

**Cash Management Services Terms and Conditions**

**Introduction**

Thank you for choosing Flushing Bank for your Cash Management Services needs. We appreciate the opportunity to serve you. If you have any questions about these Terms and Conditions or our offering of Cash Management Services, please contact your Relationship Manager.

This document contains the Terms and Conditions applicable to our Cash Management Services. It is used in conjunction with the Account Agreement which covers your deposit account Terms and Conditions. Part A contains the Terms and Conditions specific to each Service offered herein. By requesting and using a particular Service you are agreeing to be bound by the corresponding Terms and Conditions. Part B contains the General Terms and Conditions that apply to all Services offered herein. Part C contains a Glossary of terms used throughout the document.

Please read this document carefully and keep it for your records. By signing and returning the Master Cash Management Services Agreement, you agree to the Terms and Conditions herein. The entirety of the General Terms and Conditions Section together with the applicable Service Sections constitutes the Agreement between you and Flushing Bank with respect to your use of the Services outlined herein.

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## **Part A - Service Specific Terms and Conditions**

### **Cash Manager Direct (“CMD”) Service**

#### **1 SERVICE SELECTION**

- 1.1 Entity hereby accepts the individual Services available as part of the Cash Manager Direct Service as they are set out in the Cash Manager Direct Application. Entity may obtain additional Services by notifying Bank in writing of any such changes. Entity must make any changes to Entity information, Authorized Users and Authorized User’s access to the Services by submitting an updated Cash Manager Direct Application or Entity Set-up and System Administrator Form to Bank. Any such changes shall be effective once Bank has received such notice and has had a reasonable opportunity to act upon it.
- 1.2 Entity will transmit instructions to Bank and exchange data using a format, telecommunications system, or network determined by Bank. Entity agrees to have the appropriate personnel review and sign the applicable applications, including the Cash Manager Direct Application. Entity also agrees to have System Administrators complete the security initialization process and login to Bank’s network as required by Bank prior to the use of the Services.

#### **2 MOBILE ACCESS**

- 2.1 Mobile Access is a convenient supplement to the Cash Manager Direct Service. Mobile Access does not replace access to Cash Manager Direct from desktop computers or other methods used for managing accounts and Services with Bank. Mobile Access allows Entity to view account balances and history, pay bills, transfer funds between accounts, and contact Bank for support.
- 2.2 Access Requirements and Limitations:
  - (i) Entity’s mobile device must be browser compatible.
  - (ii) Entity will not be able to access all functions/Services that are accessible via Cash Manager Direct from Entity’s personal computer. Examples include, but are not limited to, electronic statement, check reordering and third-party services.
  - (iii) Mobile Access users are responsible for any service charges from mobile carriers because of using this Service.
  - (iv) Mobile Access may not be accessible or may have limited service over some network carriers. Bank does not guarantee that Entity’s mobile device or mobile phone service provider will be compatible with Mobile Access.
  - (v) Bank cannot guarantee and is not responsible for the availability of data services provided by Entity’s mobile carrier, such as data outages or “out of network” issues.
- 2.3 Bank may modify Mobile Access from time to time at Bank’s sole discretion. Entity accepts responsibility for understanding how to use Mobile Access as modified. Entity also accepts responsibility for knowing how to properly use Entity’s mobile device. Bank will not be liable for any losses caused by Entity failing to properly use the Services via Mobile Access.
- 2.4 Entity agrees that its use of Mobile Access is subject to the terms and conditions set forth in Entity’s existing agreements with any unaffiliated service providers, including, but not limited to, Entity’s mobile service provider. The Agreement does not amend or supersede any of those agreements. Entity understands that those agreements may provide for fees, limitations, and restrictions, which might affect Entity’s use of Mobile Access (such as data usage or text messaging charges imposed by Entity’s mobile

service provider). Entity is solely responsible for all such fees, limitations, and restrictions. Entity agrees to resolve any issues or problems with Entity's mobile service provider, concerning its products or services, directly with the provider without involving Bank.

- 2.5 Mobile phones and other mobile devices with Internet capabilities are susceptible to viruses. Entity is responsible for protecting its mobile device from viruses, worms, Trojan horses, or other similar harmful components (collectively referred to as "viruses") which could result in damage to programs, files, and/or Entity's mobile device or could result in a third-party intercepting Entity's information. Bank will not be responsible or liable for any damages that may result from such viruses, including, but not limited to, indirect, incidental, special or consequential damages. Bank will also not be responsible if any third-party accesses any non-public personal information via Mobile Access due to Entity's mobile device contracting any viruses at any time, from any source.
- 2.6 Bank is not responsible for any errors, delays, or inability to access the Services, caused by Entity's mobile device. Bank is not responsible for the cost of upgrading Entity's mobile device to remain current with the Service. Bank is not responsible for any damage to the mobile device or the data within.
- 2.7 Bank makes no representation that any content or use of Mobile Access is available in locations outside the United States. Entity uses Mobile Access from locations outside the United States at Entity's own risk.
- 2.8 Entity agrees to take every precaution to ensure the safety, security and integrity of Entity's Account and transactions when using Mobile Access. Entity agrees not to leave Entity's mobile device unattended while logged into the service and to log off immediately at the completion of each access. Entity agrees not to provide Entity's Company ID, user ID, password, or other access information to any unauthorized person. If Entity allows access to an unauthorized user, Entity will be responsible for any transaction they authorize, and Bank will not be liable for any damages as a result. Entity agrees not to use any personally identifiable information when creating shortcuts to Entity's Account.
- 2.9 Software Terms and License:
  - (i) General
    - (a) In connection with Mobile Access, Bank and Bank's licensors may require Entity to agree to certain license rights arrangements and/or end user agreements ("Licenses"). By downloading and installing Mobile Access software, Entity agrees to the terms and conditions of any Licenses presented at the time of such downloading. Bank may also condition Entity's continued use of Mobile Access software upon Entity subsequently agreeing to such Licenses by electronic or other means.
  - (ii) Ownership
    - (a) Entity acknowledges and agrees that Bank or its third-party vendor is the owner of all rights, title, and interest in and to the mobile technology solution made available to Entity, including but not limited to any downloaded software and the computer programs contained therein, as well as any accompanying user documentation, and all subsequent copies, updates, or versions thereof, regardless of the media or form in which they may exist.
  - (iii) License
    - (a) Subject to the Terms, and any other end user agreement or license provided to Entity in connection with downloading or using the Mobile Access software, Entity is hereby granted a personal, nonexclusive, nontransferable license to use the Mobile Access software for the sole purpose of enabling Entity to use the Cash Manager Direct Service. This is not a sale of any software. Bank and its third-party vendors hereby reserve all rights not expressly granted to Entity.

(iv) Restrictions

- (a) Entity shall not: (1) modify, revise, or create any derivative works of the Mobile Access software; (2) decompile, reverse engineer, or otherwise attempt to derive the source code for the Mobile Access software; (3) redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to the Mobile Access software; or (4) remove or alter any proprietary notices, legends, symbols, or labels in the Mobile Access software, including, but not limited to, any trademark, logo, or copyright.

2.10 Entity agrees that Bank and Bank's third-party vendors may collect and use technical data and related information, including but not limited to technical information about Entity's mobile device(s), system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support, and other services related to the Mobile Access software. Bank and Bank's third-party vendors may use that information, as long as it is in a form that does not personally identify Entity or any of Entity's Authorized Users, to improve their products or provide services technologies.

3 INSTRUCTIONS

3.1 Entity shall be solely responsible for the genuineness and accuracy, both as to content and form, of all instructions, messages and other communications properly received by Bank. Bank may rely, honor, and act upon all instructions and messages, without limit as to amount, which are issued with Security Devices, without making any further verification or inquiry and regardless of the actual identity of the individual transmitting such instructions or messages. Entity shall not repudiate the authenticity of any instruction or message given to Bank hereunder.

4 CUTOFF TIME

4.1 Entity can submit transfers between two of Entity's Accounts and stop payments requests for same day processing. Entity must submit such transactions via Cash Manager Direct prior to 11:00pm ET on the Banking Day Entity wants the transaction processed. Bank will process any transaction submitted after 11:00pm ET on the next Banking Day.

5 DATA

5.1 Entity acknowledges that Bank might not review data accessed under the Agreement and that such data may be inaccurate due to mis-postings, delays in updating account records, and other causes. Bank might periodically update and adjust such data, based in part on information received from Entity and third-parties. Except as may otherwise be expressly set forth in the applicable Service Terms and Conditions, Bank is not obligated to assure the accuracy of the data accessed under the Agreement and will not be liable for any loss or damage arising out of the inaccuracy of any data accessed under the Agreement.

6 SECURE EMAIL

6.1 Entity will have access to a secure service for the transmission of electronic mail ("email") between Entity and Bank. Entity shall use the email service solely for Entity's business use. Entity shall not use the email service for the transmission of instructions to transfer cash, securities or other assets, and Bank shall have no obligation to act upon, any such instructions. Entity shall not use the email service to transmit (i) programs, extraneous code, viruses, or data that may be reasonably expected to interfere with or disrupt the service or services connected to the service; (ii) material that violates the rights of another, including but not limited to the intellectual property rights of another. In the event of the termination or suspension of the service, Bank will bar Entity from accessing emails stored on the designated server.

7 MESSAGE NOTIFICATION

- 7.1 Bank may transmit electronic notification to Entity upon the occurrence of certain account-related transactions. Bank may send such notifications to devices capable of receiving text messages sent by email, such as alphanumeric pagers and cellular phones. Entity is responsible for setting up and maintaining the accuracy of the messaging components and conditions that will trigger the transmission of the electronic notification, including, but not limited to, the email address Entity designates to receive the information, and Bank shall have no liability in connection therewith. Any modification of such messaging components and conditions will be effective when Bank has received the modification and has had a reasonable opportunity to act upon it.

**Mobile Check Deposit Service**

1 RECITAL

- 1.1 Bank provides a mobile deposit capture service whereby Entity can deposit checks by scanning and delivering the images and associated deposit information to Bank or Bank's designated processor.

2 LIMITATIONS

- 2.1 Bank is not responsible for any technical or other difficulties, or any resulting damages Entity may incur. The Service has qualification requirements. Bank reserves the right to change the qualifications at any time without prior notice. Bank reserves the right to change, suspend or discontinue the Service, or Entity's use of the Service, in whole or in part, immediately and at any time without prior notice.

3 FEES

- 3.1 Any relevant fees will be disclosed prior to deposit. Bank may change the fees for use of the Service at any time. Entity authorizes Bank to deduct any such fees from any of Entity's accounts. Fees will not be charged during any free trial period or other promotional campaigns.

4 ELIGIBLE ITEMS

- 4.1 Entity may only scan and deposit "checks" as that term is defined in Federal Reserve Regulation CC ("Reg CC"). When the image of the check transmitted to Bank is converted to a Substitute Check for subsequent presentment and collection, it shall thereafter be deemed an "item" within the meaning of Articles 3 and 4 of the UCC.
- 4.2 Entity will not scan and deposit any of the following types of checks or other items, which shall be considered ineligible items:
- (i) Any check payable to a third-party other than Entity.
  - (ii) Any check containing an alteration, or which Entity knows or suspect, or should know or suspect, is fraudulent or otherwise not authorized by the owner of the account on which the check is drawn.
  - (iii) Any check payable jointly, unless deposited into an account in the name of all payees.
  - (iv) Any check previously converted to a substitute check, as defined in Reg CC.
  - (v) Any check drawn on a financial institution located outside the United States.
  - (vi) Any check that is a remotely created check, as defined in Reg CC.

- (vii) Any check not payable in United States currency.
- (viii) Any check dated more than six (6) months prior to the date of deposit.
- (ix) Any check prohibited by Bank's current procedures relating to the Service or which is otherwise not acceptable under the terms of the Account Agreement.
- (x) Any check payable on sight or payable through Drafts, as defined in Reg CC.
- (xi) Any check with any endorsement on the back other than that specified in the Account Agreement and Sub-Section 6.
- (xii) Any check that has previously been submitted through the Service or through a remote deposit capture service offered at any other financial institution.
- (xiii) Any check drawn on or otherwise issued by the U.S. Treasury Department.

## 5 ENDORESEMENTS AND PROCEDURES

- 5.1 Entity agrees that all required payees will sign all checks deposited through the Service and that all checks will state that they are "For Mobile Deposit Only at Flushing Bank Account # \_\_\_\_\_." Alternatively, if a check includes a pre-printed endorsement such as "Check Here if for Mobile or Remote Deposit", Entity will check such box. Entity is responsible for any loss that Bank incurs from a delay or processing error resulting from an irregular or missing endorsement or other markings. Bank has no responsibility or liability for any fees incurred due to the rejection of transmitted items for missing or incomplete endorsements. Entity's failure to properly endorse items as directed herein could result in termination of the Service. Entity agrees to follow all other procedures and instructions for use of the Service as Bank may establish from time to time.

## 6 RECEIPT OF ITEMS

- 6.1 Bank may reject any item transmitted through the Service, at Bank's sole discretion, without liability to Entity. Bank is not responsible for items it does not receive or for images dropped during transmission. Bank will send Entity a confirmation when it receives an item. Receipt of such confirmation does not mean that the transmission was error free, complete, or that Bank will credit the deposit to Entity's Account. Bank further reserves the right to charge back to Entity's Account at any time; any item that Bank subsequently determines was not an eligible item. Entity agrees that Bank is not liable for any loss, costs, or fees Entity may incur because of the chargeback of an ineligible item.

## 7 AVAILABILITY OF FUNDS

- 7.1 In general, if Bank receives and accepts an image of an item transmitted through the Service before 7:00pm ET, it will be processed the same Banking Day. Bank will process any items received after 7:00pm ET on the next Banking Day. Funds deposited using the Service will be available to Entity within two (2) Business Days from the day of deposit. Bank may make such funds available sooner based on such factors as credit worthiness, the length and extent of Entity's relationship with Bank, transaction and experience information, and such other factors as Bank, in its sole discretion, deems relevant.

## 8 DISPOSAL OF TRANSMITTED ITEMS

- 8.1 Entity agrees to retain all checks transmitted via the Service for at least fourteen (14) days from the date of the image transmission. After fourteen (14) days, Entity agrees to destroy the transmitted check, mark it "VOID", or otherwise render it incapable of further transmission, deposit, or presentment. During the time the retained check is available, Entity will promptly provide it to Bank upon request.

9 DEPOSIT LIMITS

- 9.1 Bank may establish limits on the dollar amount and/or number of items or deposits Entity may transmit via the Service from time to time. If Entity attempts to initiate a deposit in excess of these limits, Bank may reject it. If Bank permits Entity to make a deposit in excess of these limits, such deposit will still be subject to the terms of this Agreement, and Bank will not be obligated to allow such a deposit at other times.
- 9.2 The current daily dollar limit is \$10,000.00 per Banking Day for Entity's first six (6) months as a client of Bank. After six (6) months, the Online Banking Mobile Check Deposit daily limit is up to \$25,000.00 per Banking Day for Entities with more than \$100,000.00 on deposit with Bank. The daily limit is up to \$50,000.00 per Banking Day for Entities with a lending relationship with Bank.

10 PRESENTMENT

- 10.1 The way items are cleared, presented for payment, and collected shall be in Bank's sole discretion subject to the Account Agreement.

11 ERRORS

- 11.1 Entity accepts the risk that an item may be intercepted or misdirected during transmission. Bank bears no liability to Entity or others for any such intercepted or misdirected items or information disclosed through such errors.

12 IMAGE QUALITY

- 12.1 Entity's deposit of a check image is subject to Bank's verification and final inspection. The image transmitted to Bank using the Service must be legible, as determined in Bank's sole discretion. Without limiting the foregoing, the image quality of the items must comply with the requirements established from time to time by Bank, the American National Standards Institute, the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearinghouse, or association. Bank is under no obligation to inspect or verify a check image to determine accuracy of the image or MICR line information associated with the check. Bank may correct or amend MICR line information associated with a check image to facilitate processing of the check image, or a substitute check created from the image.

13 ENTITY REPRESENTATIONS AND WARRANTIES

- 13.1 Entity represents and warrants that; (i) it will only transmit eligible items, (ii) it will not transmit duplicate items, (iii) it will not re-deposit or re-present items, (iv) all information provided to Bank is accurate and true, (v) it will comply with this Agreement and all applicable rules, laws and regulations, (vi) it is not aware of any factor which may impair the collectability of any items, (vii) it will indemnify and hold Bank harmless from any loss for breach of this warranty provision.

14 COOPERATION

- 14.1 Entity agree to cooperate with Bank in the investigation of unusual transactions, poor quality transmissions, and the resolution of claims, including by providing, upon request and without further cost, any originals or copies of items deposited through the Service in Entity's possession and Entity's records relating to such items and transmissions.

## **CMD Wire Transfer Service**

### **1 RECITAL**

- 1.1 Unless otherwise defined herein, the terms used in this Section have the meaning given to them in Article 4A of the UCC. This Section is subject to Article 4A of the UCC as adopted in the State of New York. This Section is also subject to all clearing house association rules, rules of the Board of Governors of the Federal Reserve System and their operating circulars.

### **2 FUNDS TRANSFER REQUESTS**

- 2.1 Generally, a funds transfer does not include any transfer subject to the Electronic Fund Transfer Act of 1978, as amended from time to time. Entity will send Payment Orders to Bank electronically using a password and encryption device (token). If Cash Manager Direct is unavailable, an authorized signer of Entity may send Payment Orders to Bank via secure email. Such secured email will be sent to CashManagementSupport@flushingbank.com. Entity shall be liable for payment of the transferred amount, plus transfer fees, even if the transfer request was not actually transmitted or authorized by Entity, provided Bank complies with the security procedure selected by Entity. Entity will be liable for the transfer amount, plus transfer fees, of any transfer request Entity initiates, even if Bank does not follow the agreed security option. Entity authorizes Bank to record, electronically or otherwise, any telephone calls relating to any transfer under the Agreement.
- 2.2 Bank may verify all Payment Orders and communications requesting amendment or cancellation of Payment Orders issued in Entity's name as a sender, by security procedures selected by Entity and agreed upon by Bank and Entity. Bank reserves the right, at its sole discretion, but without obligation of any kind, to call back any Authorized User by telephone to verify any Payment Order that Bank receives through any means and to reject any Payment Order that Bank cannot verify to its satisfaction by 5:00pm ET on the Banking Day that Bank receives the Payment Order. Bank is not responsible for any delay in processing a Payment Order resulting from Bank's inability to reach Entity to verify the authenticity or accuracy of said Payment Order.

### **3 AUTHORIZED ACCOUNT**

- 3.1 Entity will designate a specific account to act as the source of Payment Orders via the Cash Manager Direct Application. If Entity has not designated a specific account, Bank may debit any of Entity's accounts to the extent that payment of the Payment Order is a permitted use of that account.

### **4 ACCEPTANCE OF PAYMENT ORDER**

- 4.1 Bank is not obligated to accept any Payment Order that Entity submits, although Bank normally will accept Entity's Payment Order if Entity's Account has withdrawable credit sufficient to cover the Payment Order. If Bank does not execute the Payment Order, Bank is not liable to pay Entity any interest on a withdrawable credit in a non-interest-bearing account as restitution.

### **5 CUTOFF TIME**

- 5.1 Bank will execute Entity's Payment Order on the Banking Day Bank receives the Payment Order, provided Bank receives the instructions prior to 5:00pm ET and such instructions comply with all security procedures herein. For a Payment Order received after 5:00pm ET, Bank will attempt to execute it on the Banking Day Bank receives the Payment Order, if practicable, without undertaking any obligation to do so and without any representation or warranty as to Bank's ability to do so. If Bank cannot execute the Payment Order on that Banking Day, or if Bank receives the Payment Order on a non-Banking Day, Bank will execute the Payment Order on the next Banking Day. Times may vary at Bank's discretion.

6 PAYMENT OF ORDER

- 6.1 Bank shall process transfer requests based solely upon information received from Entity. If Bank accepts a Payment Order, Bank may receive payment by automatically deducting from Entity's Account the amount of the Payment Order plus the amount of any applicable fees or charges. Bank is entitled to payment on the Execution Date. The funds transfer is completed upon acceptance by the Beneficiary's bank. Entity is excused from paying the Payment Order if the funds transfer is not completed, but Entity is still responsible to pay Bank any applicable fees or charges for the Service. However, if Entity directs Bank to route the funds transfer through an intermediate bank, and Bank is unable to obtain a refund because the intermediate bank has suspended payments, then Entity is obligated to pay Bank for the Payment Order. Entity will not be entitled to interest on any refund Entity receives because the Beneficiary's bank does not accept the Payment Order. If Entity fails to pay, Bank shall be entitled to request cancellation of the transfer, or to undertake any other legal means to collect the amount of the transfer if unable to cancel, including exercise of the right of offset.

7 DRAWDOWNS

- 7.1 Entity may arrange for drawdown Payment Orders for credit to Entity's Account by executing a Wire Transfer Drawdown Request Form. If Entity initiates such a Payment Order, Entity authorizes and directs Bank to send a wire transfer instruction to a participating financial institution through the Federal Reserve Bank's payment system. Entity understands that such instruction shall result in the creation of an outgoing wire transfer from another person or entity's account at the participating financial institution and a credit of funds to Entity's Account. Each time Entity initiates such an incoming Payment Order, Entity represents and warrants that such person or entity has duly authorized Entity, in writing, to debit such other person or entity's account for the wire transfer amount in the Payment Order and to credit those funds to Entity's Account. Bank may request written evidence of such authorization at any time and Entity will provide the written authorization in a prompt manner. Entity must not initiate any incoming Payment Order without prior and current authorization from the person or entity whose account is being debited. Bank will credit incoming funds from such a drawdown Payment Order to Entity's Account on the Banking Day that Bank receives settlement of such funds.
- 7.2 Entity may arrange for Bank to respond to drawdown Payment Orders for debit from Entity's Account by executing a Wire Transfer Drawdown Authorization Form. If Entity executes a Wire Transfer Drawdown Authorization Form, Entity authorizes and directs Bank to respond to drawdown requests initiated by an authorized Beneficiary and the Beneficiary's participating financial institution through the Federal Reserve Bank's payment system. Entity understands that such instruction shall result in the creation of a wire transfer debit of funds from Entity's Account and a corresponding credit to Beneficiary.

8 ERRORS AND REJECTIONS BY BANK

- 8.1 If a wire transfer request indicates an intermediary bank or a Beneficiary's bank inconsistently by name and identifying number, execution of the request might be based solely upon the number, even if the number identifies a bank different from the named bank or a person who is not a bank. If a wire transfer request describes a Beneficiary inconsistently by name and account number, payment might be made by the Beneficiary's bank based solely upon the account number, even if the account number identifies a person different from the named Beneficiary. Entity's obligations shall not be excused in these circumstances. Bank may reject any transfer request or incoming wire transfer that does not conform to the limitations, security procedures, and/or other requirements set forth in the Agreement, such as availability of funds on deposit. Bank may reject, at Bank's sole discretion, any transfer request Bank receives from Entity for any reason. Bank shall notify Entity of Bank's rejection of the transfer request by telephone, electronic message, or U.S. mail. Bank will comply with regulations issued by the US Treasury's Office of Foreign Assets Control (OFAC). If any transfer request is to an entity listed on OFAC's list of Specially Designated Nationals and Blocked Persons, by law Bank shall not complete the transfer and shall "block" the funds until such time OFAC issues a written release to Bank. Bank shall have no liability to Entity because of Bank's rejection of any Payment Order or other transfer request if Bank complies with the Terms.

9 DUTY TO REPORT UNAUTHORIZED OR ERRONEOUS PAYMENT

- 9.1 Entity must exercise ordinary care to determine that all Payment Orders or amendments to Payment Orders issued in Entity's name are authorized, enforceable, in the correct amount, to the correct Beneficiary, and not otherwise erroneous. If Entity discovers, or with reasonable care should have discovered, an unauthorized, unenforceable, or erroneously executed Payment Order or amendment, Entity must exercise ordinary care to notify Bank of the relevant facts. If Bank can prove that Entity failed to perform these duties with respect to an erroneous payment, and that Bank incurred a loss because of the failure, Entity is liable to Bank for the loss. Entity's liability in such instance will not exceed the amount of the Payment Order plus any expenses incurred by Bank in connection therewith.

10 OBJECTION TO PAYMENT

- 10.1 If Bank gives Entity a notice that reasonably identifies a Payment Order issued in Entity's name as sender that Bank has accepted and received payment for, Entity cannot claim that Bank is not entitled to retain the payment unless Entity notifies Bank of Entity's objection to the payment within one (1) year of Bank's notice to Entity.

11 REJECTION OF BANK'S TRANSFER REQUEST

- 11.1 If Bank receives notice that a wire transfer transmitted by Bank has been rejected, Bank shall notify Entity of such rejection, including the reason given for the rejection, by telephone, electronic message, or U.S. mail. Bank will have no further obligation to transmit the rejected wire transfer if Bank complies with the Agreement with respect to the original transfer request.

12 CANCELLATION AND CHANGE BY ENTITY

- 12.1 Entity may cancel or amend a Payment Order given to Bank only if Bank receives communication of cancellation or amendment before 5:00pm ET and with sufficient time to have a reasonable opportunity to act on it before the receiving bank accepts the Payment Order. Entity must present the communication of cancellation or amendment in conformity with the same security procedure that applies to Payment Orders. Bank shall have no liability if Bank cannot affect the cancellation or change.

13 NOTICE OF CREDIT

- 13.1 If Bank receives a Payment Order to credit Entity's Account, Bank is not required to provide Entity with any notice of the payment order or the credit.

14 PROVISIONAL CREDIT

- 14.1 Entity agrees to the clearing house association rules stating that payments made to Entity or originated by Entity by funds transfer through the automated clearing house system are provisional until final settlement is made through a Federal Reserve Bank or otherwise payment is made as provided in Article 4A-403(a) of the UCC.

15 REFUND OF CREDIT

- 15.1 Entity agrees that if Bank does not receive payment of an amount credited to Entity's Account, Bank is entitled to a refund from Entity in the amount credited and the party originating such payment will not be considered to have paid the amount so credited.

## **Positive Pay Service**

### **1 RECITAL**

- 1.1 Bank provides a check verification service whereby Entity can approve presented checks for payment via one of three service options.

### **2 SERVICE OPTIONS**

#### **2.1 Check Positive Pay**

- (i) Under Check Positive Pay, Entity is given an opportunity to examine questionable checks and advise the Bank whether to pay or return them prior to final decisioning. To do this, Entity shall upload the most current Check Issue File to Bank immediately following issuance of corresponding checks.

#### **2.2 Payee Positive Pay**

- (i) Under Payee Positive Pay, a questionable check submitted to Entity for examination may include one where the Payee name doesn't match the Check Issue File. To do this, Entity's Check Issue File must include the Payee name.

#### **2.3 Reverse Positive Pay**

- (i) Under Reverse Positive Pay, rather than creating a Check Issue File, Bank will provide Entity with images of all checks presented for payment. Entity is then given the opportunity to authorize payment or return for each item.

### **3 PAYMENT OF PRESENTED CHECKS**

- 3.1 Bank shall compare each Presented Check by check number and amount against each Check Issue File Bank receives. On each Banking Day, Bank may pay and charge to Entity's Account each Presented Check that matches by check number and amount a check shown in any Check Issue File Bank receives. For Payee Positive Pay, Bank will also check each Presented Check by Payee and may pay and charge to Entity's Account each Presented Check that also matches by Payee.

- 3.2 By 11:00am ET each Banking Day, Bank shall make an Exception File available to Entity that identifies any Exception Items received, specifying the complete account number, check number and amount of any such Exception Items. For Payee Positive Pay, the Exception File will also include the Payee name.

### **4 PAYMENT AND DISHONOR OF EXCEPTION ITEMS**

- 4.1 Using a Pay/Return Request, as required by Bank from time to time, Entity will instruct Bank to either pay or return each Exception Item on the Exception File. Bank will pay or return the Exception Items in accordance with the instructions Entity provides.

- 4.2 Bank shall return any Exception Items drawn on Entity's Account, unless Entity instructs Bank to pay such Exception Items using a proper and timely Pay/Return Request. Entity may elect to change default to "Pay All".

- 4.3 Entity shall provide the Pay/Return Request to Bank by 2:30pm ET each Banking Day in the format required by Bank.

5 COMMUNICATIONS

- 5.1 Entity or Bank, at their discretion, may amend any file submitted to the other party. The amended file must be sent in its entirety and not in the form of a partial amendment. The amended file must be sent in the format and manner, and by the deadline(s) established, for the original file. A properly and timely submitted amended file serves to revoke and replace the original file. However, Entity cannot submit a revised Pay/Return Request.
- 5.2 Bank shall use only complete and properly formatted Check Issue Files that have not been revoked in accordance with Paragraph 4.1 in the preparation of Exception Files under the Agreement.
- 5.3 Entity shall use only Exception Files that comply with Sub-Section 3 and other specifications provided within the Agreement and have not been replaced in accordance with Paragraph 5.1 in Entity's preparation of Pay/Return Requests. Bank shall not be obligated to comply with any Pay/Return Request received in a format or means, after a deadline, or in a manner not permitted under the Agreement but may instead treat such a Pay/Return Request as though it had not been received.
- 5.4 Bank is not responsible for detecting any Entity error contained in any Check Issue File or Pay/Return Request sent by Entity to Bank.
- 5.5 In the event that Bank or Entity cannot use the Internet, the party that cannot use the Internet shall contact the other party as soon as possible after identifying the problem. Entity will use best efforts to ensure that the Service can be performed to ensure appropriate processing on the proper day.

6 ACH POSITIVE PAY

- 6.1 Entity can program a filter in the Positive Pay system that will permit Entries for payment of funds into and out of Entity's Account by certain authorized Originators. Entity must fill out the filter, providing the required Entity and Entry information so that Bank processes pre-approved Entries on the Effective Entry Date without Entity's further approval.
- 6.2 Each Banking Day, Entity will have access to two files containing Entries that were not pre-approved as provided in Paragraph 5.1. Entity must choose to approve any such Entries by 1:00pm ET that Banking Day. Bank will return any such Entries absent approval by Entity.
- 6.3 Notwithstanding anything to the contrary in the Agreement, Bank will not block any ACH Returns, Settlement Offsets, or Service fees. Entity agrees that, in all such cases, Bank may properly debit or set off against Entity's Account each such amount. The specific types of ACH Returns, Settlement Offsets, and Service fees permitted pursuant to this Section may change from time to time without prior notice.

7 ACCOUNT RECONCILIATION

- 7.1 Entity will have access to multiple Account Reconciliation Reports that provide either full account reconciliation or partial account reconciliation. These include, but are not limited to, a monthly Reconciliation Detail Report and a Reconciliation Summary.

8 SECURITY

- 8.1 System Administrators will be required to change the initial passwords the first time they use their user IDs to login into the Positive Pay system. It is the System Administrator's responsibility to understand the security capabilities built into the Service and to assign, and restrict access to the various applications, only to those employees who have a need to know. Entity agrees to accept full responsibility for the payment of all instruments, whether or not the instrument passed the scrutiny of the Service described in the Agreement, and Entity will indemnify, defend and hold harmless Bank against any claims made by any person or entity that is based on or in any way related to such instruments or the Service.

9 STOP PAYMENTS

- 9.1 Entity must place any stop payments through Cash Manager Direct and the Positive Pay system. Any stop payment placed through the Positive Pay system after 3:00pm ET will be effective beginning on the next Banking Day.

**Remote Deposit Service**

1 RECITAL

- 1.1 Bank provides certain remote deposit capture services whereby Entity may request settlement of a check through ACH or send an image of a check to Bank, which will convert the item for processing.

2 SERVICE

- 2.1 Bank agrees to supply the Service and Bank Equipment/Software, ("Equipment"), to Entity. Entity agrees to configure the Equipment according to the requirements of Bank, as well as providing telecommunications services to connect to Bank's system. Entity is responsible for having adequate equipment, telecommunications, and plans for contingency planning. Entity is likewise responsible to ensure that the checks scanned meet the ANSI X9.37 standards for image quality. Entity will cooperate with Bank in the event Bank needs assistance in the balancing of transactions, or such items will be placed in suspense by Bank pending resolution.

3 SELF-ASSESSMENT

- 3.1 Bank will email a Self-Assessment Questionnaire to Entity annually, on the anniversary of Entity applying for the Service. Entity is required to respond to the Questionnaire within ten (10) Banking Days.

4 OTHER COSTS

- 4.1 Entity will be responsible for all telecommunications-related costs as well as the costs of any equipment or supplies necessary to access the Service. Bank will not be obligated to supply any special equipment (e.g., electrical outlets, telephone outlets, surge protectors, extension cords) necessary to operate any equipment.

5 OWNERSHIP

- 5.1 Bank will retain ownership of the Equipment provided by Bank for the Service. Upon termination of the Agreement by either party for any reason, Entity shall return the Equipment in the condition as originally provided to Entity excepting ordinary wear and tear resulting from proper use, packed for proper shipment, shipped FOB to such place or carrier as Bank shall specify. In the event Entity does not return the Equipment within fifteen (15) days of the date of termination, Entity shall pay Bank an amount equivalent to the replacement cost for the Equipment as established by Bank.

6 DEPOSITED ITEMS

- 6.1 All checks deposited through the Service will be deposited under the provisions of the Account Agreement. In addition, Entity agrees to follow all applicable state and federal laws, regulations, and rules relating to the Service, including but not limited to the Rules and the provisions of The Check Clearing for the 21<sup>st</sup> Century Act. Entity will not deposit original checks through the Service more than once and the original checks will be securely stored then destroyed within fourteen (14) days from the date of deposit unless otherwise agreed to in writing. Entity will not deposit checks transmitted to Bank into any other bank, thereby causing multiple debits from the payor's account. Entity agrees to review and validate the accuracy of the check data captured including the amount of the check and the legibility of the check image through the Service. Entity also agrees to deposit only checks drawn on United States financial institutions through the Service.

7 AVAILABILITY OF FUNDS

- 7.1 In general, if Bank receives and accepts an image of an item transmitted through the Service before 8:00pm ET, it will be processed the same Banking Day. Bank will process any items received after 8:00pm ET on the next Banking Day. Funds deposited using the Service will be available based on the normal availability schedule as detailed in the Account Agreement.

8 ENTITY REPRESENTATIONS AND WARRANTIES

- 8.1 Entity represents and warrants that, (i) all items scanned in connection with the Service are made payable to Entity, (ii) all signatures on each check are authentic and authorized, (iii) each check has not been altered, (iv) each check has not been doubly endorsed, and (v) each check will only be deposited once, whether in person or through the Service.

9 ENDORSEMENTS

- 9.1 Entity agrees that all required payees will sign all checks deposited through the Service and that all checks will state that they are "For Remote Deposit Only at Flushing Bank Account # \_\_\_\_\_." Alternatively, if a check includes a pre-printed endorsement such as "Check Here if for Mobile or Remote Deposit", Entity will check such box. Entity is responsible for any loss that Bank incurs from a delay or processing error resulting from an irregular or missing endorsement or other markings. Bank has no responsibility or liability for any fees incurred due to the rejection of transmitted items for missing or incomplete endorsements. Entity's failure to properly endorse remote deposited items as directed herein could result in termination of the Service.

10 IMAGE QUALITY

- 10.1 Entity's deposit of a check image is subject to Bank's verification and final inspection. The image transmitted to Bank using the Service must be legible, as determined in Bank's sole discretion. Without limiting the foregoing, the image quality of the items must comply with the requirements established from time to time by Bank, the American National Standards Institute, the Board of Governors of the Federal Reserve Board, or any other regulatory agency, clearinghouse, or association. Bank is under no obligation to inspect or verify a check image to determine accuracy of the image or MICR line information associated with the check. Bank may correct or amend MICR line information associated with a check image to facilitate processing of the check image, or a substitute check created from the image.

11 ELECTRONIC CHECKS

- 11.1 Entity warrants that, (i) the electronic image of a check accurately represents all information on the front and back of the original check as of the time that the original check was truncated, (ii) the electronic information includes an accurate record of all MICR line information required for a Substitute Check and the amount of the check, and (iii) each warrantee will not receive a presentment of or otherwise be charged for an electronic check, an electronic returned check, the original check, a Substitute Check, or a paper or electronic representation of a Substitute Check, such that the warrantee will be asked to make payment based on a check it has already paid.

12 ELECTRONICALLY CREATED ITEM

- 12.1 If Entity transfers or presents an electronically-created item and receives settlement or consideration for it, Entity agrees to indemnify each transferee bank, any subsequent collecting bank, the paying bank, and any subsequent returning bank against any losses that result from the fact that (i) the electronic image or electronic information is not derived from a paper check, (ii) the person on whose account the electronically-created item is drawn did not authorize the issuance of the item or the payee stated on the item, or (iii) a person receives a transfer or presentment, or return of, or otherwise is charged for an electronically-created item such that the person is asked to make payment based on an item or check it has paid.

13 RETURNS AFTER TERMINATION

- 13.1 If Bank receives a returned item or ACH return for a check deposited by Entity after Entity has terminated the Agreement, then Entity agrees that Bank may debit Entity's Account or otherwise exercise its right of offset. If the funds on deposit in Entity's Account are insufficient to make Bank whole, Bank will send a request for payment to Entity, and Entity agrees to pay Bank within sixty (60) days of receipt thereof.

14 WARRANTY

- 14.1 Bank, at Bank's own expense, will repair or replace any nonconforming Equipment during the initial term of the Agreement, if the deficiency is attributable solely to Bank and Entity notifies Bank of the alleged deficiency within fifteen (15) days of its occurrence. Bank will not be responsible in any manner for any deficiency in the Equipment not attributable to Bank, including but not limited to any deficiency caused in whole or in part by inaccurate or otherwise deficient data programs, equipment or communication facilities provided by Entity or third-parties other than Bank. Entity shall bear the entire risk of loss, theft, damage, or destruction of Equipment from the date of Entity's receipt of the Equipment until return shipment FOB to Bank. Such loss, theft, damage, or destruction of equipment shall not relieve Entity of the obligation to make payments or to comply with any other obligation under the Agreement.
- 14.2 Bank reserves the right to service, repair, exchange, test, and perform reasonable and occasional quality assurance exams on all Equipment, if deemed necessary or appropriate by Bank, both on and off Entity's premises throughout the duration of the Agreement. Such exams shall not exceed a frequency of one (1) per month unless mutually agreed upon by both parties. Bank reserves the right to process test system inquiries on Entity's behalf and at Entity's expense in order to monitor network performance and quality assurance. After the initial installation, an authorized Bank representative must approve and/or perform any relocation of the Equipment. Failure to comply will constitute grounds for termination of the Agreement and immediate repossession of all Equipment.

**CMD ACH Origination Service**

1 RECITALS

- 1.1 Entity wishes to initiate credit and debit Entries pursuant to the Terms and the Rules, and Bank is willing to act as an Originating Depository Financial Institution ("ODFI") with respect to such Entries. Entity may only initiate ACH Entries for the Corporate Credit or Debit Entry (CCD) and Prearranged Payment and Deposit Entry (PPD) class codes or such other Standard Entry Class (SEC) codes as Bank may approve.
- 1.2 Upon receiving Entity's executed ACH Application, Bank will provide Entity with the ACH Data Security Self-Assessment. Entity must respond to the questions therein and return the executed Self-Assessment to Bank before Entity can use the Service.
- 1.3 Unless otherwise defined herein, capitalized terms in this Section have the meanings provided in the Rules. The term "Entry" has the meaning provided in the Rules and also means the data received from Entity from which Bank prepares Entries.

2 SECURITY PROCEDURES

- 2.1 Entity and Bank will comply with the security procedure requirements described herein with respect to Entries received by Bank from Entity.
- 2.2 Entity must format all ACH files according to the Rules and the requirements of Cash Manager Direct. This includes use of the Company Entry Descriptions "PAYROLL" for payroll direct deposits and "PURCHASE" for online purchases.
- 2.3 Bank is entitled to rely on any written notice or other written communication believed by Bank in good

faith to be genuine and to have been signed by an Authorized User, and any such communication is deemed to have been signed by such person.

- 2.4 Bank will not be responsible for verifying the authenticity of any person claiming to be an Authorized User or the authenticity of any instruction, direction or information provided.
- 2.5 Bank may, but is under no obligation to, hold suspicious files or files that do not adhere to established security, exceed exposure limits, violate the Terms or the Rules, or for other reasons. Such files will require authorization by an Authorized User before transmission to the ACH Operator.
- 2.6 Bank requires the following account security:
  - (i) Token technology at approval.
  - (ii) Out of Band Authentication (IP Address Authentication and Password Authentication).
  - (iii) Entity will not process files using System Administrator credentials.
- 2.7 File transmission through Cash Manager Direct is available. Authorized Users will access Cash Manager Direct utilizing prearranged logon procedures.
- 2.8 Entity is solely responsible for the accurate creation, modification, and deletion of the account information maintained on Entity's personal computer. Entity is solely responsible for access to ACH Protected Information maintained by Entity.
- 2.9 If Bank receives an Entry (or a request for cancellation or amendment of an Entry) that purports to have been transmitted or authorized by Entity, it will be deemed effective as Entity's Entry (or request). Entity will be obligated to pay Bank the amount of such Entry (or request) even if Entity did not authorize the Entry (or request).
- 2.10 As further detailed in the Rules, Entity is responsible for establishing and implementing risk-based processes and procedures reasonably intended to identify ACH Entries initiated due to fraud. Most notably, Entity must develop processes and procedures to identify Entries that are suspected of being authorized under False Pretenses. All such processes and procedures should be reviewed at least annually.

### 3 PROCESSING AND SETTLEMENT BY BANK

- 3.1 Except as provided in Sub-Section 2, Bank will (i) process Entries received from Entity to conform to the file specifications set forth in the Rules, (ii) transmit such Entries as an ODFI to the ACH Operator, and (iii) settle Entries as provided in the Rules.
- 3.2 Entity must deliver Entries by 3:00pm ET on the Effective Entry Date to be processed the same Banking Day. Entries delivered after 3:00pm ET will be processed the next Banking Day.
- 3.3 Bank will transmit Entries delivered by Entity prior to the Effective Entry Date to the ACH Operator before the Effective Entry Date shown in such Entries. For purposes of the Agreement, Bank receives an Entry when the transmission is completed as provided in Sub-Section 2.
- 3.4 Except as provided in Paragraph 4.5, in the case of an Entry received for credit or debit to Entity's Account (an "On-Us Entry"), Bank will credit or debit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in this Sub-Section are met. If any of those requirements are not met, Bank will use reasonable efforts to credit or debit the Receiver's account on the next Banking Day following such Effective Entry Date.

### 4 MANAGEMENT OF ENTRIES

- 4.1 Entity will transmit Entries to Bank in compliance with the formatting and other requirements set forth in Sub-Section 2, as updated from time to time.

- 4.2 Entity has no right to cancel or amend any Entry after Bank receives the Entry. However, Bank will use reasonable efforts to act on a request by Entity to cancel an Entry prior to transmitting it to the ACH Operator, or in the case of an On-Us Entry, prior to crediting or debiting a Receiver's account.
- 4.3 Bank shall have no liability to Entity or any Receiver arising out of Entity's initiation of erroneous Entries or Bank's attempts to correct such Entries. Entity shall indemnify and hold Bank harmless from any liability, expenses, losses, or damages, including court costs and attorney's fees, incurred in connection with any claim or claims arising from Bank's effecting or attempting to affect the cancellation or amendment of an Entry.
- 4.4 Entity may not reinitiate Entries except as prescribed by the Rules.
- 4.5 Bank will suspend processing of or reject any Entry that does not comply with the requirements of Sub-Section 2 or Paragraph 4.1, or which contains an Effective Entry Date more than fourteen (14) days after the Banking Day Bank receives the Entry. Bank has the right to suspend processing of or reject an On-Us Entry for any reason for which an Entry may be returned under the Rules. Bank has the right to suspend processing of or reject any Entry if Entity has failed to comply with either Entity's Account balance obligations under the General Terms and Conditions or Entity's established activity limits. Suspension of an Entry may delay availability of funds upon eventual processing of the Entry. Bank will notify Entity by email of such suspension or rejection on said Entry's Effective Entry Date. Bank will have no liability to Entity because of the suspension or rejection of any such Entry or the fact that Bank does not give such notice at an earlier time than that provided for herein.
- 4.6 If the ACH Operator rejects any Entries for any reason, it is Entity's responsibility to remake such Entries. Bank is responsible for remaking the file if the ACH Operator rejects the file due to an error caused by Bank. In such a case, Entity will supply sufficient information, as required in Paragraph 4.11, to allow Bank to recreate Entries for up to five (5) Business Days after midnight of the Settlement Date.
- 4.7 Bank will promptly notify Entity by email of the receipt of a returned Entry from the ACH Operator.
- 4.8 Entity will notify the Receiver of the reversing Entry and reason no later than the Settlement Date of the reversing Entry. Entity can make this notification by Entity's method of choice (fax, telephone, etc.).
- 4.9 Bank will notify Entity of all Notifications of Change received by Bank that relate to Entity's Entries. Bank will send such notification by email within two (2) Banking Days. Entity will make changes requested by Notifications of Change for recurring payments within six (6) Banking Days of Entity's receipt of the information, or prior to initiating another Entry to the Receiver's account, whichever is later. If Entity fails to correct the Entry, NACHA may impose fines that Bank may debit from Entity's Account.
- 4.10 Entity acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted to the Receiving Depository Financial Institution ("RDFI") might be made by the RDFI (or by Bank in the case of an On-Us Entry) based on the account number even if it identifies a person different from the named Receiver. Entity's obligation to pay the amount of the Entry to Bank is not excused in such circumstances.
- 4.11 Entity will retain data on file adequate to permit remaking of Entries for ninety (90) days following the date of the transmittal by Bank as provided here and will provide such data to Bank upon Bank's request.
- 4.12 Payment by Entity for Entries; Payment by ODFI for Entries.
- (i) Entity will pay Bank the amount of each Credit Entry (including On-Us Entries) transmitted by Bank pursuant to the Agreement at such time on the Effective Entry Date of such Credit Entry as Bank, at Bank's discretion, may determine.
  - (ii) Entity will pay Bank the amount of each Debit Entry returned by a RDFI pursuant to the Agreement.

- (iii) Bank will pay Entity the amount of each Debit Entry (including On-Ups Entries) transmitted by Bank pursuant to the Agreement at such time on the Effective Entry Date of such debit Entry as Bank, at Bank's discretion, may determine.
- (iv) Bank will pay Entity the amount of each Credit Entry returned by a RDFI pursuant to the Agreement within five (5) Banking Days of such return.

## 5 SPECIFIC ENTRY TYPES

5.1 The Rules contain special requirements and impose additional obligations on Bank when Bank acts as ODFI with respect to certain Entry types. As a result, Bank must obtain additional agreements and representations from Entity with respect to those Entry types. Those additional agreement and representations are set forth for each Entry type below. Entity makes these additional agreements and representations by sending any of the designated Entry types.

- (i) Corporate Credit or Debit Entry (CCD)
  - (a) Entity will send pre-notifications three (3) Banking Days prior to initiating the first Entry to a Receiver's account. Entity will provide any such notice to Bank in the format and on the medium provided in the Rules. Entity will not initiate any Entries if Entity receives notice that an RDFI, or the ACH Operator, has rejected any such pre-notification. If Entity receives a Notification of Change from an RDFI, Entity will not initiate any Entries until after Entity has made the requested changes.
  - (b) In regards to the origination of "wholesale credit" Entries, (defined as corporate ACH credit transfers containing Standard Entry Class Code "CCD"), the following disclosure is provided:
    - 1. Entity may transmit the Entry through the ACH;
    - 2. The laws of the State of New York will govern the rights and obligations of the Originator concerning the Entry;
    - 3. Credit given by the RDFI to the Receiver for the Entry is provisional until the RDFI has received final settlement through a Federal Reserve Bank or otherwise has received payment as provided for in Section 4A-403(a) of the UCC; and
    - 4. If the RDFI does not receive such payment for the Entry, the RDFI is entitled to a refund from the Receiver for the amount credited to the Receiver's account, and the Originator will not be considered to have paid the amount of the Credit Entry to the Receiver.
- (ii) Prearranged Payment and Deposit Entry (PPD)
  - (a) Entity makes the warranties and assumes the liabilities of Bank under the PPD Rules. Entity:
    - 1. Will obtain authorization for PPD Entries in accordance with the Rules and U.S. law and will retain a record of the authorization for a period of two (2) years from the termination or revocation of the authorization. Entity will provide Bank with an original or a copy of the Receiver's Authorization for PPD Entries, upon request, within five (5) Business Days.
    - 2. Will send pre-notifications three (3) Banking Days prior to initiating the first Entry to a Receiver's account. Entity will provide any such notice to Bank in the format and on the medium provided in the Rules. Entity will not initiate any Entries if Entity receives notice that an RDFI, or the ACH Operator, has rejected any such pre-notification. If

Entity receives a Notification of Change from an RDFI, Entity will not initiate any Entries until after Entity has made the requested changes.

3. Will provide written notification to the Receiver ten (10) Banking Days in advance if the amount of the Entry varies from the previous one, unless the authorization indicates variable amounts.
4. Will provide written notification to the Receiver five (5) Banking Days in advance of the new debit date if the date of the debit changes.

## 6 ENTITY REPRESENTATIONS AND AGREEMENTS

- 6.1 Entity agrees that; (i) each person shown as the Receiver on an Entry received by Bank from Entity has authorized the initiation of such Entry and the crediting of Entity's account in the amount and on the Effective Entry Date shown on such Entry, (ii) such authorization is operative at the time of transmittal or crediting by Bank as provided herein, (iii) Entries Entity transmits to Bank are limited to those types of Entries set forth in the Agreement, (iv) Entity will perform its obligations under the Agreement in accordance with all applicable state and federal laws and regulations, and (v) Entity will be bound by and comply with the Rules as in effect from time to time, including without limitation the provision of the Rules that makes payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry; and specifically acknowledges that if such settlement is not received, the RDFI will be entitled to a refund from the Receiver of the amount credited and Entity will not be deemed to have paid the Receiver.

## 7 THIRD PARTIES

- 7.1 Entity will enter into a contract with, and assume full liability for any action made by, any third-party processor used by Entity to initiate Entries on its behalf. Entity will notify Bank of the use of any third-party.
- 7.2 The Rules contain special requirements and impose additional obligations on Bank when it acts as Entity's ODFI with respect to Entries sent by Entity as a Third-Party Sender. If Entity sends Bank any Entries as a Third-Party Sender, Entity automatically makes the additional agreements and representations to Bank that are contemplated by the Rules.

## 8 LOSS RECOVERY

- 8.1 In the event of any damages for which Bank or Entity may be liable to each other or to any third-party pursuant to this Service, Bank and Entity will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against any third-party.

## 9 AUDIT

- 9.1 Bank has the right to audit Entity's compliance with the Rules, U.S. law, and Bank policies. Entity will provide reasonable assistance and information to conduct such audit, including reasonable access to operating systems, policies, procedures, records, and other material.

## **ACH Direct Send Service**

### 1 RECITALS

- 1.1 Entity wishes to bypass Bank, and initiate credit and debit Entries directly through Bank's ACH Processor ("ACH Processor"), pursuant to the Rules. Entity agrees to hold ACH Processor, and not Bank, responsible for the performance of this Service.

- 1.2 Entity may only initiate ACH Entries for the Corporate Credit or Debit Entry (CCD) and Prearranged Payment and Deposit Entry (PPD) class codes or such other Standard Entry Class (SEC) codes as Bank may approve.
- 1.3 ACH Processor hosts a secure website, FTP portal, and Movelt DMZ server (collectively “Transmission Platforms”) through which Entity can transmit Entries. Entity can begin using the Service once all onboarding documentation required by ACH Processor is complete and approved, which may take up to ten (10) weeks.

## 2 SETTLEMENT WITH BANK

- 2.1 If ACH Processor posts an Entry (or a request for cancellation or amendment of an Entry) to Entity’s Account, that purports to have been transmitted or authorized by Entity, it will be deemed effective as Entity’s Entry (or request). Entity will be obligated to pay Bank the amount of such Entry (or request) even if Entity did not authorize the Entry (or request).

## 3 MANAGEMENT OF ENTRIES

- 3.1 Entity has no right to cancel or amend any Entry after ACH Processor posts it to Entity’s Account. However, Bank will use reasonable efforts, in concert with ACH Processor who Entity must also notify, to act on a request by Entity to cancel an Entry prior to transmitting it to the ACH Operator. Bank shall have no liability to Entity or any Receiver arising out of Entity’s initiation of erroneous Entries via ACH Processor and will not be responsible for attempting to correct any such Entries.
- 3.2 Payment by Entity for Entries; Payment by Bank for Entries.
  - (i) Entity will pay Bank the amount of each Credit Entry pursuant to the Agreement at such time on the Effective Entry Date of such Credit Entry as Bank, at Bank’s discretion, may determine.
  - (ii) Entity will pay Bank the amount of each Debit Entry returned by a RDFI pursuant to the Agreement.
  - (iii) Bank will pay Entity the amount of each Debit Entry pursuant to the Agreement at such time on the Effective Entry Date of such Debit Entry as Bank, at Bank’s discretion, may determine.
  - (iv) Bank will pay Entity the amount of each Credit Entry returned by a RDFI pursuant to the Agreement within five (5) Banking Days of such return.

## 4 ENTITY REPRESENTATIONS AND AGREEMENTS

- 4.1 Entity agrees that; (i) each person shown as the Receiver on an Entry transmitted to ACH Processor has authorized the initiation of such Entry and the crediting of Entity’s account in the amount and on the Effective Entry Date shown on such Entry, (ii) such authorization is operative at the time of transmittal or crediting by Bank as provided herein, (iii) Entity will perform its obligations under the Agreement in accordance with all applicable state and federal laws and regulations, and (iv) Entity will be bound by and comply with the Rules as in effect from time to time, including without limitation the provision of the Rules that makes payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry; and specifically acknowledges that if such settlement is not received, the RDFI will be entitled to a refund from the Receiver of the amount credited and Entity will not be deemed to have paid the Receiver.

## 5 ADDITIONAL CHARGES

- 5.1 As ACH Processor will directly initiate all transactions processed under this Service, Entity accepts responsibility for the timing of the transactions and any late fees, charges, or other consequences that may arise from the timing of the transactions.

6 SERVICE ISSUES

- 6.1 Bank does not review or have any control over the Transmission Platforms, or any of the instructions, messages, or prompts therein. Entity should contact ACH Processor directly with any questions pertaining to messages received from the Transmission Platforms and any functionality issues therewith.
- 6.2 Certain payment options and other functions available via Cash Manager Direct may not be available through the Transmission Platforms. Additionally, information available via Cash Manager Direct may not be available through the Transmission Platforms or may be presented differently therein. Finally, the method for entering instructions via the Transmission Platforms may also differ from Cash Manager Direct. Bank is not responsible for any such differences.

7 WARRANTY

- 7.1 Entity is solely responsible for any transactions attempted via this Service and any information or files exchanged in utilizing this Service. Bank is not responsible for the actions, omissions, or instructions provided by either Entity or ACH Processor in utilizing this Service. Bank makes no warranty with respect to the service ACH Processor renders, including, without limitation, accuracy, merchantability, or fitness for a particular purpose and Bank expressly disclaims same. Bank is not responsible for Entity's ability to access the Service or for ACH Processor's responsiveness in processing transactions pursuant to the Service.

8 INDEMNITY

- 8.1 Entity Agrees to take every precaution to ensure the safety, security, and integrity of Entity's Account and transactions when using the Service. If Entity allows access to an unauthorized user, Entity will be responsible for any transaction they authorize, and Bank will not be liable for any damages as a result.
- 8.2 Entity agrees to indemnify and hold Bank harmless against liabilities, expenses, losses, or damages, including court costs and attorney's fees, resulting from any claims based on Entity's use of this Service and any transactions effected hereunder.
- 8.3 Bank is not liable for any loss or liability resulting from any failure of the Service or ACH Processor. Liability for all claims resulting from the use of this Service and/or from transactions processed hereunder is born by Entity.

**ACH Debit Block and Filter Service**

1 RECITALS

- 1.1 Entity acknowledges that Bank typically permits, through an ACH Operator, the debit and credit of money between Entity's Account and third-party accounts held at other participating depository financial institutions by way of the ACH.
- 1.2 Entity wishes to have certain Debit Entries honored against Entity's Account while all other Debit Entries are returned as unauthorized, or Entity wishes to block all Debit Entries and have them returned as unauthorized.
- 1.3 Using the ACH Debit Block and Filter Authorization Form ("Entity's Form") provided by Bank, Entity will authorize certain Debit Entries from specified Originators or Entity will elect to block all Debit Entries.
- 1.4 Bank is willing to review and filter Debit Entries based on Entity's Form, in accordance with the Terms and the Rules.
- 1.5 Unless otherwise defined herein, capitalized terms have the meanings provided in the Rules.

2 SERVICE ACTIVATION

- 2.1 This service will not be active until Bank sends Entity an activation email to the email address(es) designated on Entity's Form.

3 SERVICE FUNCTIONS

- 3.1 If Bank receives a Debit Entry from an Originator that Entity's Form does not authorize or if Entity's Form blocks all Debit Entries, Bank will return the Debit Entry without consulting Entity. If Bank receives a Debit Entry over the Debit Threshold from an Originator that Entity's Form does authorize, Bank will return the Debit Entry unless Entity elects to permit it. Entity may elect to receive notifications regarding Debit Entries over the Debit Threshold from authorized Originators and may update the information on Entity's Form at Entity's discretion.

4 ENTITY AUTHORIZATIONS

- 4.1 Entity's Form will contain information Bank requires to perform the Service agreed to herein, including the Originators that Entity permits to submit Debit Entries for payment of funds out of Entity's Account and the Debit Threshold for such Debit Entries. Entity will maintain information pertaining to each Originator that Entity has so authorized, including its Originating ACH Company ID, the effective date of the authorization, and any other information Bank may reasonably request from time to time. Entity may also elect to include expiration dates for the authorizations. Entity is responsible for being aware of any upcoming expiration dates and requesting an extension of an Originator's authorization if necessary. Bank will begin returning Debit Entries from an authorized Originator immediately after the expiration date of their authorization, without giving Entity a reminder about the expiration of the authorization.
- 4.2 Bank will return each Debit Entry Bank receives for Entity's Account unless the Entry is (i) authorized based on Entity's Form, (ii) accepted as outlined in Paragraph 8.1, or (iii) deemed authorized as provided in Paragraph 9.1. Bank will notify Entity of a change in the processing deadline.
- 4.3 Entity may pre-emptively notify Bank of Entity's approval of a Debit Entry from an Originator not listed on Entity's Form. Bank will only accept such a pre-emptive notification once. Bank will reject any subsequent attempts by Entity to approve a Debit Entry from an Originator not listed on Entity's Form until Entity amends Entity's Form.

5 ENTITY WAIVER

- 5.1 Entity hereby waives any claim of wrongful dishonor or return, or wrongful payment or acceptance, associated with any Debit Entries Bank returns or pays based on information provided by Entity.

6 ENTITY LIABILITY

- 6.1 Entity assumes all responsibility and liability for any overdraft status Entity's Account enters into because of Bank processing an authorized Debit Entry. This includes any overdraft fees permitted under the Account Agreement.

7 NOTIFICATION

- 7.1 Entity may choose to have Bank notify Entity via email of any Debit Entry over the Debit Threshold from an Originator that Entity's Form authorizes. Bank will send such notifications to the email address(es) designated on Entity's Form on the same Banking Day that Bank receives the Debit Entry. Bank will not notify Entity of any Debit Entry received after 3:30pm ET. Bank will return any Debit Entry received after that time unless Entity's Form authorizes it.

8 ELECTION TO ACCEPT

- 8.1 If Entity decides to permit a Debit Entry that Bank would otherwise return, Entity must make such decision

by 3:30pm ET on the date Bank notifies Entity of the Debit Entry. If Entity takes no action by the stated time, Bank will return the Debit Entry as unauthorized. Entity will make its decision to accept or return a Debit Entry via an email response to the notification Bank sends as provided in Paragraph 7.1. In addition to deciding to permit or return the particular Debit Entry in question, Entity may update Entity's Form to address similar Debit Entries received in the future, however, updating Entity's Form will not impact the treatment of Debit Entries Bank received prior to such update. Acceptance of a particular Debit Entry will also not impact the treatment of similar Debit Entries received in the future absent a change to Entity's Form.

## 9 PERMITTED ENTRIES

- 9.1 Notwithstanding anything to the contrary in the Agreement, Bank will not block any ACH Returns, Settlement Offsets, or Service fees. Entity agrees that, in all such cases, Bank may properly debit or set off against Entity's Account each such amount. The specific types of ACH Returns, Settlement Offsets, and Service fees permitted pursuant to this Section may change from time to time without prior notice.

### **Sweep Service**

## 1 RECITALS

- 1.1 Entity acknowledges that it maintains multiple business accounts with Bank. Entity wishes to concentrate the control of funds within these various business accounts in one account (the "Master Account").
- 1.2 Using the Sweep Setup Form ("Sweep Form"), Entity will direct Bank as to how funds should be distributed between the Master Account and Entity's other designated account(s) (the "Subordinate Account(s)").

## 2 MASTER AND SUBORDINATE ACCOUNTS

- 2.1 Entity will identify at least one account on the Sweep Form as a Master Account and one or more accounts as Subordinate Accounts. Bank will transfer Available Funds into or out of each Subordinate Account so that the balance at the end of each Banking Day will be between the Minimum Target Balance and the Maximum Target Balance selected on the Sweep Form.
- 2.2 Entity will link each Subordinate Account to a Master Account from which Bank will transfer Available Funds to the Subordinate Account to cover debits, to the extent of Available Funds, and to restore the Subordinate Account to its Target Balance when it drops below its Minimum Target Balance.
- 2.3 When a Subordinate Account's balance exceeds its Maximum Target Balance at the end of a Banking Day, Bank will transfer any Available Funds in the Subordinate Account in excess of its Target Balance to the Master Account.

## 3 DEBITS FROM SUBORDINATE ACCOUNTS

- 3.1 When a Subordinate Account does not have sufficient Available Funds to cover any debits, Bank will automatically transfer Available Funds from the Master Account in an amount sufficient to pay the debits. If there are insufficient Available Funds in the Master Account to pay any such debits, Bank reserves the right, in its sole discretion, to pay or return any debits.
- 3.2 If Bank pays any debit that overdraws a Subordinate Account (because of a lack of sufficient Available Funds in the Master Account) the payment of the debit will result in an overdraft. Each overdraft will be subject to the Account Agreement.

## 4 RESTORATION OF TARGET BALANCE

- 4.1 If, after payment of all debits from a Subordinate Account, the funds in the account are less than the

Minimum Target Balance, Bank will automatically transfer any Available Funds in the Master Account in an amount sufficient to bring the Subordinate Account to its Target Balance. If there are insufficient Available Funds in the Master Account to restore the Subordinate Account's full Target Balance, Bank will transfer all Available Funds in the Master Account to the Subordinate Account.

## 5 MULTIPLE SUBORDINATE ACCOUNTS

- 5.1 If the Sweep Form links more than one Subordinate Account to a Master Account, Bank will transfer Available Funds from the Master Account to cover debits from all the Subordinate Accounts, then transfer funds in excess of any of the Subordinate Accounts' Maximum Target Balances to the Master Account, prior to making transfers from the Master Account to restore the Target Balances of the Subordinate Accounts.
- 5.2 Bank will transfer funds from the Master Account to multiple Subordinate Accounts, and/or transfer funds from multiple Subordinate Accounts to the Master Account in the order specified by Entity on the Sweep Form.

## Online Escrow Account Service

### 1 RECITALS

- 1.1 Entity desires, and Bank agrees to provide, a master non-interest-bearing business checking escrow account ("Master Account") and associated interest bearing savings account(s) ("Sub-Account(s)"), and to provide for the transfer of funds between the Master Account and Sub-Accounts respectively.
- 1.2 Bank may have in existence one or more Sub-Accounts for each Master Account, and the accounts shall operate together under the procedures set forth herein. Any termination of the Master Account for any reason shall also terminate all related Sub-Accounts.

### 2 MASTER ACCOUNT

- 2.1 Bank will open one Master Account that may pay interest at a variable rate set by Bank at its sole discretion. All transactions conducted from the Master Account shall be subject to the charges and fees established by Bank.

### 3 SUB-ACCOUNT(S)

- 3.1 Entity may open one or more Sub-Accounts that shall pay interest at a variable rate set by Bank at its sole discretion. The Sub-Accounts will each be separate savings accounts, with interest computed by Bank for each account. Entity will open each Sub-Account for the benefit of a Principal, and Bank's records shall indicate the full legal name of the Principal, based upon information provided by Entity upon account opening.
- 3.2 Within three (3) Business Days of opening a Sub-Account "for the benefit of" the Principal, Entity shall provide Bank with the following:
  - (i) The full and complete legal name of the individual or legal entity who is the Principal for the applicable Sub-Account.
  - (ii) A W-9 (Request for TIN and Certification) or W-8 (Certification of Foreign Status of Beneficial Owner for U.S. Tax Withholding and Reporting) form executed by the Principal.
  - (iii) Any additional identifying information requested by Bank including, but not limited to, the Principal's address or TIN.

If Entity fails to provide any of the required information within three (3) Business Days of account opening, Bank will freeze the subject Sub-Account, thus preventing any further deposits or withdrawals, until the required information is provided. Entity agrees to indemnify and hold harmless Bank from any liability for damages incurred by Entity and/or Principal as a result of Bank's freeze of the subject Sub-Account for the reasons set forth herein.

- 3.3 Entity will initially place Escrow Funds into the Master Account. Entity can then transfer Escrow Funds into the applicable Sub-Account. The Principal has no rights to receive, pledge, borrow, or otherwise obtain the funds or the benefits of any funds held by Entity or Bank. Entity is solely and expressly responsible for properly instructing Bank regarding such distributions.
- 3.4 The depositing of Escrow Funds into and transferring Escrow Funds out of a Sub-Account shall be done solely by Entity, who shall operate only as permitted by any applicable, binding agreements between Entity and Principal, and in accordance with all applicable state, local, and federal laws, rules, and regulations.

## 4 CLOSING OF ACCOUNT

- 4.1 Entity may close their own Sub-Accounts by transferring funds into the Master Account and issuing a check from there. Bank shall only close Sub-Accounts; (a) as expressly directed by Entity upon notice, (b) as set forth in the Account Agreement, or (c) as required under applicable law, if Bank, in its sole discretion, unilaterally elects to close such account.
- 4.2 If Bank receives conflicting demands or instructions from Entity and the Principal in connection with a Sub-Account, or if Bank, in good faith, is in doubt as to the action it should take in connection with any matter relating to such Sub-Account, Bank, acting solely as a stakeholder, shall have the right to act; (a) solely in accordance with Entity's instruction (as per this Agreement), (b) to take no further action except in accordance with joint instructions from Entity and Principal provided to Bank, or (c) in accordance with a final non-appealable judgment of a court of competent jurisdiction entered in a proceeding in which Entity and Principal are named as parties, directing the disbursement of the Escrow Funds by Bank. In addition, if Bank shall receive a notice from either Entity or Principal that litigation has commenced between Entity and Principal over entitlement to the Escrow Funds, Bank may, on notice to Entity and Principal, elect to deposit the Escrow Funds with the Clerk of the Court in which such litigation is pending.

## 5 REPORTING PROCEDURES

- 5.1 Bank's sole reporting responsibility shall be as follows:
  - (i) At the end of each month, Bank shall forward to Entity a statement (copies of which will also be available on the Escrow System) listing respective Principal information for each Sub-Account, including account balances. It shall be Entity's responsibility to report any errors or changes to Bank within twenty-one (21) days of receipt of such statement.
  - (ii) Bank shall provide a Form 1099 for each Sub-Account maintained by Bank during each calendar year according to the TIN that Entity provides to Bank with respect to each such account. It shall be Entity's sole responsibility to comply with applicable reporting requirements.
- 5.2 Entity shall maintain appropriate records reflecting the activities of the Principal and shall make such records available to Bank in accordance with applicable laws and regulations. Upon the opening of a Master Account, Entity shall provide Bank with a Backup Withholding Certification (W-9 form) signed by Entity, which will include Entity's name, address, and TIN, which shall be designated for Entity's Master Account. If Entity, however, opens up a Master Account or Sub-Account in the name of the Principal instead of Entity or "for the benefit of" the Principal, with the Principal as the beneficiary of the Account, Entity shall then also provide Bank with a W-9 form signed by the Principal with the Principal's name, address, and TIN.

6 BANK'S SCOPE OF UNDERTAKING

- 6.1 Bank's duties and responsibilities in connection with the Master Account and Sub-Accounts shall be purely ministerial and shall be limited to those expressly set forth in this Agreement and the Account Agreement. Bank is acting solely in its capacity as a depository with whom Entity places monies that are the subject of the above-described transaction. Bank undertakes to perform only such duties as are expressly set forth herein and no other duties shall be implied. Bank shall have no liability under and no duty to inquire as to the provisions of any agreement other than the Account Agreement. Bank may rely upon and shall not be liable for acting or refraining from acting upon, any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. Bank shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document. Bank shall have no duty to solicit any payments that may be due it or the Escrow Funds. Bank shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines in a final non-appealable judgment or order that Bank's gross negligence or willful misconduct was the primary cause of any loss to Entity or Principal.

7 ESCROW SYSTEM

- 7.1 Bank will provide Entity access to its Internet-based Escrow System, which allows for the receipt of electronic information about activity in Entity's Master and Sub-Accounts and the initiation of certain electronic transactions or the transfer of funds between Entity's Master and Sub-Accounts. The Escrow System consists of information reporting, transaction or transfer initiation, and instruction entry capabilities. Entity agrees not to use the Escrow System in connection with any activity other than those permitted by the Agreement unless Bank provides prior written approval.
- 7.2 Bank shall provide alternative access to Escrow System features on a best-efforts basis and will notify Entity in advance of any update releases or other permitted changes which may affect the Escrow System. Bank will notify Entity of any system interruption or changes promptly via a Bank website banner message, email, or telephone notification or another communication method that Bank deems expedient and effective.

8 ESCROW SYSTEM SECURITY

- 8.1 Entity and Bank will comply with the security procedure requirements described herein with respect to transactions received by Bank from Entity.
- 8.2 Entity shall take all appropriate measures to either prohibit accessing the Escrow System from a third-party home or personal computer or device or ensure that all security precautions applicable to accessing the Escrow System from Entity's computers or devices are also in place on any third-party home and personal computers and devices used to access the Escrow System.
- 8.3 Bank will be responsible for: (i) restricting Escrow System web site access to valid user IDs and passwords, (ii) restricting access to Entity information only to valid user IDs and passwords, and (iii) properly acting upon instructions and communications associated with valid user IDs and passwords.

9 AMENDMENT

- 9.1 Bank assumes no responsibility to any Principal with monies in any Sub-Account for notice of any amendment or supplementation to this Agreement.

10 THIRD PARTY RIGHTS

- 10.1 Unless expressly stated elsewhere herein or in any other Account Agreement, it is specifically understood and agreed between the parties hereto that no third-party rights arise under this Escrow Agreement with respect to any third party or party-making claim to any Sub-Account balance.

11 VERIFICATION

- 11.1 Bank shall have a reasonable opportunity to verify any information given to it by Entity upon the opening of any Master Account or any Sub-Account or the modification of any such accounts, and Bank may refuse any withdrawal or transfer instructions until Bank has verified such information.

12 PATRIOT ACT DISCLOSURE

- 12.1 Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "Patriot Act") requires Bank to implement reasonable procedures to verify the identity of any person that opens a new account with it. Accordingly, the parties acknowledge that Section 326 of the Patriot Act and Bank's identity verification procedures require Bank to obtain information which may be used to confirm any third party's identity including without limitation the party's name, address and (if applicable) organizational documents (collectively, "Identifying Information"). As a condition to opening an account with Bank or using any service provided by it, Entity agrees to provide Bank with and consents to Bank obtaining from third parties any such required Identifying Information.

**Lockbox Deposit Account Service**

1 RECITAL

- 1.1 Bank agrees to establish the Deposit Account and the Lockbox as contemplated by the Agreement and agrees not to commingle the amounts held or designated to Bank for deposit in the Deposit Account with any other amounts. Bank acknowledges that all amounts received in the Lockbox, or held in the Deposit Account, are for the benefit and account of Entity. Bank agrees not to apply amounts received in the Lockbox, other than as an offset of claims due to Bank, or to make disbursements from or debits to the Deposit Account, other than in accordance with the Agreement or other applicable agreements of the Bank, or other than as permitted or required under applicable state and federal laws and regulations.

2 DEPOSIT ACCOUNT

- 2.1 Bank will maintain the Deposit Account for the purposes of receiving and holding all deposits directed to the Deposit Account by Entity, and disbursing sums on deposit therein in accordance with the Agreement.
- 2.2 Subject to Bank's rights as set forth herein, and further subject to applicable state and federal laws and regulations, Entity and Bank acknowledge that Entity shall have the sole right, title or interest, whether express or implied, in the Deposit Account and shall be entitled to withdraw or make use of any amounts from the Deposit Account.
- 2.3 Entity shall not, without Bank's prior written consent, further pledge, assign, encumber or grant any security interest in the Deposit Account, nor shall Entity permit any lien to attach thereto, except those created in Bank's favor.

3 LOCKBOX MANAGEMENT

- 3.1 Bank will establish a Lockbox and promptly notify Entity in writing of such postal address. Bank shall have exclusive and unrestricted access to, and use of, the Lockbox to handle remittances in accordance with the Agreement. Bank, or its agent, will collect, open, and process for deposit all mail received in the Lockbox.
- 3.2 Bank will retrieve mail from the Lockbox from time to time in accordance with Bank's regular lockbox collection schedules.

- 3.3 Bank will inspect and handle items contained in the envelopes recovered from the Lockbox as follows:
- (i) An item not bearing an acceptable payee designation, as set forth in the specifications, or a reasonable variation thereof, will not be deposited in the Deposit Account. If a necessary endorsement of a payee other than Entity is missing, the item will not be deposited into the Deposit Account.
  - (ii) An item will be deposited into the Deposit Account whether it is stale-dated, post-dated or does not bear a date.
  - (iii) If the written and numeric amounts of an item differ, the written amount shall control over the numeric amount unless the written amount is ambiguous. If the amount of an item cannot be determined from application of the preceding sentence, or if the amount is missing altogether, the item will not be deposited into the Deposit Account.
  - (iv) Bank will still deposit an item into the Deposit Account if the drawer's signature is missing.
  - (v) Bank will not deposit an item that appears to have been materially altered into the Deposit Account.
  - (vi) Bank will not examine the front and back sides of items to detect handwritten or typed "paid in full" or similar language. Bank will deposit such items into the Deposit Account and shall have no liability to Entity for depositing such items.
  - (vii) An item denominated in foreign currency and drawn on a foreign bank will not be deposited into the Deposit Account but will be submitted for collection only. Bank will forward an appropriate advice to Entity. Bank shall not be responsible for fluctuation in exchange rates.
- 3.4 Items found acceptable for deposit under Paragraph 3.3 will be encoded, endorsed and deposited into the Deposit Account. The endorsement will be the standard endorsement for Lockbox items as used by Bank from time to time, and this endorsement will function as the endorsement of the payee of the item. In order to maximize daily receipts and funds availability, Bank will make deposits throughout the day in anticipation of major check clearing deadlines.
- 3.5 Bank will image all deposited items for reference purposes. Bank will retain such images for at least two (2) years and will provide photocopies of deposited items to Entity within said time upon request and payment of Bank's retrieval and photocopying charges.

#### 4 PAYEE ENDORSEMENTS

- 4.1 The parties agree that items deposited in the Deposit Account shall be deemed to bear the valid and legally binding endorsement of the payee and will comply with all legal requirements for supplying missing endorsements by a depository bank, now or hereafter in effect.

#### 5 PAYOR FUNDS

- 5.1 Bank will be debit from the Deposit Account any item deposited by or on behalf of Entity that is returned for insufficient or uncollected funds. Bank may debit from the Deposit Account any fees due to Bank or charges incurred by Bank in connection with Bank's deposit or collection attempts related to an Uncollectible Draft, and the amount represented by such Uncollectible Draft if such amount has been credited by Bank to the Deposit Account prior to Bank's collection thereof. If the amount of collected funds in the Deposit Account is insufficient to fully reimburse Bank as required herein, Entity agrees to pay such deficiency to Bank.

6 DEPOSITS

- 6.1 Upon execution of the Agreement, Entity shall (i) deposit or cause the deposit of all sums Entity intends to deposit into in the Deposit Account and (ii) cause all future deposits to be paid and deposited directly into the Deposit Account by directing payors to make payments to the Lockbox.
- 6.2 For deposits made through the Lockbox, Entity shall direct each payor to remit all payments owed to Entity to the Lockbox.

7 TRANSFERS

- 7.1 Entity shall have the right to withdraw funds from the Deposit Account from time to time, subject to the terms of the Deposit Account Agreement and all state and federal laws and regulations. Entity hereby authorizes Bank to honor all transfers or withdrawals from the Deposit Account directed by Entity.

8 TERMINATION

- 8.1 Upon termination, and the payment of all fees and other sums due under the Agreement, Bank shall take reasonable measures to facilitate the transfer of any funds held in the Deposit Account and items received in the Lockbox to the replacement depository selected by the Entity.

9 BANK DUTIES AND OBLIGATIONS

- 9.1 The Terms shall determine the duties and obligations of Bank and, except as expressly set forth herein, Bank will not be charged with knowledge of any provisions affecting payment to Entity. Bank shall not be liable, except for its gross negligence, bad faith or willful misconduct in the performance of its duties and obligations as are specifically set forth in the Agreement, and no implied covenants or obligations shall be read into the Agreement against Bank.

**Secure Safe Solutions Service**

1 RECITAL

- 1.1 Entity wishes to arrange for processing and deposit of cash bills placed in the Secure Safe provided by Processor. Bank is willing to provide this Service to Entity in accordance with the Terms.

2 CASH DEPOSITS

- 2.1 Entity shall contract separately with Processor to provide equipment, cash pick-up, and report transmission in accordance with the Service. Such contract will ensure that Processor picks up all cash from Entity within five (5) days of initial deposit into the Cash Manager Safe. Entity shall deposit only United States cash bills using the Cash Manager Safe. Entity assumes full responsibility for all fees, charges, costs or damages associated with attempting to deposit non-conforming items via the Cash Manager Safe. Entity will not receive advanced credit for any items placed in the Manual Drop Location within the Cash Manager Safe. Bank will credit Entity's Account for items placed in the Manual Drop Location only after Processor adds the funds to Bank's inventory within the Processor Cash Vault. Processor's accounting of such funds will be the true, correct and controlling determination of the final credit posted to Entity's Account. Bank will treat checks placed in the Manual Drop Location as mail in deposits.

3 ADVANCED CREDIT

- 3.1 Bank will advance Entity's Account credit for amounts deposited in the Secure Safe Location within the Cash Manager Safe as recorded by the Safe Validator. Bank will credit Entity's Account the next Banking Day after deposits are transmitted via the Cash Manager Safe. Upon pick-up, Processor will process Entity's deposits according to the Secure Safe Service agreement between Entity and Processor in

conjunction with the Processor Cash Vault agreement between Bank and Processor. If there is no on-site pick-up by Processor from Entity for more than five (5) consecutive days after a deposit, then advanced credits shall stop beginning on the sixth (6th) day. Bank may reverse any credit advanced during the period without a timely pick-up. In the event of a discrepancy between the Processor accounting and the advanced credit provided based on the Cash Manager Safe transmission, any adjustments will be credited or debited to Entity's Account. The accuracy of the Cash Manager Safe notwithstanding, Processor's subsequent accounting of the deposit will be the true, correct, and controlling count of the final credit posted to Entity's Account. Entity expressly assumes the risk of any unexplained loss or shortage in their deposit, including any counterfeit notes that Processor detects.

#### 4 RISK OF LOSS

- 4.1 Entity assumes sole responsibility for deposits while they are in transit between Entity and Bank. Bank shall have no responsibility to Entity for deposits that are lost, delayed, stolen or damaged while in transit. Deposits are deemed received by Bank when they are processed and added to Bank's inventory within the Processor Cash Vault.

### Cash Service

#### 1 RECITAL

- 1.1 Entity wishes to arrange for processing and deposit of cash (coin and currency) delivered to Bank's Processor into Entity's Account, and to place orders for coin and currency to be debited from Entity's Account and delivered to Entity. Bank is willing to provide this Service to Entity in accordance with the Terms and according to the Service specifications in the Secure Safe Customer Profile Setup form, as amended from time to time.

#### 2 COIN AND CURRENCY SHIPMENTS

- 2.1 Entity shall contract separately with a Bank approved armored carrier to provide for the transportation of shipments of cash to Processor. Bank may, in Bank's sole discretion, arrange for an armored carrier to transport shipments. Any armored carrier is an agent of Entity and not Bank regardless of which party pays the armored carrier for services rendered. Entity must use a Security Bag when making a deposit under the Agreement. Entity must comply with all shipment procedures provided by Bank and the armored carrier and seal all Security Bags and clearly mark them to show the originating and intended delivery points. Entity shall place nothing in a Security Bag except a deposit ticket that states the amount contained therein and United States coin and currency. Items placed in a Security Bag that do not conform to these requirements will be returned to Entity. Entity assumes full responsibility for all fees, charges, costs or damages associated with placing a non-conforming item in a Security Bag.

#### 3 SHIPMENT DELIVERY

- 3.1 Entity assumes all risk of loss or damage to shipments while in transit to or from Processor. Bank assumes no responsibility for a shipment until Processor receives and records the shipment. Shipments shall be delivered only to Processor. Processor may refuse to accept any shipment that is not delivered in a properly sealed, undamaged Security Bag.

#### 4 ACCOUNTING BY BANK

- 4.1 Processor's receipt of a shipment constitutes confirmation of the shipment's contents. All shipments are subject to later verification by Processor. Entity understands and agrees that shipment items that are intended for deposit will not be deemed deposited until Bank credits those items to Entity's Account. Although Entity agrees to insert a completed deposit slip with each shipment, Processor's subsequent accounting of each shipment will be the true, correct and controlling determination of the contents of the shipment.

- 4.2 Processor will verify by using either fine count or single denomination weight verification processes. Processor will attempt to notify Entity of any discrepancy between a deposit slip and Processor's accounting within two (2) days from the receipt of any shipment, but a longer period may be necessary, on occasion. Entity expressly assumes the risk of any unexplained loss or shortage in a shipment including any counterfeit notes that Processor may be detect.

5 COIN AND CURRENCY ORDERS

- 5.1 Processor will fill coin and currency orders from Entity in accordance with procedures established by Bank. Entity authorizes Bank to accept instructions from any authorized signor on Entity's Account. Entity must provide its cash withdrawal order at least one (1) day prior to the requested date of shipment unless Bank instructs otherwise. Entity is responsible for withdrawal instructions and Bank shall not be liable for withdrawal instructions that are either inaccurate or incomplete. Entity authorizes Bank to debit Entity's Account for orders on the day that Entity places the order. Bank has no obligation to process a coin or currency order unless there are sufficient collected and Available Funds in Entity's Account on the day Entity places the order. Entity shall report cash differences to Bank within one (1) day of Entity's receipt of a shipment. The report shall be in writing and must be accompanied by the Security Bag, its seal and any accompanying documentation. Entity must report differences of more than \$100 immediately by telephone, followed with a written report.
- 5.2 Entity must provide Bank with at least thirty (30) days prior notice of any changes in Entity's address for shipments, order instructions, or other Service parameters.

6 RISK OF LOSS

- 6.1 Entity assumes sole responsibility for shipments while they are in transit between Entity and Processor. Bank shall have no responsibility to Entity for shipments that are lost, delayed, stolen or damaged while in transit. Without limiting the generality of the preceding sentence, Bank shall not be liable for any failure or inability to deliver shipments on schedule due to strikes, lockouts, work stoppages, labor disputes/disturbances, riots, war, legal process, civil disturbances, acts of God, or circumstances beyond Bank's reasonable control. Shipments sent to Entity are deemed delivered to Entity for this purpose when the armored carrier picks them up from Processor. Shipments delivered to Bank are deemed to be received by Bank for this purpose when the armored carrier delivers them to Processor. Items transported in Security Bags with an armored carrier, but not yet received by Processor, are not insured against loss by Bank.

7 COOPERATION

- 7.1 Entity and Bank agree to cooperate promptly and fully in the investigation of any claim asserted by any person arising out of the Agreement or the transactions generated hereunder or relating hereto. Entity shall maintain adequate records of shipments to ensure that the funds represented by such items can be collected in the event a shipment is lost, stolen or destroyed.

8 VENDORS

- 8.1 Any third party servicer or vendor used by Entity in connection with the Service described herein, including those providing any armored transportation services, shall be Entity's agent, and Entity will be liable for, (i) any vendor's failure to comply with any security procedures or operating requirements relating to the services, (ii) all fees, costs and expenses owed to each vendor for its services, and (iii) any claims, damages, costs and expenses incurred as a result of any vendor's failure to perform, or delay or error in performing its services. This Paragraph shall survive termination of the Agreement.

## **Part B - General Terms and Conditions**

### **1 NOTICES AND INSTRUCTIONS**

- 1.1 Except as otherwise expressly provided herein, Bank is not required to act upon any notice or instruction received from Entity or any other person, or to provide any notice or advice to Entity or any other person with respect to any matter.
- 1.2 Bank is entitled to rely on any written notice or other written communication Bank believes in good faith to be genuine and to have been sent by an Authorized User. Entity can manage the names and signatures of Authorized Users as provided in Sub-Section 18.
- 1.3 Bank may change the deadlines, report or file formats, and information reported under the Services from time to time at Bank's sole discretion. Bank will attempt to notify Entity of any changes and will use commercially reasonable efforts to assist Entity with those changes.

### **2 FEES AND CHARGES**

- 2.1 Entity agrees to pay Bank all fees listed in the Fee Schedule. Bank may change such fees upon thirty (30) days written notice to Entity except for any increases in governmental or access fees charged to Bank, which Bank may immediately pass onto Entity without prior notice.

### **3 PAYMENT**

- 3.1 Invoices are payable upon receipt. Bank will assess and Entity agrees to pay a finance charge equal to 1.5% per month (18% per year) on all outstanding balances thirty-one (31) days and older. Entity shall be responsible to Bank for all costs Bank incurs while collecting any outstanding balances due Bank, including, but not limited to, reasonable attorney's fees and court costs. The charges applicable to the Agreement do not include sales, use, excise or similar taxes. Consequently, in addition to the specified charges, Entity is solely responsible for and agrees to pay amounts equal to any such taxes resulting from the Agreement or any activities hereunder. In the event any dispute arises involving any of the items contained on an invoice, Entity agrees to promptly notify Bank of said dispute but will not withhold payment. Bank shall investigate such disputed items and notify Entity of the findings of its investigation.

### **4 ENTITY'S ACCOUNT**

- 4.1 Bank may, without prior notice or demand, obtain payment of any amount due and payable under the Agreement by debiting Entity's Account. Bank will credit Entity's Account for any amount Bank receives because of the return of an Entry transmitted by Bank for which Entity has previously paid Bank. Bank will credit Entity's Account within three (3) Banking Days of Bank receiving the return. Entity will, at all times, maintain a balance of Available Funds in Entity's Account sufficient to cover Entity's payment obligations under the Agreement. If there are not sufficient Available Funds in Entity's Account to cover Entity's obligations under the Agreement, Entity agrees that Bank may debit any account Entity maintains with Bank or any affiliate of Bank or that Bank may set off against any amount Bank owes to Entity, in order to obtain payment of Entity's obligations under the Agreement.
- 4.2 Upon request, Entity agrees to promptly provide Bank with information pertaining to Entity's financial condition, including annual financial statements. Bank reserves the right to pull a credit report at any time to evaluate Entity's ongoing financial condition.
- 4.3 The periodic statement issued by Bank for Entity's Account will reflect transactions credited and debited to Entity's Account. Entity agrees to notify Bank promptly of any discrepancy between Entity's records and the information shown on any such periodic statement. If Entity fails to notify Bank within fourteen (14) days of receipt of a periodic statement, Entity agrees that Bank will not be liable for any other losses resulting from Entity's failure to give such notice, including any loss of interest or any interest equivalent with respect to an Entry shown on such periodic statement. If Entity fails to notify Bank within fourteen

(14) days of receipt of a periodic statement, Entity will be precluded from asserting such discrepancy against Bank.

- 4.4 Entity further agrees that if Entity fails to report any unauthorized signatures, alterations or forgeries in Entity's Account within sixty (60) days of receipt of a periodic statement, Entity cannot assert a claim against Bank on any items in that statement and Entity will bear any loss for such unauthorized signatures, alterations or forgeries on said statement.
- 4.5 If Entity's Resolution of Authority requires multiple approvals/signatures for transaction processing, Bank's responsibility for enforcing such dual control request will be limited to written documents only. Entity acknowledges and agrees that Bank is authorized to honor instructions provided by Entity in accordance with this Agreement, regardless of any dual control request made elsewhere, and that Bank will not be held liable for processing any transactions based on such instructions. Entity is solely empowered and responsible for establishing and enforcing any multiple approvals/signatures requirements for transactions initiated via Online or Electronic Banking.

## 5 SECURITY INTEREST AND SETTLEMENT RESERVE

- 5.1 Entity grants Bank a security interest in all of Entity's accounts at Bank, and in all funds in such accounts to secure Entity's obligations under the Agreement. This security interest will survive termination of the Agreement for up to ninety (90) days following the expiration of any return or chargeback rights regarding any request or ACH processed by Entity using the Services or, if later, until any other claims to such funds have expired.
- 5.2 Entity grants Bank a valid and binding security interest in all assets of Entity including, but not limited to, all inventory, equipment, accounts, accounts receivable, chattel paper, instruments, deposit accounts, investments or investment property, money, contracts or contract rights, whether now owned or hereafter acquired
- 5.3 Entity may be required to maintain a "Settlement Reserve" of an amount Bank solely determines. Entity acknowledges and agrees to deposit any Settlement Reserve in a Bank account for exclusive use by Bank for purposes of offsetting any of Entity's obligations under the Agreement. Entity authorizes Bank to immediately replenish the Settlement Reserve to an amount determined by Bank via an ACH debit to Entity's Account or by a direct deposit to the Settlement Reserve if Entity's Settlement Reserve falls below the required amount. Entity grants Bank a security interest in any Settlement Reserve to enable Bank to enforce any obligation owed by Entity under the Agreement without notice or demand to Entity. Entity's obligation to maintain a Settlement Reserve, and Bank's security interest therein, shall survive termination of the Agreement with such obligation and security interest lasting until all of Entity's obligations under the Agreement have been fully offset.

## 6 ELECTRONIC BANKING

- 6.1 Bank's Internet-based Electronic Banking allows for the receipt of electronic information about activity in Entity's Account and, depending on the Services contracted for, the initiation of certain electronic transactions or the transfer of funds between Entity's Accounts. Electronic Banking consists of information reporting, transaction or transfer initiation, and instruction entry services supporting those Services. Entity agrees not to use Electronic Banking in connection with any activity other than those permitted by the Agreement unless Bank provides prior written approval.
- 6.2 Bank shall provide alternative access to Electronic Banking features on a best-efforts basis. Bank will notify Entity of any system interruption promptly via a Bank website banner message, email, or telephone notification or another communication method that Bank deems expedient and effective.
- 6.3 On a best-efforts basis, Bank will notify Entity in advance of any update releases or other permitted changes which may reasonably be expected to affect service and Bank will notify Entity promptly via a

Bank website banner message, email, or telephone notification or another communication method that Bank deems expedient and effective.

- 6.4 Electronic Banking is a double authentication process. Dual user validation is required for compliance with the Federal Financial Institution Examination Council's (FFIEC) guidance, *Authentication and Access to Financial Institution Services*. The guidance, issued in August 2021, reflects many significant legal and technological changes with respect to the protection of Entity information, increasing incidents of identity theft and fraud, and the continuing introduction of improved authentication technologies and other risk mitigation strategies.
- 6.5 Under the guidance, authentication methodologies must include at least two of three basic factors: (i) something the user knows, (ii) something the user has, and, (iii) something the user is. Bank authenticates with something the user knows (user ID and password) and something the user has (Company ID, challenge questions or a Supplemental Security Code via the Bank's Out-of-Band Authentication service).

## 7 NACHA RULES

- 7.1 Entity acknowledges that it has access to a copy of the Rules. Entity agrees to comply with and be bound by the Rules. If Entity violates any of the applicable Rules and NACHA imposes a fine on Bank because of Entity's violation, Bank may charge the fine to Entity. Bank will notify Entity of any changes to the Rules by posting notice of such changes to the Cash Management Quick Link's page on Bank's website.
- 7.2 Bank will provide reporting information to NACHA regarding Entity if Entity's return rate for unauthorized Entries exceeds the Unauthorized Entry Return Rate Threshold as required by the Rules.
- 7.3 Entity's ability to originate Entries under the Agreement is subject to ACH exposure limits in accordance with the Rules. The total dollar amount of Entries transmitted, frequency of origination and payment application (debits or credits) originated by Entity must comply with limits set forth in Entity's ACH Application.

## 8 CONFIDENTIALITY

- 8.1 Bank will maintain the confidentiality of information obtained from Entity in connection with the Services provided under the Agreement in accordance with all applicable state and federal laws and regulations and its normal procedures for safeguarding Entity information.
- 8.2 Entity acknowledges and hereby agrees that the products, services, software, data, and any information provided to or obtained by Entity in connection with the Agreement is the exclusive, valuable, and confidential property of Bank and/or Bank's relevant licensors or suppliers. Entity shall establish and maintain procedures to ensure that all such products, services, software, data, and any information provided to or obtained by Entity in connection with the Agreement, will be treated as confidential and propriety and shall not be used or disclosed, in whole or part, to any person, firm, corporation, association, or other entity, except as provided for in the Agreement or as required by law. Entity will promptly notify Bank by telephone, confirmed in writing, if any of Bank's confidential information is lost or compromised.
- 8.3 Neither party will use the other's name or refer to the other party directly or indirectly in any solicitation, marketing material, advertisement, news release or other release to any publication without receiving the other party's specific prior written approval for each such use or release.

## 9 LIMITATIONS ON LIABILITY

- 9.1 Bank is responsible only for performing the Services expressly provided for in the Agreement. With respect to the Services performed hereunder outside the scope of Article 4 of the UCC, Bank shall only be liable to Entity for actual damages due to claims arising solely from Bank's own gross negligence or

willful misconduct in performing such Services. Bank is not responsible for Entity's acts or omissions or those of any other person, including, without limitation, any Federal Reserve Bank or transmission or communications facility, or any Receiver or RDFI and no such person will be deemed Bank's agent.

- 9.2 In no event will Bank be liable for direct, indirect, special, incidental, consequential, or punitive loss or damages arising out of the Agreement or the use or inability to use the Services or faulty service even if Bank has been advised of the possibility of such damages.
- 9.3 Bank is excused from failing to process, or for a delay in processing, a transaction if such transaction would result in Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to Federal Reserve guidelines or if Bank reasonably believes it would violate any provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.
- 9.4 Any claim, action, or proceeding to enforce the Terms or to recover for any Services related loss must be commenced within one (1) year from the date that the event giving rise to the claim, action or proceeding first occurs.
- 9.5 This Sub-Section shall survive termination of the Agreement.

## 10 INDEMNITY

- 10.1 Entity agrees to indemnify and hold Bank harmless against liabilities, expenses, losses, or damages, including court costs and attorney's fees, resulting from any claims based on (i) Entity's breach of the Terms or one of its representation hereunder, (ii) Bank's compliance with instructions or requests submitted by Entity in accordance with the Terms, (iii) Entity's provision of invalid or inaccurate data in connection with the Services provided under the Agreement, (iv) an act or omission by Entity under the Terms.

## 11 WARRANTY

- 11.1 Bank makes no warranty with respect to the Services Bank renders under the Agreement, including, without limitation, accuracy, merchantability, or fitness for a particular purpose and Bank expressly disclaims same.

## 12 FORCE MAJEURE

- 12.1 Bank is not responsible for any action taken, allowed, or omitted by or under the Agreement, or for any liability, loss, claim, or damage arising from an act of God, act of governmental authority, legal constraint, war, terrorism, catastrophe, fire, flood, unusually severe weather conditions, electrical mechanical or telecommunications malfunction or failure, or from delay occasioned in transit of data or processed work, or from any other cause of event beyond Bank's control.

## 13 WAIVER

- 13.1 No waiver by either party of any term or provision of the Agreement, whether express or implied, shall constitute a continuing waiver of such provision or a waiver of any other provision of the Agreement.

## 14 TERMINATION

- 14.1 The Agreement is effective from the date of execution by Entity. Either party may terminate the Agreement upon sixty (60) days' written notice to the other party provided that applicable portions of the Agreement shall remain in effect for ninety (90) days after the effective date of termination with respect to any Entries initiated by Entity prior to the effective termination date, to clear all returns against Entity's Account. In addition, Bank may terminate the Agreement or suspend Entity's use of the Services under the Agreement immediately and without giving Entity prior written notice if; (i) Entity breaches any of the

Terms, (ii) Bank suspects Entity of fraud or other illegal activity, (iii) Entity fails to pay or settle account transactions, (iv) Entity fails to pay Bank's fees and Service charges in a timely manner, (v) Entity terminates, liquidates or dissolves its business or disposes of a substantial portion of its assets, (vi) Entity becomes the subject of a bankruptcy, insolvency, reorganization or other similar proceeding, (vii) Entity has breached relevant state or federal laws or regulations, (viii) Entity's account activity might cause Bank to breach relevant state or federal laws or regulations, (ix) any state or federal regulatory body requests or requires Bank to terminate the Agreement or suspend the Services, or (x) Bank believes termination or suspension is necessary for Bank to comply with relevant state and federal laws and regulations. Any termination or suspension of the Agreement will not affect any rights or obligations with respect to the Services performed or requested prior to termination or suspension.

- 14.2 Bank may suspend Entity's use of the Services immediately and without prior notice if Bank suspects or detects fraud within the network or systems used to access or perform the Services.

## 15 AMENDMENTS

- 15.1 Bank may amend any of the Terms. Such amendments will become effective upon issuance of notice of such amendment to Entity or such later date as may be stated in Bank's notice to Entity. Notice of any amendments to the Terms will be via email. Entity's continued use of the Services after the effective date of the notice constitutes acceptance of the amendment. Entity may not amend the Agreement without Bank's prior written consent.

## 16 ASSIGNMENT

- 16.1 The Agreement is binding upon and benefits the parties and their respective legal representatives, successors, and assigns except that Entity may not assign the Agreement or any of the rights or duties hereunder to any other person or entity without Bank's prior written consent.

## 17 THIRD PARTY SERVICE PROVIDERS

- 17.1 Entity acknowledges that, in providing the Services, Bank may utilize and rely upon certain third-party service providers and that such third-party service providers are not agents of Bank.

## 18 SECURITY

- 18.1 Entity is strictly responsible for establishing and maintaining commercially reasonable security measures to safeguard against unauthorized transmissions, network infections, and breaches of Personally Identifiable Information. Entity warrants that such measures will include, but not be limited to, security technology (e.g. secure web-servers) that provides commercially reasonable encryption technology for the Entry and transmission of Entries over the Internet, and network security to safeguard account information and access from unauthorized parties.
- 18.2 Entity agrees that any activities and/or use of the Services carried out by using an Access Code or other Security Device are deemed to be carried out directly by and on behalf of Entity. Entity agrees to be bound by and adhere to the security procedures set out in the Agreement, which Bank may revise from time to time, and any additional security procedures as necessary for each Service.
- 18.3 Entity acknowledges that allowing an Authorized User to access the Services from a home or personal computer or device may not provide the same level of security that exists when an Authorized User accesses the Services from Entity's own computers or devices. Entity shall take all appropriate measures to either prohibit its Authorized Users from accessing the Services from a home or personal computer or device or ensuring that all security precautions applicable to accessing the Services from Entity's computers are also in place on the home and personal computers and devices of each of its Authorized Users who accesses the Services. In addition to all other limitations of liability set forth in the Agreement or elsewhere, Bank shall have no liability in connection with any claims resulting from or in connection with the use of computers or devices not belonging to Entity.

- 18.4 Entity shall designate System Administrators who shall have equal authority in accordance with the administrative control procedure for each Service (Except for the Remote Check Print Service. Bank retains System Administrator authority over that Service). Entity shall designate its System Administrators by submitting a completed Entity Set-Up and System Administrator Form. Entity agrees to notify Bank of any changes to the System Administrators by submitting an updated Entity Set-Up and System Administrator Form to Bank. Any such changes shall be effective when Bank receives such notice and has had a reasonable opportunity to act upon it.
- 18.5 The System Administrator shall be responsible for; (i) designating Authorized Users, (ii) identifying the functions of the Services that each Authorized User may access, and/or (iii) receiving, exchanging and distributing materials, notices, documents and correspondence relating to security procedures. Entity agrees and acknowledges that Entity has authorized each Authorized User to use the Services.
- 18.6 If a System Administrator is to be an Authorized User, the System Administrator should obtain authorization for such user status via one other System Administrator. Entity acknowledges that failure to obtain such authorization poses security risks to Entity and Entity assumes any such risks. Entity further acknowledges that the designation of only one System Administrator poses a risk to Entity and, if Entity fails to designate a second System Administrator, Entity assumes all associated risks, including, without limitation, those associated with the delivery of Security Devices to a single individual.
- 18.7 Bank shall deliver Security Devices (including Access Codes for each Authorized User) and related documents and correspondence to the designated Systems Administrators. In the absence of a valid designation, Bank may direct materials otherwise deliverable to a System Administrator to any person authorized to act on behalf of Entity with respect to Entity's Account. Entity's issuance and dissemination of Access Codes to Authorized Users is under the control of Entity's Systems Administrators. The System Administrators will have the responsibility of identifying Authorized Users who are to receive Access Codes, disseminating and controlling such Access Codes and the applicable user entitlements, and restricting an Authorized User's access to certain Services functions or granting access to all functions in accordance with Bank's standard procedures.
- 18.8 Entity will be responsible for the confidentiality and use of any assigned user ID and password. Entity will be responsible for all instructions Bank receives through and under Entity's user ID and password. Entity agrees to notify Bank immediately if Entity becomes aware of any loss or theft of the user ID or password, or unauthorized use of Entity's user ID and/or password or of the Services or any information.
- 18.9 Bank will be responsible for: (i) restricting Electronic Banking web site access to valid user IDs/passwords, (ii) restricting access to Entity information only to valid user IDs/passwords assigned to such user, and (iii) properly acting upon instructions and communications associated with a valid user ID/password assigned to a specific user.
- 18.10 Entity acknowledges that these security procedures are commercially reasonable and that the purpose of such security procedures is to verify authenticity and not to detect an error in the transmission or content of an Entry. Bank and Entity have not agreed upon any security procedures for the detection of any such error.
- 18.11 Bank may modify, amend, or cancel any or all security procedures at its discretion. Bank will make best efforts to give Entity reasonable notice of any changes in security procedures but may make changes in security procedures without advance notice if Bank, in its judgment and discretion, believes such change to be necessary to protect the security of the Services. Entity's use of any changed security procedure shall constitute acceptance of the change.
- 18.12 Bank may implement out-of-band authentication ("OOBA") as a security procedure for certain Services. OOBA is a type of two-factor authentication which requires a secondary verification method through a separate communication channel. This additional level of authentication validates the user to prevent fraud even if an unauthorized user obtains an Authorized User's credentials. To use OOBA, Authorized Users are required to have compatible telephone and/or email access and System Administrators will be

responsible for providing telephone and email information to Bank so Bank may send the required authentication challenges.

- 18.13 Bank may cancel or disable any user ID/password, Access Code, or Security Device if there is any reason to suspect improper use.
- 18.14 Entity acknowledges that, any computer data transmissions or other communications between the parties are not encrypted and Entity assumes the risk of interception of unencrypted data transmitted between Entity and any third party.
- 18.15 Entity acknowledges that Access Codes expire if Authorized Users do not use them to access the Services within a period of time determined by Bank. Once activated, hard token Security Devices may expire within five (5) years. Prior to such time, it is Entity's responsibility to ensure that Entity orders and receives new tokens. Entity is obligated to renew tokens annually for a fee. Bank may dishonor or disable any Security Device at any time and will inform Entity of its decision to do so. The System Administrator shall provide to the Bank, upon request, a list of the persons issued Access Codes.
- 18.16 Entity warrants that Entity will not allow any individual to initiate transfers in the absence of proper supervision and safeguards, and Entity agrees to take reasonable steps to maintain the confidentiality of security procedures and any Access Codes, Security Devices, passwords, codes, and related instructions Bank provides. Entity assumes full responsibility for the consequences of any misuse or unauthorized use of any Access Code, password or Security Device or other code or identifier relating to systems access or transactions initiated under the Agreement. If Entity suspects fraudulent activity, or that unauthorized persons access any such any Access Codes, Security Devices, passwords, codes, or instructions, Entity will notify Bank immediately by contacting 800-516-8603 or by using the secure email. Bank may require a written statement of the breach. Entity shall ensure that each Authorized User is bound by the Terms. The occurrence of unauthorized access will not affect any transfers Bank makes in good faith prior to Bank's receipt of Entity's notification informing Bank of the unauthorized access.

## 19 OPEN NETWORK ACCESS

- 19.1 Entity acknowledges that there are certain security, corruption, transmission error, and access availability risks associated with using open networks such as the Internet, and Entity hereby expressly assumes such risks. Entity shall make its own independent assessment of the adequacy of the Internet and of the security procedures made available by Bank. Entity acknowledges and agrees that Entity's selection and use of third-party security and communications software and third party service providers is the sole responsibility of Entity. Bank expressly disclaims all risks related hereto, notwithstanding that Bank may recommend certain security and/or communications software packages. All such software must be interoperable with Bank's software. Entity and Bank shall be responsible for the proper functioning, maintenance and security of their own systems, services, software and other equipment.
- 19.2 Entity acknowledges the risk of error, failure, incompatibility or nonperformance of Entity's computer system or mobile devices, including the risk that Entity does not operate such system or devices, or software therein, correctly. Bank is not responsible for any errors or failures from any malfunction of Entity's computer, mobile device, or software. Bank shall have no liability to Entity for any damages or other loss, direct or otherwise, which Entity may suffer or incur due to Entity's use of Entity's computer, mobile devices, or software. Bank makes no warranty to Entity regarding Entity's computer, mobile device, or software, including any warranty of merchantability or fitness for a particular purpose. Bank makes no representations or warranties regarding the accuracy, functionality, or performance of any third party software, including any file creator software that is provided by Bank that may be used in connection with the Services herein.

## 20 EQUIPMENT

- 20.1 Except as detailed in the Remote Deposit and the Remote Check Print Services Terms & Conditions, Entity agrees to, at Entity's sole expense: (i) procure and maintain all hardware, browsers, software and telecommunications equipment necessary to access the Services, including any updates or upgrades

Bank requires in order to continue using the Services, in accordance with Bank's recommended system configuration; (ii) provide Bank with all information reasonably necessary to setup or establish the Services on Entity's behalf, (iii) advise each of its employees, officers, agents or other persons accessing the Service by or on behalf of Entity of his or her obligations hereunder or under any service material, user guides or implementation forms which may contain operating procedures, security procedures, specifications or other requirements applicable to the Services.

## 21 HARDWARE AND SOFTWARE

21.1 In order to use the Services, Entity must obtain and maintain compatible hardware and software as specified by Bank from time to time. Bank is not responsible for any third-party software Entity may need to use the Services. Entity accepts any such software as is. Such software is subject to the terms and conditions of the software agreement Entity enters into directly with the third-party software provider at the time of download and installation.

21.2 In consideration of the fees paid by Entity to Bank, and subject to any applicable software license addendum in relation to Bank owned or sublicensed software provided for a particular application, Bank grants to Entity a non-exclusive license to use the Services and the data for the sole use of Entity. Entity may download the data and print out hard copies for its reference, so long as Entity does not remove any copyright or other notices contained therein, or any hyperlink, or other reference to any such notice.

## 22 ERRONEOUS REPORTS

22.1 If Entity receives an erroneous transmission, Entity will immediately notify Bank by telephone and will return the original erroneous transmission to Bank by U.S. Mail. Entity agrees not to disclose, use, review, copy, sell, disseminate, publish or distribute any erroneous transmission.

## 23 GOVERNING LAW

23.1 The Agreement will be construed in accordance with and governed by the laws of the State of New York to the extent such law is not preempted by federal law.

## 24 ARBITRATION

24.1 Bank and Entity shall resolve any dispute arising out of or relating to the Agreement, or any alleged breach thereof by final and binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. A single arbitrator who is experienced in banking law and agreed upon by the parties will conduct the arbitration in the state of New York. A judgment based upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

## 25 SEVERABILITY

25.1 If any provision of the Agreement is determined to be invalid, illegal, or unenforceable to any extent, the remainder of the Agreement will not be impaired or otherwise affected and will continue to be valid and enforceable to the fullest extent permitted by law.

## 26 ENTIRE AGREEMENT

26.1 The Agreement is the complete and exclusive statement of the Agreement between Bank and Entity with respect to the subject matter hereof and supersedes any prior Agreement(s) between Bank and Entity with respect to such subject matter. In the event of any inconsistency between the Terms and the Account Agreement, the Terms will govern. If performance of the Services provided herein would result in a violation of any present or future statute, regulation or government policy to which Bank is subject, and which governs or affects the transactions contemplated by the Agreement, then the Agreement will be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank will incur no liability to Entity as a result of such violation or amendment.

## Part C - Glossary of Terms

**ACCESS CODE** - Any code created by Entity or assigned by Bank, used by Entity for accessing Cash Manager Direct or any other system necessary for utilizing the Services.

**ACCOUNT AGREEMENT** - The Terms and Conditions and other information detailed in the "Important Information About Your Flushing Bank Accounts" pamphlet Entity received upon opening a deposit account with Bank.

**ACCOUNT RECONILIATION REPORT** - A report showing the reconciliation of paid and outstanding checks in Entity's Account.

**ACH** - An electronic funds transfer system governed by the Rules.

**ACH OPERATOR** - An entity that acts as a central facility for the clearing, delivery, and settlement of Entries between and among participating depository financial institutions.

**ACH RETURN** - An Entry initiated by a participating depository financial institution or ACH Operator that returns a previous Credit Entry's funds to the Originator within the timeframe established by the Rules.

**AUTHORIZED USER** - An individual designated by the System Administrator to use a particular Service or Services on behalf of Entity.

**AVAILABLE FUNDS** - Funds from Entities deposits that are available to be withdrawn based on the Account Agreement.

**BANKING DAY** - Every day except Saturdays, Sundays, and Bank holidays.

**BENEFICIARY** - The third-party being credited with funds via Entity's Payment Order.

**CASH MANAGER DIRECT** - The software/Internet platform Entity and Bank use to administer the Cash Manager Direct Service.

**CASH MANAGER SAFE** - Equipment installed by Processor at Entity's business location that Entity uses to deposit funds into Entity's Account. The Cash Manager Safe may consist of a Secure Safe Location and an additional Manual Drop Location.

**CHECK ISSUE FILE** - A record, in .csv format, which can detail the check number, issue date, and amount for checks drawn by Entity under the Positive Pay Service. Entity submits the record via the Positive Pay system.

**COMPANY ID** - The identification number Bank gives to Entity to allow access to Cash Manager Direct.

**CREDIT ENTRY** - An order or request sent from an Originator for the deposit of money into Entity's Account.

**DEBIT ENTRY** - An order or request from an Originator for the withdrawal of money from Entity's Account.

**DEBIT THRESHOLD** - The maximum amount of Debit Entry Entity permits a particular Originator to request as per the ACH Debit Block and Filter Authorization Form.

**DEPOSIT ACCOUNT** - Entity's Account established to receive payments for Entity under the Lockbox Agreement.

**ENTITY'S ACCOUNT** - Any deposit account owned by Entity that Entity has authorized to be debited and/or credited in connection with a particular Service.

**ENTRY** - An electronic payment processed through the ACH network.

**ESCROW FUNDS** - Funds deposited by Entity on behalf of a Principal.

**EXCEPTION FILE** - A record Bank provides to Entity that details Exception Items. Bank submits the record via the Positive Pay system.

**EXCEPTION ITEM** - A presented check that does not match any check included in the Check Issue File that is subsequently identified as an error.

**EXECUTION DATE** - The Banking Day Bank receives a Payment Order from Entity unless the Payment Order specifies otherwise.

**ISSUE INFORMATION** - Check information consisting of; the serial number, the transit routing number, the account number, and the dollar amount. For Positive Payee Items, the payee's name is also included.

**LOCKBOX** - A unique U.S. Postal Service address established by Bank for remittances that are to be deposited into the Deposit Account.

**MANUAL DROP LOCATION** - The portion of the Cash Manager Safe that does not record items for advanced credit. Entity can deposit items such as checks and money orders here.

**MAXIMUM TARGET BALANCE** - The maximum end of day balance for a particular Subordinate Account as designated by Entity on the Sweep Form. Once the end of day balance exceeds this amount, funds in excess of the Target Balance will be debited from the Subordinate Account and credited to the Master Account

**MINIMUM TARGET BALANCE** - The minimum end of day balance for a particular Subordinate Account as designated by Entity on the Sweep Form. Once the end of day balance drops below this amount, funds will be debited from the Master Account and credited to the Subordinate Account sufficient to restore the Subordinate Account to its Target Balance.

**NACHA** - National Automated Clearing House Association

**ODFI** - Originating Depository Financial Institution; A participating depository financial institution that transmits an Entry to an ACH Operator on behalf of an Originator.

**ORIGINATOR** - A person or entity that has authorized a participating financial depository institution to transmit a Credit Entry or Debit Entry to a Receiver's account with an RDFI.

**PAY/RETURN REQUEST** - Entity's instructions to Bank directing the payment or return of Exception Items. Entity sends the instructions via the Positive Pay system.

**PAYMENT ORDER** - Entity's instruction to Bank to transfer funds to a third-party via a wire transfer.

**PERSONALLY IDENTIFIABLE INFORMATION** - Non-public personal information regarding individual "consumers" or "Entities" as defined in Section 509 (4) of the Gramm Leach Biley Act of 1999 and in the Fair Credit Reporting Act and the Fair and Accurate Credit Transactions Act of 2003.

**PRESENTED CHECK** - A check drawn on Entity's Account and presented to Bank for payment.

**PRINCIPAL** – The third-party on whose behalf Entity opens an Escrow Sub-Account.

**PROCESSOR** - The third-party vendor Bank contracts with to perform armored car and cash collection/disbursement services.

**PROCESSOR CASH VAULT** - The secure vault location Processor provides Bank where Entity's funds are deposited after pick-up under the Secure Safe Solutions Service.

**RDFI** - Receiving Depository Financial Institution; A participating depository financial institution that receives an Entry from an ACH Operator for the benefit of a Receiver's account.

**RECEIVER** - A person or entity that has authorized an Originator to initiate a Credit Entry or Debit Entry to a Receiver's account with an RDFI.

**RULES** - NACHA Operating Rules and Guidelines

**SAFE VALIDATOR** - The electronic drop location on the Cash Manager Safe that records amounts deposited into the Secure Safe Location and transmits said deposits to Processor.

**SECURE SAFE LOCATION** - The portion of the Cash Manager Safe where Entity can be deposit cash. The Safe Validator records such deposits so that Bank can grant Entity advanced credit.

**SECURITY BAG** - A sealable and disposable deposit bag designated and approved by Bank and an armored carrier for use in the Cash Service.

**SECURITY DEVICE** - Anything used by Entity to authenticate and verify their identity for the purposes of using the Services. This includes Access Codes, other identification codes, passwords, authentication and/or encryption algorithms, tokens, and trusted access security devices.

**SETTLEMENT OFFSET** - A Debit Entry created by Bank to offset an Entry originated by Entity using Bank's ACH Origination Service.

**SUBSTITUTE CHECK** - A paper reproduction of an original check as defined in the Check 21 Act.

**SYSTEM ADMINISTRATOR** - An individual designated by Entity (except with regards to the Remote Check Print Service) to manage Entity's use of the Services, including assigning Authorized Users, and overseeing access capabilities.

**TARGET BALANCE** - The desired end of day balance for a particular Subordinate Account as designated by Entity on the Sweep Form.

**TIN** - Taxpayer Identification Number

**UCC** - Uniform Commercial Code

**UNCOLLECTIBLE DRAFT** - An item deposited by or on behalf of Entity that is returned for insufficient or uncollected funds.