficiary’s name and account number, the name and routing number or bank identifier code of the beneficiary’s financial institution, such additional information as Bank may reasonably request and, if necessary, further evidence of any Agent’s authority to transfer funds or to do any other act contemplated by this Service.

   c. Execution of Payment Orders. Customer authorizes Bank to execute and charge Customer’s account(s) with Bank for payment orders delivered to Bank in accordance with this Agreement. Bank has no obligation to execute a payment order if Customer’s account to be charged has insufficient collected and available funds to cover the order.

   d. Processing Payment Orders. The order in which Bank processes wire transfer payment orders is determined solely by Bank. Customer does not have the right to reverse, adjust or revoke any payment order after it has been received by Bank, provided, however, that Bank will make a reasonable effort to act on such a request by Customer.

   With respect to a payment order already transmitted to the beneficiary’s financial institution, Bank shall, at Customer’s request, request the financial institution to return funds previously transferred. Customer understands that the receiving institution is under no legal obligation to comply with this request.

   e. Rejection of Payment Orders. Bank may reject a payment order from Customer if such payment order is not initiated in accordance with the applicable security procedure, if there is any inconsistency between a payment order and information previously supplied to Bank, if Bank is unable to obtain confirmation of such payment order satisfactory to Bank, if there are insufficient collected funds in Customer’s specified account to fund the payment order, if Bank has a reasonable basis to suspect the payment order may be unauthorized or fraudulent, or if Bank has other reasonable grounds not to honor the payment order. Bank will notify Customer by telephone that it has rejected a payment order. Bank may also reject an incoming payment order if it has reasonable grounds to do so.

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

g. Batch Wire; Direct Wire Interface.
   (i) Service Specifications. If requested by Customer and agreed to by Bank, the Batch Wire service and Direct Wire Interface service allows Customer to initiate payment orders from its computer to Bank’s computer, subject to the provisions of this Agreement. In addition, the Direct Wire Interface service allows Customer to receive reports of incoming wire activity. Customer will comply with the relevant interface specifications established by Bank for these services, including, without limitation, file formats, means of data transmission, or establishing a secure connection (the “Specifications”). Customer may not use such modifications as the Specifications and Customer shall implement such modifications as soon as reasonably practicable.

   (ii) Wire Transfer Software, Confidentiality. Customer or its Agent shall be solely responsible for creating the computer programs to implement the Specifications (“Wire Transfer Software”). Customer shall maintain the confidentiality of the Specifications and the Wire Transfer Software and permit access solely to those responsible for supporting the Wire Transfer Software or authorized to initiate payment orders. Customer shall implement passwords and other security devices commensurate with the highest level of security afforded by Customer to other computer programs and confidential information of Customer.

   a. Confirmation Method. Customer and Bank shall agree to the method of confirming payment orders received from Customer. Customer shall designate Authorized Users to confirm payment orders. Bank recommends a minimum of three potential Authorized Users to confirm payment orders and that Authorized Users serve as an initiator or a confirmer, but not both. Notwithstanding Bank’s recommendation, if Customer permits an Authorized User to act as both initiator and confirmer, Customer hereby authorizes Bank to process a wire initiated and confirmed by such Authorized User. Customer may add or delete the Authorized Users in accordance with Section II.9 of this Agreement. In the event the designated Authorized Users with authority to confirm are not available to confirm a payment order, Customer agrees that Bank may, at its discretion, elect to process the payment order initiated by an Authorized User. Customer agrees to be bound by any such payment order processed by Bank.

   b. Waiver of Confirmation. Bank advises Customer not to waive confirmation. If Customer, however, chooses to waive confirmation, Customer agrees to be liable for all outgoing payment orders, except those payment orders where (1) Customer is able to conclusively prove that the unauthorized transfer could not have been prevented by the use of confirmation procedures; (2) Bank is unable to produce any evidence that the unauthorized transfer could have been prevented by the use of confirmation procedures; and (3) Customer is otherwise liable for the transfer under this Agreement or applicable law. Customer acknowledges that not using confirmation procedures substantially increases Customer’s risk of liability for an unauthorized wire transfer.

   c. Confirmation of Wire Transfers Initiated through SinglePoint® Essentials, Batch Wire, or Direct Wire Interface (collectively, the “Customer Initiation Methods”). Customer represents and warrants that the confirmation of payment orders initiated through any of the Customer Initiation Methods shall be verified, initiated and confirmed by Customer prior to receipt by Bank. All payment orders shall be initiated and confirmed in accordance with the security procedures established for the relevant Customer Initiation Method.
5. Advices.
   a. Advice Method. Customer will select the type of advice it wishes to receive after Bank receives an incoming wire transfer. If Customer selects telephonic advice, Customer may designate person(s) to be contacted and telephone numbers to be used for advice purposes. Bank shall not be required to make more than one attempt to reach Customer’s designated location by telephone. If Bank is able to reach the Customer’s designated location, but not Customer’s designated Agent, Bank may leave a message containing the information to be conveyed.

   b. Advices by Facsimile. If Customer selects advice by facsimile (“fax”), Customer shall exercise extreme care in maintaining its own security in the receipt of fax advices. Customer acknowledges that the information to be received by fax may include confidential information, including, without limitation, names, amounts, phone numbers, originating account information and the text of incoming wires. Customer further acknowledges that it alone assumes full responsibility for maintenance of its internal security procedures to keep such information confidential. Customer agrees to indemnify, defend and hold Bank harmless against any and all loss, liability, damage, costs and expenses (including attorneys’ fees) that Bank may sustain in reliance on Customer’s representations and warranties set forth in this Agreement.

   c. Waiver of Advice. Customer may waive its right under the Uniform Commercial Code to receive advices by so indicating on the applicable Implementation Documents.

   a. General. Wire Transfers across country borders are customarily done by Bank through a correspondent bank. Outgoing U.S. dollar payment orders may be converted by the correspondent bank or beneficiary bank to the local beneficiary’s currency at the applicable rate in effect at any point in the processing chain. Though in some cases Bank may receive compensation from the correspondent bank in accordance with such conversion, the conversion is executed by the correspondent bank in accordance with the policies and procedures of such correspondent bank at an exchange rate set by that correspondent bank in its sole discretion and subject to any applicable regulations. Any fee, commission or charges assessed by Bank, the correspondent bank or the beneficiary bank may be passed on to the Customer or deducted from the wire transfer amount. Bank assumes no liability for delays, non-delivery, market risk or other events resulting from causes beyond Bank’s control. In refunding unexecuted payment orders, Bank shall be liable to Customer only to the extent it receives payment from the correspondent bank processing the transfer. Cancellation or rejection of a transfer involving non-U.S. dollar currency is subject to any rate exchange loss as determined by Bank. Customer agrees to sell any canceled or rejected payment order to Bank at the then-current applicable foreign currency buy rate.

   b. Remittance Transfer Provider. If Customer is at any time classified as a Remittance Transfer Provider under Regulation E, Customer represents, warrants and agrees that:

   (i) Customer shall be responsible for performing and complying with the requirements of 12 CFR Part 1005, including, but not limited to, providing disclosures to the consumer (sender), the error resolution procedures, the provision of any remedies to the consumer, and the cancellation and refund of remittance transfers;

   (ii) Bank is acting as an agent and not as a Remittance Transfer Provider when performing activities on behalf of Customer; and

   (iii) Even if Bank is deemed a Remittance Transfer Provider under applicable law, Customer shall take all actions necessary to comply with the obligations of a Remittance Transfer Provider.

   Customer agrees to indemnify and hold Bank harmless from and against any and all loss, liability, damage, costs and expenses (including attorneys’ fees) that Bank may sustain in reliance on Customer’s representations and warranties set forth in this Agreement.

7. Reverse Wire Transfers.
   a. Authorized Debits. If requested by Customer and agreed to by Bank, Customer authorizes Bank to debit Customer’s account(s) with Bank upon receipt of a Fedwire drawdown request, and to send funds to the requesting bank. Each transfer will be done on the Business Day Bank receives the incoming request from the requesting bank if the request is received within a reasonable time to determine whether Customer’s Account has sufficient available funds and to obtain access to the Federal Reserve network prior to the close of business.

   b. Reverse Wire Funding. Customer acknowledges and agrees that Bank may reject any reverse wire request in excess of the collected and available balance. Requesting bank will be notified if the request is rejected by Bank.

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

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

   e. Limitation on Bank’s Liability. In consideration of Bank’s compliance with this authorization, Customer agrees that Bank’s treatment of any authorized debit, and Bank’s rights with respect to it, shall be the same as if the entry were initiated personally by Customer. Bank shall have no liability if any authorized debit is dishonored.

8. Additional Limits on Bank’s Liability. Bank is responsible only for performing the Services described in this Section. Bank shall not be responsible for the acts or omission of Customer, any Federal Reserve Bank or other financial institution, any transmission or communication or any other person, and no such person shall be deemed to be Bank’s agent under this Agreement.
D. U.S. BANK EASYTAX℠ SERVICES

1. Authorization; Enrollment. If the EasyTax Service is requested by Customer and agreed to by Bank, Bank will electronically enroll Customer in the Electronic Federal Tax Payment System (EFTPS) if Customer desires to make federal tax payments via EFTPS. Electronic enrollment will allow Bank to process Customer’s tax payments in compliance with EFTPS through Bank’s tax payment system only. If Customer chooses to pay federal taxes by any other means, payments may not be EFTPS compliant. Customer understands that Bank’s EFTPS enrollment form 8655 does not replace the EFTPS form 9779, which is sent to mandated companies by the Internal Revenue Service. Customer may also use the EasyTax Service to make state and/or local municipality tax payments in jurisdictions that support such payments. Customer agrees that the EasyTax Service shall be governed by this Section and all other relevant sections of this Agreement.

2. Submission of Information. Customer shall furnish Bank with complete and accurate master file information which shall enable Bank to file tax deposits via ACH with the appropriate tax authorities in a timely manner. The Service provided by Bank hereunder shall be based solely upon the information furnished by Customer to Bank. Accordingly, any inaccuracy in any information provided by Customer may result in unintended processing by Bank. Customer bears sole and exclusive responsibility to verify that the information provided to Bank is complete and accurate. Bank bears no responsibility for detecting or reporting any error in data supplied by Customer and shall not be liable to Customer for any information provided by Customer with respect to information that is inaccurate, incomplete or otherwise incorrect. The Service provided hereunder does not relieve Customer of any duty imposed on Customer by law to maintain records or from verifying and, if necessary, immediately correcting in writing all data received from Bank relating to the Service. Customer agrees to be bound by any instructions, whether or not authorized, issued in its name and accepted by Bank in accordance with the agreed procedures. Customer shall indemnify and hold Bank harmless from and against all liability, loss and damage (including attorneys’ fees and other costs incurred in connection therewith) arising out of the use of information provided by Customer.

3. Requests for Payment. Requests for payment to tax authorities must be made in accordance with instructions which Bank shall provide Customer, which may be amended by Bank from time to time at its discretion, and will be considered complete only if actually received by Bank. All tax deposits must be initiated at least one Business Day in advance of the due date, otherwise deposits may be subject to federal or state penalties. Any request by Customer to make tax deposits hereunder shall be submitted to Bank prior to the daily cut-off time established by Bank from time to time. Any such request received by Bank after its daily cut-off time may be processed on the next Business Day. In the event that an ACH Entry is rejected or returned by an ACH processor for any reason whatsoever, Bank will give Customer notice of any rejected or returned ACH Entry in the usual manner agreed to by the parties. Bank shall have no liability for any delay caused by strikes, telephone failure, equipment or electrical failure, or any other condition beyond the reasonable control of Bank.

4. Receipt of Funds. Funds received by Bank from Customer shall be held as a deposit liability of Bank to Customer until such time as such funds are due and paid to the appropriate tax authorities. Customer is not entitled to interest on such funds and Bank may invest such funds solely for Bank’s benefit.

5. Account. Customer shall maintain with Bank a business demand deposit account in which Customer shall maintain immediately available funds in an amount sufficient to cover all tax deposits and fees charged by Bank for the Service hereunder. Failure by Customer to maintain such funds shall relieve Bank from providing such Service, notwithstanding any request by Customer to provide the Service.

6. Liability. Bank shall not be liable for any penalties assessed by reason of failure of Customer to make any tax payments. Interruption of the Service or performance hereunder for any reason shall not relieve Customer of its obligation to make any required tax deposits, and Bank shall not incur any liability to Customer for Customer’s failure to make any such deposit. If Customer elects to make a tax deposit by any means other than through Bank, Bank shall not be liable for any penalties or interest arising from any error in due date or other calculations for deposits made within the period in which such other deposit was made. Bank may choose to provide its EasyTax Service through a third-party vendor. Bank and its third-party vendor’s liability to Customer is limited to correcting any error made by the Bank or third-party vendor. The sole and exclusive remedy, at law or in equity, against Bank or third-party vendor is limited to money damages in an amount not to exceed the total amount paid to Bank for EasyTax fees during the twelve (12) months preceding the event giving rise to the liability. Neither Bank nor third party vendor will be liable for special, incidental, indirect, punitive or consequential damages. Customer acknowledges that the EasyTax Service would not be available or would be available at substantially increased rates without the liability and remedy limitations set forth in this agreement.

7. Codes. Customer shall keep confidential the Access and PIN codes issued to Customer in connection with the Service, and only Customer shall use such codes. If Customer suspects that any such codes have become known or otherwise accessed by unauthorized persons, Customer shall notify Bank immediately and follow up such notice with written confirmation. The occurrence of unauthorized access will not affect any deposits made in good faith by Bank before Bank has received such notification and had a reasonable time to act to prevent any unauthorized deposits.
E. POSITIVE PAY SERVICES

1. Introduction. Positive Pay Services are offered by Bank as the most effective way to minimize loss from fraudulent check issuance or payment. If Positive Pay Services are requested by Customer and agreed to by Bank, Customer and Bank agree that in the event of an inconsistency between this Agreement and applicable law, the provisions of this Agreement shall prevail to the extent permitted. Nothing in this Agreement is intended to limit Bank's right to return an item unpaid if there are insufficient available funds in the designated account.

2. Format Specifications. Customer shall comply at all times with Bank's format and data transmission standards for the Positive Pay Service. Customer agrees to issue checks, warrants or other Items (collectively, "Items") in accordance with Bank's specifications and will change the Item format when requested to do so by Bank. Bank shall not be responsible for correcting or resolving processing problems caused by substandard quality magnetic encoding.


a. Customer Responsibilities. Customer shall designate to Bank all account(s) that are to be used with the Positive Pay Service ("Positive Pay Account(s)"). Customer will provide Bank with a file of all outstanding Items prior to activation of this Service. On each day that an Item is written against the Positive Pay Account, Customer shall supply Bank with all required Item information prior to the deadline established by Bank. Such information shall include, without limitation, the account number, the issue date, the item number and the dollar amount. Customer shall be responsible for the accuracy and completeness of all information provided to Bank. Customer agrees to review all Positive Pay Exception Items (as defined below) each Business Day.

b. Bank's Responsibilities. In reliance on the information provided by Customer, Bank will create a master issue file for each designated Positive Pay Account ("Issue File"). Excluding valid stop payment orders and issue records voided by Customer request, all Items, including those that have been electronically converted, that match by item number and dollar amount to Bank's Issue File will be deemed properly payable and Bank is authorized to pay all such Items.

c. Positive Pay Exceptions. Each Business Day, Bank shall make reasonable efforts to report to Customer any Item that does not match the Issue File (each, a "Positive Pay Exception") and, if requested and if available, provide the front and back images of those Items for that day's presentation; provided, however, no images shall be provided in the case of electronically converted Items presented to Bank for payment. Customer agrees to review all Positive Pay Exception Items each Business Day. Bank will refer the presenter to Customer if payee information is not provided for a particular Item or for electronically converted Items presented to Bank for payment. Customer agrees to review all Positive Pay Exception Items each Business Day.

d. Teller Positive Pay. All Positive Pay Accounts will interface with the Bank's teller system unless requested by Customer. Bank will compare Items presented for cash at a branch of the Bank with Customer's Issue File. Customer acknowledges that under some circumstances issuance information submitted by Customer may not be reflected in Customer's Issue File until the opening of the following Business Day. Customer agrees to follow Bank's established procedures should it need to manually add an Item to the Issue File. Customer agrees to follow Bank's established procedures should it need to manually add an Item to the Issue File. Bank will make reasonable efforts to assist Customer, but Customer acknowledges that Bank may be unable to process such requests on a same day basis. If a special handling process for teller-cashed items is selected by Customer and agreed to by Bank, Customer shall attempt to contact Customer for approval prior to the encashment of any item that does not appear in the Issue File. Customer agrees that Bank, in its sole discretion, may refuse to cash any Positive Pay Exception Item and such refusal will be deemed to be a wrongful dishonor. In the event of dishonor, Bank will refer the presenter to Customer. Customer acknowledges that Bank may be unable to process such requests on a same day basis. If a special handling process for teller-cashed items is selected by Customer and agreed to by Bank, Bank shall attempt to contact Customer for approval prior to the encashment of any item that does not appear in the Issue File. Customer agrees that Bank, in its sole discretion, may refuse to cash any Positive Pay Exception Item and such refusal will be deemed to be a wrongful dishonor. In the event of dishonor, Bank will refer the presenter to Customer.

e. Teller Payee Positive Pay. If Customer selects the Teller Payee Positive Pay service, payee name(s), in addition to the Issue File information, will be verified at Bank's teller lines. Customer shall include in the Issue File the payee name(s) for each Item issued by Customer. Customer shall be responsible for the accuracy and completeness of the payee information provided to Bank. In reliance on the payee information provided by Customer, Bank will compare the payee information on the Item presented for encashment at a Bank teller line with Customer's Issue File. Customer acknowledges that Bank will not be able to validate payee information if payee information is not provided for a particular Item or for electronically converted Items presented to Bank for payment. Customer agrees to follow Bank's established procedures should it need to manually add an Item to the Issue File. Bank will make reasonable efforts to assist Customer, but Customer acknowledges that Bank may be unable to process such requests on a same day basis. If a special handling process for teller-cashed items is selected by Customer and agreed to by Bank, Bank shall attempt to contact Customer for approval prior to the encashment of any item that does not appear in the Issue File. Customer agrees that Bank, in its sole discretion, may refuse to cash any Positive Pay Exception Item, including where the payee name is not an exact match and such refusal will not be deemed to be a wrongful dishonor. In the event of dishonor, Bank will refer the presenter to Customer.

Bank also reserves the right to require Customer to execute a separate indemnity agreement related to Customer's selection of "pay all" as its default setup for Positive Pay Exception Items.

f. Customer Responsibilities. Customer agrees to issue checks, warrants or other Items (collectively, ";"") in accordance with Bank's specifications and will change the Item format when requested to do so by Bank. Bank shall not be responsible for correcting or resolving processing problems caused by substandard quality magnetic encoding.

(i) payment in accordance with this Section of any Positive Pay Exception Item that is altered or unsigned or which bears the forged or unauthorized signature of Customer;

(ii) the return of any Positive Pay Exception Item to the depository bank in accordance with this Section; or

(iii) Customer's failure to meet Bank's established deadlines. Customer may be required to place a stop payment order on any returned Positive Pay Exception Item, which shall be subject to Bank's customary stop payment fee. Bank's failure to report a discrepancy will not discharge Customer's obligation with regard to any Item and shall not obligate Bank to return any Item if it is otherwise properly payable.

Bank also reserves the right to require Customer to execute a separate indemnity agreement related to Customer's selection of "pay all" as its default setup for Positive Pay Exception Items.

d. Teller Positive Pay. All Positive Pay Accounts will interface with the Bank's teller system unless requested by Customer. Bank will compare Items presented for cash at a branch of the Bank with Customer's Issue File. Customer acknowledges that under some circumstances issuance information submitted by Customer may not be reflected in Customer's Issue File until the opening of the following Business Day. Customer agrees to follow Bank's established procedures should it need to manually add an Item to the Issue File. Customer agrees to follow Bank's established procedures should it need to manually add an Item to the Issue File. Bank will make reasonable efforts to assist Customer, but Customer acknowledges that Bank may be unable to process such requests on a same day basis. If a special handling process for teller-cashed items is selected by Customer and agreed to by Bank, Bank shall attempt to contact Customer for approval prior to the encashment of any item that does not appear in the Issue File. Customer agrees that Bank, in its sole discretion, may refuse to cash any Positive Pay Exception Item and such refusal will be deemed to be a wrongful dishonor. In the event of dishonor, Bank will refer the presenter to Customer. Customer acknowledges that Bank may be unable to process such requests on a same day basis. If a special handling process for teller-cashed items is selected by Customer and agreed to by Bank, Bank shall attempt to contact Customer for approval prior to the encashment of any item that does not appear in the Issue File. Customer agrees that Bank, in its sole discretion, may refuse to cash any Positive Pay Exception Item and such refusal will be deemed to be a wrongful dishonor. In the event of dishonor, Bank will refer the presenter to Customer.

Customer agrees to follow Bank's established procedures should it need to manually add an Item to the Issue File. Customer agrees to follow Bank's established procedures should it need to manually add an Item to the Issue File. Bank will make reasonable efforts to assist Customer, but Customer acknowledges that Bank may be unable to process such requests on a same day basis. If a special handling process for teller-cashed items is selected by Customer and agreed to by Bank, Bank shall attempt to contact Customer for approval prior to the encashment of any item that does not appear in the Issue File. Customer agrees that Bank, in its sole discretion, may refuse to cash any Positive Pay Exception Item and such refusal will be deemed to be a wrongful dishonor. In the event of dishonor, Bank will refer the presenter to Customer.
F. REMOTE DEPOSIT CAPTURE SERVICES

Remote Deposit Capture Services provide Customer with the option of making Electronic Deposits using one or more products offered by Bank. Customer agrees that the Remote Deposit Capture Services shall be governed by this Section and other relevant sections of this Agreement.

1. Processing Options. Customer shall at all times maintain an account with Bank. Customer captures checks received from its Payor Customers into Check Images and transmits Check Images to Bank for processing and collection. Bank will seek to collect such Check Images through the check collection system by presenting or exchanging Check Images or using Check Images to create Substitute Checks for collection.

2. Definitions.

a. “Check Image” means an electronic image of the front and back of an original paper check (including a paper Demand Draft) or an electronic image of a Substitute Check that is created by Customer, Bank or another bank or depository institution in the check collection system.

b. “Check Image Metadata” means information about the Check Image, as well as pointers to the actual image data (also known as image tags).

c. “Customer System” means the computer hardware, and/or software and/or Web-based applications located at Customer’s site that is used by Customer to prepare Electronic Deposits and to access the Remote Deposit Capture Services.

d. “Demand Draft” or “Remotely Created Check” means a paper item, other than a Substitute Check or PIL, which (i) is drawn on a Payor Customer account, (ii) does not bear the signature of the Payor Customer, and (iii) is authorized by the Payor Customer to be issued in the amount for which the item is drawn.

e. “Electronic Deposit” means electronic information (including Check Images, Check Image Metadata, MICR Data, or dollar amount information), obtained from capturing information from an original paper check and remittance documentation that is transmitted to Bank for deposit, processing and collection.

f. “MICR Data” means information from the Magnetic Ink Character Recognition stylized printing on the bottom of checks comprising of routing, transit, account and check serial numbers.

g. “Payor Customers” means clients and/or customers of Customer that submit original paper checks to Customer for payment obligations owed to Customer.

h. “Remote Deposit Capture Services” means one or more Services that allow organizations that receive check payments and/or remittance payments by mail, dropbox or a walk-up environment to deposit all payments electronically at Bank, as further described in the applicable User Manual.

i. “Remote Deposit Capture System” means Bank’s computer systems or databases that Customer may access in order to obtain the Remote Deposit Capture Services.

j. “Substitute Check” means a paper check document that meets the definition of a “substitute check” in the Check Collection for the 21st Century Act as implemented by Regulation CC of the Federal Reserve Board.


a. Only a paper item, payable on demand, and drawn on or payable through or at an office of a bank, is eligible for deposit as a Check Image. Unless permitted by applicable law, Customer represents and warrants to Bank that Customer shall not use the Remote Deposit Capture Services to transmit electronically created payment orders (which are electronic images that are not captured from original paper checks). Without limiting the generality of the preceding sentence, the following items are not eligible for deposit as Check Images or an Electronic Deposit under the Remote Deposit Capture Services, and Customer must deposit these original paper items with Bank: (i) checks, including travelers checks, that are drawn on banks located outside of the United States; (ii) checks payable in a medium other than U.S. dollars; (iii) non-cash items (as defined under Section 229.2(u) of Federal Reserve’s Regulation CC); (iv) promissory notes and similar obligations, such as savings bonds (unless explicitly permitted as an Electronic Deposit in the applicable User Manual); (v) third party checks; (vi) checks issued by and drawn on Customer or an affiliate of Customer; and (vii) any other class of checks or drafts as identified by Bank to Customer from time to time in the User Manual.

b. Customer represents and warrants to Bank that Customer shall not use the Remote Deposit Capture Services to transmit Electronically Created Items (as defined in Federal Reserve’s Regulation CC). Customer shall physically endorse each paper check and ensure that all other necessary endorsements are obtained prior to capturing Check Images for transmission to Bank.

4. Capture of Checks and Check Information.

a. For certain Remote Deposit Capture Services, Customer shall use scanning hardware and/or software that meets Bank’s specifications. In the event the condition of a paper check precludes a complete automated read, Customer shall be responsible for visually inspecting the Check Image. Customer shall be responsible for the repair of any MICR Data (if applicable), and for ensuring that any and all information on the front and back of a paper check is accurately captured and legible in the resulting Check Image, that the resulting Check Image contains an accurate record of all MICR Data required for a substitute check, and that the Check Image otherwise complies with any Check Image quality standards and guidelines established by the American National Standards Institute (“ANSI”), ECCHO Rules, the Federal Reserve, other applicable regulatory agency or clearinghouse, or which Bank may provide to Customer from time to time. Customer acknowledges that current image technology may not capture all security features (e.g. watermarks) contained in the original paper checks and agrees to assume any and all losses resulting from claims based on security features that do not survive the image process.

b. Customer further acknowledges that Bank does not verify the accuracy, legibility or quality of the Check Image prior to processing an Electronic Deposit. Bank may, in its sole discretion, reject, repair, alter, amend, re-format or convert the Check Image Metadata or MICR Data submitted in an Electronic Deposit in accordance with general check collection practices and industry presentation standards, but Bank shall have no obligation to reject, repair, alter, amend, re-format or convert the Check Image Metadata or MICR Data. If Bank requires that Customer comply with certain formatting standards or other guidelines outlined in the applicable User Manual when submitting Electronic Deposits (for example, requiring use of the external processing code for identifying Remotely Created checks) and Customer declines to implement, or comply with, such standards or guidelines, Customer acknowledges that Bank shall not be liable for any error or loss that results from Bank processing such Electronic Deposit or from Bank’s re-formatting or conversion of the Electronic Deposit prior to processing.

c. Bank shall not be liable to Customer for failure to process an Electronic Deposit, or any error that results in processing or collecting an Electronic Deposit: (i) for which Customer has not provided Bank an accurate, complete and legible image of, or information from the original paper check; (ii) for which Customer has failed to comply with formatting standards or other guidelines required by Bank; or (iii) which would violate this Agreement, the User Manual or any other agreement between Customer and Bank.

d. If Customer desires to make an Electronic Deposit outside of the contiguous United States, Customer shall seek Bank’s prior approval. Bank may reject a deposit transaction or terminate the Remote Deposit Capture Services immediately if Customer fails to obtain Bank’s prior approval. If Customer chooses to access Remote Deposit Capture Services from locations outside the contiguous United States, Customer is responsible for compliance with local laws. Customer agrees not to use the Remote Deposit Capture Services in any country that is subject to geographically-based restrictions imposed by OFAC.

5. Upload of Electronic Deposit to Bank.

a. Customer shall upload the Electronic Deposit transmission (containing one or more Electronic Deposits) to Bank prior to the daily cut-off time established by Bank from time to time for the receipt of Electronic Deposits. Any Electronic Deposit transmission received by Bank after its
daily cut-off time shall be deemed to have been received by Bank at the opening of its next Business Day. Performance of the Remote Deposit Capture Services may be affected by external factors such as communication network latency. Customer is responsible for the transmission of the Electronic Deposit until the Remote Deposit Capture System reports a successful acknowledgement of receipt of the transmission.

b. An Electronic Deposit is received when the entire Electronic Deposit transmission in which that Electronic Deposit is contained is received by Bank in accordance with section 5.a above. If only a portion of that Electronic Deposit transmission is received by Bank for any reason, including without limitation, a failure during the transmission to Bank, the Electronic Deposit transmission is deemed to have been not received by Bank with respect to any Electronic Deposit contained in that Electronic Deposit transmission (including any Check Image contained in the portion of that Electronic Deposit transmission that was received).

c. Bank will process Electronic Deposit transmission received from Customer via Check Image or Substitute Check collection only. Remote Deposit Capture Services will not process checks through ACH conversion. For each Check Image sent to Bank in an Electronic Deposit transmission, Customer agrees it shall not deposit or cash the original paper check nor re-deposit the Check Image at Bank or any other financial institution or other business.

d. A per item limit, dollar limit, or deposit limit may be established by Bank in its sole discretion and communicated to Customer. If any such limit is established, Bank shall have no obligation to process items or files in excess of the limit.

6. Funds Availability. Customer agrees that the transmission of Check Images using Remote Deposit Capture Services is not subject to the funds availability requirements of Regulation CC. Bank may, at any time, and in its sole discretion, provide a one-time notification to Customer if Bank intends to delay funds availability beyond ordinary Regulation CC funds availability time frames for items submitted by Customer using Remote Deposit Capture Services. In such instance, funds deposited will be available for withdrawal 3 business days after electronic transmission to Bank, subject to any holds placed on the account as permitted under this Agreement. Bank may, but is not required to, make such funds available sooner.

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

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

9. Franking, Endorsement, Retention and Destruction of Original Paper Checks. To mitigate against potential fraud or the presentment of duplicate items, Customer agrees to frank all original paper checks after successful transmission capturing the Check Images to help ensure that items are not deposited more than once either as a Check Image or physical check. Bank may require Customer to restrictively endorse each check prior to capturing each Check Image. Customer shall destroy the original paper check based on guidelines identified in the applicable User Manual and shall employ commercially reasonable methods to securely store the original paper check until destruction. At Bank’s request, Customer shall provide the original paper check to Bank if the original paper check has not been destroyed by Customer and Bank needs the original paper check to process a payment or resolve a dispute arising from an Electronic Deposit.

10. Representations and Warranties. With respect to each Check Image or Electronic Deposit that Customer transmits to Bank, Customer is deemed to make any representation or warranty that would have applied had Customer deposited the original paper check, including without limitation, that no party will receive a presentation or otherwise be charged for a paper check, whether presented in paper or electronic form, which Customer has converted to a Check Image such that such party is asked to make payment of a check which has already been paid. In addition Customer is deemed to make to Bank any representation, warranty or indemnification that Bank makes, under applicable law, clearance rule, Federal Reserve Operating Circular, Federal Reserve Regulation (including without limitation Regulation CC), bi-lateral agreement or otherwise, to any person (including without limitation a collecting bank, a Federal Reserve Bank, a paying bank, a returning bank, a depository bank in possession of the original paper check, the drawee, the drawer, any endorser, or any other transferee) when Bank transfers, presents or originates a Check Image, or a Substitute Check created from that Check Image. These representations and warranties include but are not limited to, that: (a) the transmissions contain accurate images of the front and back of the original checks; (b) the transmissions contain all necessary endorsements up until the original paper check is imaged; and (c) no depository bank, drawee, drawer, or endorser will be asked to make a payment based on an item that it has already paid.

11. Customer Responsibility. With respect to each Check Image, Electronic Deposit or other item that Customer transmits to Bank, Customer agrees to defend, indemnify and hold Bank harmless from and against any and all claims, demands, damages, losses, liabilities, penalties and expenses (including, without limitation, reasonable attorney fees and court costs at trial or on appeal) arising directly or indirectly: (a) from Customer’s breach of a representation or warranty as set forth in section 9 above; (b) as a result of any act or omission of Customer in the capturing, creation or transmission of the Check Image or Electronic Deposit, including without limitation the encoding of the MICR Data from the original paper check; (c) from any duplicate, fraudulent or unauthorized check, Check Image or Substitute Check; (d) for any loss caused by Bank’s acceptance or creation of a Check Image or Substitute Check instead of presentment of the original paper check; (e) out of Customer's deposit of an Electronically Created Item; or (f) from any other act or omission arising out of Bank’s action or inaction taken pursuant to any request by Customer or pursuant to this Agreement. This Section 11 shall survive termination of the Agreement.

12. User Manual. Bank will provide Customer with one or more user guides (the “User Manual”) in electronic format that will set forth the policies and procedures for the Remote Deposit Capture Services product with which Customer agrees to comply. Bank may require that certain employees of Customer attend periodic training as a condition to using the Remote Deposit Capture Services.

13. Security Procedures and Right to Audit. Customer shall comply with all security procedures for the Remote Deposit Capture Services that are established by Bank or set forth in the applicable User Manual. Customer is solely responsible for (i) maintaining its own internal security procedures; (ii) safeguarding the security and confidentiality of any information obtained from “Payor Customers’ checks, Check Images and other information that is either printed from, stored on, or downloaded to, the Customer System, Remote Deposit Capture System, or Customer’s other computer/data systems or portable media; and (iii) preventing errors or unauthorized access to the Customer System or the Remote Deposit Capture System. Bank reserves the right to periodically audit Customer’s security procedures and information technology processes and to mandate controls.

14. Mobile Remote Deposit Services (“Mobile Services”). Depending on the type of Electronic Deposit Service selected by Customer, Mobile Services is an optional add-on service that will allow Customer to make remote check deposits and obtain check deposit history made through the Mobile Services using a supported mobile device. If Customer selects Mobile Services, Customer will need to download and install a Mobile Service application on compatible and supported mobile phones, tablets or other devices (collectively, “Devices”).
a. Description of Mobile Services. Mobile Services allow Customer to use a Device to take photographs of the front and back of the check and to transmit the Check Image to Bank in a secure data encrypted format using Customer's mobile service provider's cellular network or the Internet (collectively, “Network”). Certain Mobile Services may allow Customer to use a Device to enter remittance data and to take photographs of the front and back of remittance and general documents associated with the Check Image for reporting and research purposes.

b. Use of Mobile Services. Customer agrees to use Mobile Services in accordance with this Agreement, other user requirements provided in the User Manual and the downloaded mobile application. Bank reserves the right to modify the scope of Mobile Services at any time or change or upgrade Mobile Services from time to time, including the right to cease offering the Service on a previously supported Device. Bank also reserves the right to refuse any Electronic Deposit requested through the Service because a Check Image fails image quality standards, is detected as a duplicate item, or for any other reason in Bank's sole discretion. Customer understands and agrees that Mobile Services may not be accessible at all times due to Network connectivity or may have limited utility over some Networks, such as while roaming. Customer acknowledges and agrees that Bank may use geolocation technology to track that Mobile Services activity occurs within the contiguous United States.

c. Software. Customer agrees not to use Mobile Services or the content or information delivered through Mobile Services in any way that would infringe upon any third-party copyright, patent, trademark, trade secret, or other proprietary rights or rights of publicity or privacy, including any rights in the Mobile Services software. In the event Mobile Services is terminated or Customer's software license is revoked for any reason, Customer agrees to promptly delete the Mobile Services application from its Devices.

d. Service Limitations.

i. Neither Bank nor Customer's mobile service providers can always foresee or anticipate technical or other difficulties related to Mobile Services, which may result in loss of data, personalization settings or other interruptions. Bank assumes no responsibility for the timeliness of any Mobile Services transmissions or communications, or the loss or failure to store any user data, communications or personalization settings in connection with a Device and Customer's use of Mobile Services.

ii. Bank shall not be responsible for the operation, security, functionality, or availability of any Device or Network that Customer utilizes to access Mobile Services. Transmission of a Check Image shall not be deemed received unless the Device reports a successful acknowledgement of receipt of the transmission. Customer agrees to exercise caution when utilizing Mobile Services on Devices and to train its Authorized Users to exercise good judgment and discretion when accessing or transmitting information.

iii. Information about activity is synchronized between the Mobile Services software and Bank's Electronic Deposit System; however, deposit information available via the Mobile Services application may differ from the information that is available directly through the Electronic Deposit System. Information and features available directly through the Electronic Deposit System may not be available via the Mobile Services application and may be described using different terminology. The method of entering information via the Mobile Services application may also differ from the method of entering instructions through the Electronic Deposit System. Customer agrees that Bank shall not be liable for any errors or delays in the content as a result of Customer's use of the Mobile Services software.

iv. Customer acknowledges that its mobile service carrier or provider may provide for fees, limitations and restrictions such as data usage charges or data throttling which may have an impact on Customer's use of or interaction with Mobile Services. Customer agrees to be solely responsible for all such fees, limitations and restrictions.

e. Security.

i. If Customer permits its employees or agents to use their own personal mobile devices to access Mobile Services, Customer assumes any and all risks associated with the use of personal mobile devices, including but not limited to, any risk that compromises the integrity of Customer's corporate network or sensitive business data. Customer is solely responsible for implementing policies that will help mitigate the risk of allowing employees to use personally-owned mobile devices, which may include but are not limited to, requiring that Devices are configured and managed with information assurance controls commensurate with the sensitivity of the underlying data and employing Mobile Device Management (MDM) software or other software that secures, monitors, manages and supports mobile devices deployed across operators, service providers and enterprises.

ii. Customer shall ensure that its employees or agents exercise appropriate precautions surrounding the use and safeguarding of the Devices at all times. Customer agrees not to leave Devices unattended when logged into Mobile Services and to log off immediately at the completion of each access. Customer agrees that either a username or biometric verification and password are agreed-upon security procedures and that such security procedures are commercially reasonable. If these security procedures are used to access Mobile Services, Customer agrees that any transactions using Mobile Services are hereby authorized. If Customer permits other persons to use a Device, login information, or any other means to access Mobile Services, Customer will be responsible for the resulting transactions, and Bank shall have no liability for any damages Customer may incur.

iii. Devices with internet capabilities are susceptible to viruses. Customer is responsible for ensuring that each Device is protected from and free form viruses, malicious software (“malware”), and other harmful components which could result in damage to programs, files, or the Device, or could result in information being intercepted by a third party. Bank shall have no liability for any damages which may result from such viruses, malware, or other harmful components.
G. BUSINESS SAVINGS SWEEP SERVICES

1. If Customer chooses the Business Savings Sweep Service, collected funds with a minimum of $500 in excess of a pre-established collected balance ("Peg Balance") shall be swept from Customer's business demand deposit account into a Business Savings Sweep Account (the "Savings Account"). The Peg Balance shall be set at a minimum of $10,000 unless otherwise agreed to by Bank. Funds remain in the Savings Account until Customer's business demand deposit account reaches a negative balance, whereupon available funds are swept back into Customer's business demand deposit account in an amount necessary to return the business demand deposit account balance to the Peg Balance.

2. In accordance with applicable federal law, sweeps from the Savings Account to Customer's business demand deposit account are limited to six per month. In order to comply with applicable regulations, on the sixth transfer from the Savings Account to Customer’s business demand deposit account, all of the funds are moved from the Savings Account back into Customer’s business demand deposit account and the sweeps suspend until the first day of the following month’s cycle.
U.S. Bank Cash Management Services Agreement

Customer Information
(Customer includes the Covered Entities listed in the Additional Business Owners Supplement, if applicable)

Business name: ____________________________________________

Business address: ____________________________________________

Organization type:

☐ Corporation ☐ Partnership ☐ Limited Liability Company
☐ Association ☐ Sole Proprietorship ☐ Governmental Entity
☐ Non-Profit Organization ☐ Other: ____________________________

Tax Identification Number: ____________________________

U.S. Bank's Cash Management Services ("Services") are described in the U.S. Bank Cash Management Services Terms and Conditions, and any addendum or supplements thereto, and in additional Implementation Memos, User Manuals, Operating Guides and other related documentation provided to Customer by Bank (collectively referred to as the "Agreement"). Customer has received and reviewed the Agreement and decided to use one or more of the Services. Customer and Bank agree that the Services shall be governed by the Agreement and also agree to comply with the procedures and instructions contained therein.

Authorized Signers

The undersigned officer(s), partner(s), owner(s), or otherwise authorized person(s) (the "Authorized Signers") are authorized to execute and to act on behalf of Customer (which includes, the Covered Entities listed in the Additional Business Owners Supplement, if applicable) in all actions taken under the Agreement and amendments thereto from time to time and to enter into any and all transactions contemplated in the Agreement, including without limitation, selecting Services for the benefit of Customer, appointing agents to act on behalf of Customer in the delivery of Services, signing additional documentation that may be necessary to implement the Services and giving the Customer's instructions with regard to any Service, including without limitation, book transfers, ACH transfers and any other electronic or paper transfers from or to any account Customer may maintain at Bank.

U.S. Bank may, at its discretion, require the Customer to execute additional documentation to implement or amend certain Services. In such cases, documentation necessary to implement or amend such Services shall be signed by at least one of the Authorized Signers. Customer further acknowledges and agrees that U.S. Bank may implement or amend Services based on the verbal, written, facsimile voice mail, email or other electronically communicated instructions that in good faith it believes to have been received by an Authorized Signer. By signing below, Customer authorizes U.S Bank to verify and investigate any of the information provided in the Cash Management Services E-Form, including personal checking account history.

Authorized Signer 1: (please print) ____________________________________________ Title: ____________________________________________

Signature 1: ____________________________________________ Date: _________________

Authorized Signer 2: (please print) ____________________________________________ Title: ____________________________________________

Signature 2: ____________________________________________ Date: _________________

Authorized Signer 3: (please print) ____________________________________________ Title: ____________________________________________

Signature 3: ____________________________________________ Date: _________________