

# Master Treasury Management Services Agreement

## FORWARD

Thank you for choosing our bank for your treasury management service needs. We appreciate the opportunity to serve you. Should you have any questions about this Agreement, please contact your Relationship Manager or Treasury Management Officer.

This Master Treasury Management Services Agreement (“Agreement”) sets forth the terms and conditions of our Treasury Management services. The Agreement is comprised of the Terms and Conditions that apply to all Treasury Management services provided by Bank from time to time, and the Terms and Conditions that apply to the applicable Service. By enrolling in or using any Service provided by Bank, Customer accepts and agrees to the terms and conditions set forth under this Agreement.

Please review this Agreement carefully and retain it for your records. As you add Services in the future, they will also be covered by the terms and conditions contained in this Agreement. Bank may change the terms and conditions of Services provided under this Agreement. Your continued use of the Service constitutes your acceptance of the change. As new services are added to Bank’s Treasury Management product line, this Agreement will be updated to include the terms and conditions for that new service, and you will be provided with a revised document prior to your enrollment in that service.

# Master Treasury Management Services Agreement

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# MASTER TREASURY MANAGEMENT SERVICES AGREEMENT

This Master Treasury Management Services Agreement (“Agreement”) is made by and between Arizona Bank & Trust (the “Bank”, “Us” or “We”) and the “Customer” or “You” or “Yours”. The Bank and Customer shall also be referred to as a “Party” or collectively as the “Parties”.

By using a Service (as defined within this Agreement), Customer agrees to be bound by the terms of this Agreement, any Separate Agreements, and any supplement or amendment to any of the same. Customer also agrees that the deposit accounts to which the Services apply are governed by the agreement entitled “Business Deposit Account Agreement and Disclosure” (the “Account Terms”). Except as otherwise provided herein, where any terms and conditions contained in the Account Terms, a Separate Agreement, or any other agreement between the parties conflict with the terms of this Agreement, the terms of this Agreement shall control unless the Account Terms, a Separate Agreement to which Bank is a party, or any other agreement to which Bank is a party, provides that its terms shall prevail over the terms of this Agreement.

The Bank is a federally insured depository institution providing treasury management services (“Services”) to its customers for use with accounts maintained at the Bank and the Customer desires access to the Services available from the Bank.

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is agreed as follows:

- 1. Services.** Subject to the terms and conditions of this Master Treasury Management Services Agreement (collectively with all Schedules the “Agreement”), the Bank will provide Customer with those services as requested by Customer. Except as otherwise specifically provided in this Agreement, any changes requested by Customer shall not be effective unless the Bank has a reasonable amount of time to implement the requested amendments, revisions or modifications. The Bank may amend the terms of this Agreement or revise, modify or discontinue any Service in accordance with the provisions outlined in Section 18.
- 2. Authorized Representatives.** Based on your instructions, a Primary Administrator has been identified. You hereby grant the Primary Administrator access to your accounts (“Authorized Accounts”), and full authority to access and use the System (defined below) on behalf of Customer, including the authority to select and change Security Procedures; request the issuance or re-issuance of Primary Administrator usernames, passwords and access devices; access and use all of the features of the System and the Services; enable, set parameters for the use of or disable any Customer controlled features of the System and each Service; use the System and Services to issue, activate, limit, or de-activate one or more usernames and passwords which may be used to access and use one or more features of the System and the Services; and authorize other persons to access and use one or more features of the System and the Services (each such person along with the Primary Administrator and each other person issued, provided or given access to any such username or password collectively referred to as “Authorized Persons”). Bank may act upon oral or written requests reasonably believed by the Bank to be from the Primary Administrator.
- 3. Term, Termination.** This Agreement shall remain in effect until terminated in the manner provided in this Agreement. Either Party upon thirty (30) calendar days written notice may terminate this Agreement with respect to all Services. The Bank may also terminate this Agreement in its entirety, or with respect to any specific Service, without advance notice to Customer in the event that any of the following occurs: (a) any breach or default by Customer under the terms of this Agreement; (b) any breach or default under the terms of any other note, obligation, mortgage, assignment, guaranty, other agreement, or other writing to which Customer is a party; (c) the insolvency, death, dissolution, liquidation, merger or consolidation of Customer; (d) any appointment of a receiver, trustee or similar officer of any property of Customer; (e) any assignment for the benefit of creditors of Customer; (f) any commencement of any proceeding under any bankruptcy, insolvency, receivership, dissolution, liquidation

or similar law by or against Customer; (g) the issuance or levy of any writ, warrant, attachment, garnishment, execution or other process against any property of Customer; (h) the attachment of any tax lien to any property of Customer; (i) any statement, representation or warranty made by Customer (or any representative of Customer) to the Bank at any time shall be incorrect or misleading in any material respect when made; (j) there is a material adverse change in the condition (financial or otherwise), business or property of Customer; (k) the Bank receives notice of allegations or information, without any duty of further inquiry or verification, that Customer has used any Service in violation of applicable laws or regulations, or (l) the Bank shall in good faith believe that the prospect of due and punctual payment or performance of Customer's obligations under this Agreement is impaired.

Upon termination of this Agreement, Customer may no longer use the Services and the Bank shall not allow any Services to be used by or on behalf of Customer or by any Authorized Person to initiate any transactions with respect to Customer's accounts with the Bank. Following termination, neither Party shall have any further obligations under this Agreement, except that: (i) Customer shall remain liable for any transactions initiated by Customer using any Service and any other liabilities or obligations arising out of Customer's use of any Service that have not been paid, satisfied or otherwise performed prior to termination, in each case to the extent provided by the terms of this Agreement; and (ii) the rights, duties, obligations and liabilities of the Parties pursuant to Sections 9, 15, 23 and 24 shall remain in effect following termination.

4. **System.** Each Service will be provided using the internet or computer based banking systems made available by the Bank (the "**System**") and that Customer will access through the internet using its own computers, its own internet browser software and its own internet service provider or other internet access point selected by Customer. Each Customer computer and internet browser used with any Service or to access the System must meet or exceed the specifications set forth on the Bank's website and other implementation materials made available to Customer. Customer is solely responsible for the selection, purchase, license or lease, maintenance, upgrade, security, and any error, failure or malfunction of Customer's computers, operating systems, internet browser software, virus software, firewalls, internet service providers or other internet access points, and internal and external communication lines and wireless communication systems, none of which shall be deemed part of the System made available by the Bank. Customer acknowledges that computer, operating system and internet browser specifications may change from time to time and that Customer is solely responsible for maintaining or upgrading its computer, operating system and internet browser software in response to any changes in specifications.

During the term of this Agreement, Customer has a nonexclusive, nontransferable license to use the System and all related System software ("**Software**"), and all user manuals and other implementation and reference guides, as in effect from time to time (collectively "**Proprietary Data**") solely for the purpose of using the System and related Services in accordance with the terms and conditions of the Agreement. Customer acknowledges that the System may be operated by or include Software or other Proprietary Data owned and copyrighted by third parties and is being made available or sub-licensed to Customer by the Bank, subject to the terms, conditions and limitations of the Bank's service and license agreement with such third parties. Customer acknowledges that it is not purchasing title to any Software or Proprietary Data, that such Software and Proprietary Data may not be copied or used independently of the System or related Service, and that no third party provides any support services, upgrades or technical assistance in connection with the software owned by it. Customer agrees not to decompile or reverse engineer any code contained in any Software. The Bank shall not be responsible for any computer virus or related problems that may be associated with the use of the System.

**THE SYSTEM, EACH SERVICE AND ANY SOFTWARE AND PROPRIETARY DATA ARE PROVIDED "AS IS." THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO THIRD PARTY PROVIDER OF THE SYSTEM OR ANY SERVICE, SOFTWARE OR PROPRIETARY DATA MAKES ANY EXPRESS OR IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

5. **Fee Schedule.** Customer agrees to compensate the Bank for each Service in accordance with the Bank's Fee Schedule, which may change from time to time. Customer hereby acknowledges receipt of the Bank's Fee Schedule.

Customer understands that utilization of Services may cause you to incur charges and fees imposed by third parties, including, without limitation, charges imposed by any third party telecommunication provider. You agree that you will pay all additional charges in connection with or otherwise resulting from your use of the Services.

6. **Security Procedures.** Each Service that can be used to initiate a series of transactions, beginning with Customer's payment order, made for the purpose of making payment to the beneficiary of the order (a "**Funds Transfer**"), includes procedures for verifying the authenticity of communications sent to the Bank in the name of Customer or for the detection of errors contained in any such communications (each a "**Security Procedure**"). Customer acknowledges that Funds Transfers may be requested using one or more Services and other products and services available from the Bank, that the Security Procedures available differ depending on the Service or other product or service selected, and that some have more than one Security Procedure available. Customer acknowledges that it has reviewed the various products and services offered by the Bank for the execution of Funds Transfers and the Security Procedures available for each, that such Security Procedures are commercially reasonable and that in selecting one or more Services and Security Procedures or requesting that all or any part of any Security Procedure be curtailed, deactivated or otherwise modified, it has elected not to use other commercially reasonable Security Procedures or Security Procedures that are commercially reasonable if used without curtailment, deactivation or modification. Except as otherwise required by applicable law, Customer agrees to be bound by and liable for all transactions initiated using the Services and Security Procedures selected by Customer in the Schedules to this Agreement, including transactions initiated using a procedure that has been curtailed, deactivated, or otherwise modified by or at the request of Customer, and all such transactions shall be deemed authorized regardless of whether such transaction was initiated by Customer or any other person authorized to act by or on behalf of Customer. Customer acknowledges and agrees that Security Procedures are in addition to and do not limit or otherwise revoke or restrict any separate Customer authority of any Authorized Person, Primary Administrator or other person (whether by course of dealing or otherwise) to authorize any action, transaction or communication or otherwise act on behalf of Customer. The Bank may also, from time to time, implement additional verification and identification steps, factors or procedures as it may deem necessary or appropriate, as an amendment to any Security Procedure selected by Customer or as an additional Security Procedure available to Customer; provided, that, no such amendment or adoption of a Security Procedure shall constitute an admission or other evidence that a Security Procedure was not commercially reasonable as and when previously selected by Customer.

Customer will establish and maintain the confidentiality of and security and control over those aspects of each Security Procedure communicated or entrusted to or created, established or selected by Customer, including but not limited to any identification codes, usernames, voice retrieval codes, passwords, access cards, access devices or code or password generating devices; all electronic, paper or other media on which any of the foregoing are maintained, recorded or stored, and each computer used to access the System or any Service. Customer further agrees that each person that is provided access or control over any of the foregoing shall be an Authorized Person and fully authorized to initiate Funds Transfers and other transactions and use the, System, Services and related Security Procedures as an authorized agent of Customer. If Customer believes that any identification codes, usernames, voice retrieval codes, passwords, access cards, access devices or code or password generating devices has become lost, compromised or known to any unauthorized person, Customer shall immediately disable such username, password, code, access card or access device established, assigned or issued by a Primary Administrator and for any username, password, code, access card or access device issued by the Bank for use by a Primary Administrator, provide telephone notice to the Bank, followed by written facsimile notice or email, and the Bank will disable such Primary Administrator username, password, code, access card or access device in question within **[one]** Banking Day following actual receipt of notice from any person which the Bank reasonably believes is authorized. For purposes of this Agreement, a Banking Day is every day on which the Bank is open to the public for purposes of carrying on substantially all of our business, except Saturdays, Sundays, and holidays that are observed by the Federal Reserve Bank.

**Unauthorized Requests.** The Customer is solely responsible for all requests received by the Bank. If at any time the Customer suspects that an unauthorized request has been made or that Customer Codes have or may have become known to any unauthorized person or party, THE CUSTOMER MUST IMMEDIATELY PROVIDE TELEPHONE NOTICE TO TREASURY MANAGEMENT SUPPORT AT 877-251-1953 TO BE FOLLOWED BY WRITTEN NOTICE VIA E-MAIL TO [TMSUPPORT@HTLF.COM](mailto:TMSUPPORT@HTLF.COM) AS SOON AS POSSIBLE, BUT NO LATER THAN THE END OF BUSINESS DAY, AFTER TELEPHONE NOTIFICATION.

**CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT CERTAIN RISKS ARE INHERENT IN THE TRANSMISSION OF OR PROVIDING ACCESS TO INFORMATION OVER THE INTERNET AND THERE CAN BE NO ASSURANCE THAT INQUIRIES OR TRANSACTION ACTIVITY WILL BE COMPLETELY SECURE OR FREE FROM DELAYS, MALFUNCTIONS, OR OTHER INCONVENIENCES GENERALLY ASSOCIATED WITH THIS ELECTRONIC MEDIUM. THE BANK MAKES NO REPRESENTATION, WARRANTY, COVENANT OR AGREEMENT THAT A SECURITY PROCEDURE WILL BE EFFECTIVE AND, EXCEPT AS OTHERWISE REQUIRED BY APPLICABLE LAW, THE BANK SHALL NOT HAVE ANY LIABILITY FOR THE BREACH OF A SECURITY PROCEDURE OR THE INTEGRITY OF THE SYSTEM OR ANY SERVICE.**

**Protection Against Fraud and Unauthorized Items.** It is your responsibility to protect: (i) your account Information, account number(s) and other information related to your account; (ii) any access device we provide for your account (such as a debit card) or equipment that may allow access to your account; and (iii) your checks and other paper Items. An unauthorized person's access to your account number may alone be sufficient to allow that person to initiate Unauthorized Transactions.

- a. Risk of Loss and Controlling Risk. You acknowledge that there is a growing risk of losses resulting from unauthorized Items. We offer services that help control the risk from unauthorized Items. These services include: (i) Positive Pay and Account Reconciliation Services and (ii) ACH Fraud Filters. Additionally, we strongly recommend that you impose a dual-control environment, maintain up-to-date virus protection software and firewalls, update employee access when employment is terminated or an employee is reassigned, and use a stand-alone personal computer for all online banking and ACH origination activity.
- b. Assumption of Risk. If we have expressly recommended that you implement one or more of the services or controls listed above (or any other service or control related to fraud prevention that we offer after the date of the Agreement) and you either decide not to use the recommended service or fail to use the recommended service in accordance with the applicable service description or other documentation applicable to the service, you will be treated as having assumed the risk of any losses that could have been prevented if you had used the recommended service in accordance with the applicable service description or applicable documentation. As a result:
  - 1) You will be precluded from asserting any claims against us with respect to any unauthorized, altered, counterfeit, or to other fraudulent transactions occurring in your accounts that the product or service was designed to detect or deter.
  - 2) We will not be required to re-credit your Account or otherwise have any liability for such transactions.
  - 3) You will indemnify us for any loss or expense (including, without limitation, reasonable attorney's fees to the extent permitted by law) relating in any way to such transactions, so long as we otherwise satisfied our duty of care with respect to the other aspects of such transactions.

7. **Incorrect/Erroneous Transmission.** Customer will notify the Bank immediately upon detection of any incorrect or erroneous transmission, transaction request or other communication. The Bank will have no liability for failure to detect any incorrect or erroneous transmission, transaction request or other communication from Customer. If any transmission, transaction request or other communication identifies a person or account by both name and an identifying or bank account number, and the name and number identify different persons, any bank may rely solely on the identifying number. If any transmission, transaction request or other communication identifies a bank by both name and an identifying number and the number identifies a bank different from the bank identified by name,

any bank may rely solely on the identifying bank number. The Bank shall not be responsible for any delay arising out of any bank's attempt to reconcile inconsistencies between names and account numbers or resolve other irregularities.

- 8. Liability and Indemnification.** Except to the extent otherwise required by applicable law, regulation or fund transfer system rule, to the extent any Service or transaction is (a) governed by or otherwise involves transactions governed by Article 4A of the Uniform Commercial Code as in effect in the state in which the main office of the Bank is located ("**UCC Article 4A**"), the liability of the parties shall be governed by this Agreement and the applicable provisions of UCC Article 4A and the Bank shall only be liable for Customer's actual damages and then only to the extent such damages are recoverable under UCC Article 4A, or (b) not governed by UCC Article 4A, the liability of the Parties shall be governed by a standard of ordinary care, in which case the Bank shall only be liable for Customer's actual damages and then only to extent caused by the Bank's failure to exercise ordinary care. The Bank will be deemed to have exercised ordinary care if its actions or failure to act have been in conformity with this Agreement, the applicable Security Procedure and the Bank's other ordinary procedures. In no event shall the Bank be liable for damages in excess of the lesser of 1.) the loss sustained by the Customer or 2.) The amount customer has paid for service fees over the course of the prior 6 months, except to the extent otherwise required by UCC Article 4A or other applicable laws and regulations. In the event that Customer is entitled to interest on any unauthorized or erroneously executed payment order under UCC Article 4A, the Bank will not be liable for interest unless Customer notifies Bank in writing that such payment order was not authorized or properly executed within **[20]** calendar days following Customer's receipt of notification either of the acceptance of such payment order or the debiting of such order to one of Customer's accounts at the Bank. **THE BANK SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES UNDER THIS AGREEMENT, EVEN IF BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

The Bank shall not be liable for delays or failures in the performance or completion of any of its obligations under or with respect to this Agreement, beyond its reasonable control; including, but not limited to, delays or failures directly or indirectly caused by fire, flood, storm, earthquake, strikes, lockouts, labor difficulties, sabotage, war, insurrection, military operation, national emergency, mechanical, electrical or computer system breakdown, riot or civil commotion; failures of transportation, communications or power supply; any order, requisition, request or recommendation of any governmental agency or acting governmental authority or either Party's compliance therewith; government regulation, or other acts of God or causes beyond either the Bank's reasonable control, whether similar or dissimilar to such causes.

Customer shall indemnify and hold the Bank harmless from any cost, liability or expense (including reasonable attorneys' fees) arising from (a) any claim by a third party alleging that any transaction or other activity contravenes or compromises the rights, title or interest of any third party, or violates any applicable law, rule, regulation, fund transfer system rule, ordinance, court order or other mandate or prohibition, or (b) the breach of any representation, warranty, or covenant made by Customer to the Bank in this Agreement ("**Claim**"), except to the extent the Claim is caused directly by the Bank's failure to act in accordance with Customer's instructions given pursuant to and in the manner required by this Agreement. This paragraph shall survive termination of this Agreement with respect to acts or omissions occurring during its term.

Customer will indemnify the Bank and its directors, officers, employees, agents, successors, and assigns from and against (i) all liability, loss, or damages of any kind which may be imposed upon, incurred by, or asserted against any of them as the result of any act or omission in any way relating to or arising out of this Agreement or any Loan Transaction, except in the case of the bad faith or willful misconduct of the Bank (provided that reliance, without further investigation, on any oral, telephonic, telegraphic, electronic, or written request, notice, or instruction believed in good faith to have been given or signed by Customer will in no event constitute bad faith or willful misconduct by the Bank); and (ii) all costs and expenses of any kind (including, but not limited to, reasonable attorneys' fees) which may be imposed upon, incurred by, or asserted against any of them as the result of any act

or omission in any way relating to or arising out of this Agreement or any Transaction. The obligations contained in this Section will survive termination of this Agreement.

- 9. Recording and Use of Communications.** Customer acknowledges and agrees that all telephone conversations and data transmissions through or using the System or among or between Customer, Bank, and any third parties used by Customer or the Bank and their respective employees and agents and relating to the Services, may be recorded and retained by the Bank and the Bank's third party service providers by use of any reasonable means.
- 10. Statements.** At least once a month, the Bank shall render a statement of account for the Customer's Account, which statement shall be considered correct and accepted by the Customer and conclusively binding upon the Customer unless the Bank is notified to the contrary in writing within thirty (30) business days of the sending of said statement by the Bank to the Customer.
- 11. Electronic Statements, E-Mail Communications.** If Customer has elected to receive statements electronically ("**Electronic Statements**") for any accounts used with any Service or has selected a Service that gives Customer access to account statement and transaction information, Customer must promptly and regularly access and review each Electronic Statement and accompanying items and other account statement and transaction information and immediately notify the Bank in writing of any error, dispute, or irregularity; and the Bank may, at the Bank's option, deliver disclosures, notices and other information to Customer electronically as part of an Electronic Statement or otherwise using the Service. Any applicable time period within which Customer must notify the Bank of unauthorized transactions, errors, signature issues, alterations or other irregularities shall begin on the earlier of (a) the date an e-mail is sent notifying the Customer of the availability of the Electronic Statement or other on-line transaction confirmation or acceptance that first includes the transaction or item in question, or (b) if the Customer has selected a service that allows Customer access to daily transaction information, the first date on which the transaction information or item is available on the System. Customer agrees to notify Bank immediately of any change to the e-mail address to which Electronic Statement notices are to be delivered. Customer should not rely on e-mail to communicate with the Bank immediately – for example, if Customer needs to report an unauthorized transaction from one of its accounts or if Customer needs to stop a payment that is scheduled to occur. If Customer sends the Bank an e-mail message, the Bank will be deemed to have received it on the following business day. The Bank will have a reasonable time to act on your e-mail. Customer agrees that the Bank may respond to it by electronic mail with regard to any matter related to a Service, including responding to any claim of unauthorized electronic funds transfer that Customer makes. Customer acknowledges that unencrypted e-mail is not a secure form of communication and that Customer's complete account numbers, tax identification numbers or other confidential information should not be included in any unencrypted e-mail transmissions to the Bank.
- 12. Delivery of Financial Information.** At least once every twelve (12) months Customer shall provide the Bank with such financial statements and other information as the Bank may reasonably request for purposes of evaluating Bank's risk of nonpayment under this Agreement. The Bank reserves the right to perform periodic customer site inspections to ensure compliance with this Agreement.
- 13. Customer Business Representation.** Customer represents and warrants to the Bank that each Service will be used only for Customer's own business purposes, will not be used to initiate transactions for any third party and will not be used for personal, family or household purposes. Upon request of the Customer, the Bank may grant view only access to personal accounts provided such access is consented to by one or more owners of said personal accounts.
- 14. Binding Nature and Assignment.** This Agreement shall be binding on the parties and their successors and assigns, but neither Party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.
- 15. Heading and Interpretation.** The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.



- 16. Relationship of Parties.** The Bank, in furnishing Services to Customer, is providing Services only as an independent contractor. The Bank does not undertake by this Agreement or otherwise to pay, perform or satisfy any obligation of Customer, whether regulatory or contractual.
- 17. Approvals Consents.** Where agreement, approval, acceptance or consent by either Party is required by any provision of this Agreement such action shall not be unreasonably delayed or withheld.
- 18. Amendments; Waivers.** No delay or omission by either Party to exercise any right or power accruing upon noncompliance or default by the other Party with respect to any of the terms of this Agreement shall impair any such right or power, or be construed as a waiver thereof. The terms and conditions of this Agreement, including, without limitation, the fees to be charged by the Bank to Customer, may be amended or changed by the Bank upon the mailing, to Customer, of notification of the new terms, conditions or fees. The changes will be effective immediately. At its discretion, the bank may provide notice of only the changed terms. Notice may be included in any reasonable way which would inform the customer of the change in terms. For example, the notice may be included with or on account statements, may be delivered as a separate mailing to the address reflected on the customer's bank statement, may be delivered electronically to the Primary Administrator or may be posted on the login page for the Services. The continued maintenance of Customer's accounts or the service affected by the change after the effective date of the change indicates Customer's acceptance of the changes or amendments. If notices sent are returned, the change contained in the notice is still effective. No prior notice is required when any change in terms is determined by the Bank to be necessary to the services provided herein or to prevent a loss by the Bank. In such case, the Bank will send Customer notice of the change after the change becomes effective. No amendment or modification of this Agreement and no waiver of its terms will be valid unless set forth in a writing executed or delivered by the Bank. A waiver by either of the Parties of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.
- 19. Entire Agreement.** This Agreement (including the Master Treasury Management Services Agreement, Business Deposit Account Agreement and Disclosure, and all Separate Agreements, exhibits, and schedules) constitutes the full and complete agreement between Bank and Customer regarding the Services and supersedes any other agreements expressed or implied. There are no understandings or agreements relative hereto which are not fully expressed herein and no change, waiver or discharge shall be valid unless in writing and executed by the Party against whom such change, waiver or discharge is sought to be enforced. This Agreement supersedes any and all previous agreements relating to data processing services entered into between Customer and the Bank.
- 20. Governing Law, Use of Funds Transfer System, System Rules and Representations.** Except as otherwise provided below, this Agreement shall be governed by and construed in accordance with the laws of the state in which the Bank's main office is located. Any bank may facilitate or cancel a Funds Transfer transaction by use of any automated clearing house ("ACH"), Fedwire or other funds transfer system. The Bank will be responsible for selecting an ACH operator for transmission of the ACH entries. Customer acknowledges that Funds Transfer transactions will be subject to applicable ACH, Fedwire or other system rules and agrees to be bound by the same. Terms used in this Agreement which are defined in the applicable system rules, but not in this Agreement, have the meanings given those terms in the applicable system rules. Customer represents, warrants, and covenants to the Bank that: (a) at the time each transaction request (or any related adjustment, reversal or stop payment or posting requested or initiated by Customer) or any cancellation is executed, made or transmitted by the Bank, the information regarding it provided by Customer to the Bank is accurate and complies with the format and content specifications of the applicable funds transfer system rules and this Agreement, (b) if a transaction request requires the authorization of a third party, Customer will keep a copy of any required authorizations on file and make them available to the Bank upon request, (c) each transaction request initiated by Customer is in compliance with the laws of the United States of America, including, without limitation, economic sanctions maintained by the United States Treasury Department's Office of Foreign Asset Control. Without limiting the generality of the foregoing, Customer agrees to

be bound by the operating rules, and the guidelines which are part of the operating rules, of the National Automated Clearing House Association (“**NACHA**”) and Subpart B of Federal Reserve Board Regulation J, as applicable and in effect from time to time. The operating rules are available upon request. If the accounts to be debited and credited by a transaction request are both maintained by the Bank, the intra-bank transfer or related cancellation may be made by a book transfer rather than through a funds transfer system. If a transfer request or cancellation relates to or is part of a transaction, portions of which are subject to the Electronic Funds Transfer Act of 1978 and Federal Reserve Board Regulation E (the “**EFTA Act**”), as may be in effect from time to time, all actions and disputes between Customer and the Bank concerning that transfer or cancellation request shall be determined pursuant to Article 4A of the Uniform Commercial Code as in effect from time to time in the state where the Bank’s main office is located, and as varied by this Agreement, except to the extent the EFTA Act otherwise requires. Customer agrees that its breach of this Agreement may cause irreparable injury to the other party, and agrees that the other party shall be entitled to seek temporary and preliminary injunctive relief in a court of competent jurisdiction, without the necessity of proving actual damages or posting a bond, to prevent such violation

- 21. Bank’s Right to Audit.** The bank reserves the right to periodically audit Customer’s compliance with both the terms of this agreement and any applicable provisions of the NACHA ACH Rules and Guidelines currently in effect. Customer shall provide Bank with any information necessary to conduct such audit (e.g. receiver authorizations, polices, procedures, etc.) within 10 calendar days from a date of a written request.
- 22. Force Majeure.** Notwithstanding any other provision of this Agreement, the Bank shall not be liable for delays or failures in the performance or completion of any of its obligations under or with respect to this Agreement beyond its reasonable control, including without limitation, delays or failure directly or indirectly caused by fire, flood, storm, earthquake, strikes, lockouts, labor difficulties, sabotage, war, insurrection, military operation, national emergency, mechanical, electrical or computer system breakdown, riot or civil commotion; failures of transportation, communications or power supply; any regulation, order, requisition, request or recommendation of any governmental agency or acting governmental authority or the Bank’s compliance therewith; or other acts of God or causes beyond Bank’s reasonable control, whether similar or dissimilar to the foregoing.
- 23. Confidential Information.** Bank acknowledges that it may obtain or have access to non-public personal information regarding Customer or its customers, and agrees to (i) maintain the confidentiality, integrity and security of such information, (ii) use such information only for the purposes set forth in this Agreement and the Account Agreement, including without limitation for the performance of its obligations and exercise of its rights hereunder, (iii) disclose such information only to its employees, agents, auditors, accountants, attorneys and regulators, and only as necessary to perform its obligations and exercise its rights hereunder, or as otherwise permitted by law, and (iv) maintain physical, technical, procedural and administrative controls and safeguards reasonably designed (taking into account the nature and circumstances of Bank business) to ensure the security, integrity and confidentiality of such information, and to protect against any anticipated threats or hazards to the security or integrity of, or unauthorized access to, such information.

# TREASURY MANAGEMENT SERVICES TERMS & CONDITIONS BY SERVICE

## INTERNET BANKING - InBusiness

### System Access/Security Requirements:

To access InBusiness you must have a User ID, User password and the required hardware and software. You are solely responsible for having necessary hardware and regularly updated computer security. The InBusiness service utilizes a comprehensive security strategy to protect your accounts and transactions conducted over the internet. You will be given a User ID and User password. Certain Services require an additional layer of security called an Access Token which is used to authorize transactions. During the first logon session, you will be required to change your password. We recommend you periodically change your password by visiting the link under Settings/Security Preferences.

Customer agrees to comply with the following security procedures. You acknowledge that the security procedures are for the verification of authenticity and not to detect errors in transactions. You warrant that no Authorized Representative will be allowed to initiate transfers without proper supervision and safeguards and agree to take all reasonable steps to maintain confidentiality of security procedures and any related security features. If you know, become aware, or believe security procedures have otherwise been compromised, you agree to immediately notify the bank and agree that any transactions made before or within a reasonable time after such notice to Bank shall be treated as authorized by you.

You agree to designate Authorized Persons to act on your behalf, who shall have authority to authorize all action necessary in the use of InBusiness. You agree that the Bank shall not be under a duty to inquire as to the authority or propriety of any transaction made by your Authorized Persons.

Bank shall be entitled to act upon the instructions of any person whom the Bank reasonably believes to be an Authorized Person, whether or not you have authorized such instructions. The Bank shall not be liable for any loss, cost, expense or other liability arising out of any such instruction.

You agree to implement and comply with the Bank's password and secure access requirements. You further agree that the Bank will not be responsible or liable to you in any way if information is intercepted by an unauthorized person, either in transit or at your place of business. You agree to: (1) keep your password(s) secure and strictly confidential, providing password(s) only to Authorized Persons on your account(s); (2) instruct each person to whom you give password(s) that he or she is not to disclose it to any unauthorized person; and (3) immediately notify the Bank and select a new password(s) if you believe a password may be known to an unauthorized person.

BANK WILL HAVE NO LIABILITY TO YOU FOR ANY UNAUTHORIZED PAYMENT OR TRANSFER MADE USING YOUR PASSWORD(S) THAT OCCUR BEFORE YOU HAVE NOTIFIED BANK OF POSSIBLE UNAUTHORIZED USE AND BANK HAS HAD REASONABLE OPPORTUNITY TO ACT ON THAT NOTICE. Bank may suspend or cancel your password(s) even without receiving notice from you, if Bank suspects a password is being used in an unauthorized or fraudulent manner. Contact by Bank or Affiliated Party. No bank employee will contact you via email or phone requesting your InBusiness user ID, password or secure access information. If you are contacted by anyone requesting this information please do not provide your confidential information and call Treasury Management Support at (877) 251-1953.

## WIRE TRANSFER SERVICES

Subject to the terms and conditions of this Agreement, the Bank will execute Funds Transfers using the Wire Transfer Service described in this Agreement (each a "**Wire Transfer**"), in the amount and from one of Customer's accounts at the Bank, all as specified in each Wire Transfer request, provided the request is (a) actually received by the Bank; (b) designates the Customer account from which it is to be paid; (c) does not exceed the collected funds in the designated

Customer account, or any applicable daily limits, or other restrictions or limitations established by the Bank; (d) is authorized by an Authorized Person or satisfies one of the Security Procedures set forth below; and (e) is accepted by the Bank.

### ***Wire Transfer Procedures***

- 1. Customer may initiate Wire Transfers through the System.** Customer uses the Security Procedure described below, Customer's computer, Customer's internet service provider and internet browser software, and the System web site and related software and as further specified in web site instructions or other instructional materials provided to Customer, and all as in effect from time to time. If the System is not accessible, Customer may contact its Bank representative to make a Wire Transfer request via telephone or facsimile, subject to the Bank's procedures for initiating Wire Transfers in that manner.
- 2. Customer acknowledges that the Bank's deadline for receiving Wire Transfer requests shall be 4:00 p.m. CST.** Any Wire Transfer requests received after that cutoff time on any Banking Day may be treated as if they were received at the opening of the next Banking Day. These deadlines are subject to change by the Bank from time to time in the Bank's sole discretion.
- 3. The Bank reserves the right to refuse processing of transfers drawn upon uncollected or insufficient balances.** Nothing in this section shall prohibit the Bank from debiting any Customer account for any Wire Transfer executed by the Bank, even if the amount of the Wire Transfer creates or increases an overdraft in the account. In the event an overdraft is created or increased, Customer shall deposit or transfer into the account sufficient available funds to pay the amount of the overdraft by the close of that Banking Day. Any overdraft existing at the close of a Banking Day is immediately due and payable without notice or demand. Nothing in this Agreement nor any course of dealing between Customer and the Bank constitutes a commitment or obligation of the Bank to lend money, allow the creation or increase of an overdraft, or otherwise extend any credit or advance funds to Customer to pay for any transaction or transfer made hereunder.
- 4. The Bank will notify Customer if the Bank, any funds transfer system, or any other bank rejects or fails to execute a Wire Transfer.** Bank will also notify Customer of the reason for the rejection or failure after the Bank receives notice of the reason. The notices provided under this paragraph shall be deemed commercially reasonable and effective when given in the manner designated below or if the information is made available to Customer through its regular deposit account statement, any Electronic Statement or any System or other Service used by Customer.

### ***Wire Security Procedures***

- 1. Authorized Accounts & Limits.** Wire Transfers may be made from each of the Customers enrolled accounts in an aggregate amount not to exceed assigned wire limit on any single Banking Day.
- 2. System Security Procedures.** The Bank shall provide the Primary Administrator with a User ID and User password which shall allow the Primary Administrator to use the System to: (a) initiate and authorize Wire Transfers; (b) designate the Customer accounts(s) from which Wire Transfers may be made by Authorized Users; (c) issue usernames, Access Tokens or codes and passwords that may be used with the System to initiate, authorize, confirm or verify Wire Transfers and establish and change transaction limits and other limitations or conditions applicable to each username or code; and (d) identify those Authorized Persons that may initiate, authorize, confirm or verify Wire Transfers using the System, whether by providing them with a username or code and password, access to a computer used by Customer to access the System or otherwise. The Primary Administrator may also approve and amend the Security Procedures that are used to authorize Wire Transfers. Customer shall at all times remain solely responsible for the Primary Administrator, Authorized Persons and their access rights (and any limitations, conditions or changes thereto), whether placed on the system by Customer or by the Bank at the direction of

Customer or Primary Administrator. Customer shall utilize an Access Token or code for all transactions on the System. Additionally, the System allows for each Wire Transfer be authorized by two separate usernames or codes using the associated passwords ("Dual Control"). Customer acknowledges and agrees that circumvention of this feature, by providing more than one username or code to a single individual, the sharing of or failure to maintain the secrecy or security of a username or code and password or in any other manner, may reduce the protection afforded by the System and that Customer will remain liable for all Wire Transfers initiated using two separate usernames or codes, regardless of whether the persons using such usernames or codes are Authorized Persons or Primary Administrators.

- 3. Alternative Procedures.** By electing not to use all available Security Procedures (as described above) to initiate and authorize Wire Transfers, Customer acknowledges that it has declined to use other available security procedures, including, but not limited to, security procedures that use a call back feature to verify authorization of Wire Transfers initiated by telephone or facsimile transmission.

### ***Wire Notification Procedures***

**Information sent by e-mail is not secure! The bank will attempt to keep non-public information out of the advice by masking fields normally containing account number information. However, because we cannot control the information as it is received by a sending institution, confidential information may appear in parts of the incoming e-mail advice. By selecting this option you expressly agree to be liable for any information contained in such advice.**

*If notification fax or e-mail is selected, a mail advice will not be generated except where specifically requested. If a mail advice is requested in addition to another option, additional fees may apply.*

## **ACH SERVICES**

### ***ACH Origination***

The Customer ("Originator") has requested to initiate electronic fund transfer entries ("Entry" or "Entries") through the Bank ("Originating Depository Financial Institution" or "ODFI") for the deposit ("Credit") and/or payment ("Debit") of money to and from the accounts of Receivers maintained at Bank and at other Depository Financial Institutions ("DFIs"), by means of the Automated Clearing House ("ACH.")

- 1. Operating Rules/Regulations.** Customer will comply with the Operating Rules ("Rules") of the National Automated Clearing House Association ("NACHA"), in existence as of the date of this Agreement and as amended from time to time. The duties of the Customer set forth in the following paragraphs of this Agreement in no way limit the requirements of complying with the Rules. For a fee, the Bank will make available upon request to Customer a copy of the Rules of NACHA and thereafter will promptly deliver revisions thereto as it receives them. Customer and bank agree to comply with all applicable federal and state rules and regulations, including, but not limited to Office of Foreign Asset Control ("OFAC") regulations.
- 2. Customer Authorizations and Records Retention.** Before the initiation by Customer of the first Credit or Debit Entry to a Receiver's account, the Customer will obtain from each of its Receiver's an authorization to make one or more Entries to the Receiver's account, and, in the case of Debit Entries, the Customer shall provide the Receiver with a copy of such authorization. Such authorization shall comply with the Rules. Each Entry thereafter will be made pursuant to such authorization, and Customer will initiate no Entry after such authorization has been revoked or the arrangement between Customer and such Receiver has terminated. The Customer will retain the original or a copy of each notice and other document required to be given to the Receiver under the Rules for a period of not less than two 2 years, except that it will retain the original or a copy of each authorization for six 6 years after termination or

revocation of such authorization and will, upon request of Bank, furnish such original or copy to Bank for any purpose authorized by the Rules.

### 3. Delivery of Entry Information.

#### a. Future Dated ACH Origination

The Customer will deliver each Entry or file of Entries to Bank no later than **6 p.m. Central Standard Time** on the day set forth below for credit or debit entries or in a schedule mutually agreed upon by Customer and Bank incorporated herein. All Entry information so delivered shall be in the medium required by the Bank and the format required by the Rules. For purposes of this Agreement, a Banking Day is every day on which the Bank is open to the public for purposes of carrying on substantially all of our business, except Saturdays, Sundays, and holidays that are observed by the Federal Reserve Bank.

i. **Credit Transactions.** Credit Transactions are to be delivered on or before two banking days prior to the effective date of the entries contained within the file. Should the Bank on an exception basis choose to accept entries received on the last banking day prior to the effective entry date, it does not create a future obligation to do so. Any entries not received on or before two banking days prior to the effective entry date may experience delays in settlement and Bank will be held harmless in the event settlement does not occur on the effective entry date

ii. **Debit Transactions** are to be delivered on or before one banking day prior to the effective entry date of the entries within the file.

#### b. Same Day ACH Origination

The Customer will deliver each same day ACH Entry (refer below for the definition of a "Qualifying Entry" for same day ACH) or file of same day ACH Entries to Bank no later than **12 p.m. Central Standard Time** on the settlement date or in a schedule mutually agreed upon by Customer and Bank incorporated herein. All Entry information so delivered shall be in the medium required by the Bank and the format required by the Rules. For purposes of this Agreement, a Banking Day is every day on which the Bank is open to the public for purposes of carrying on substantially all of our business, except Saturdays, Sundays, and holidays that are observed by the Federal Reserve Bank.

In order to qualify for same day ACH, Entries transmitted by Customer must meet the following characteristics (Qualifying Entries):

- Have an effective entry date equal to the current date (settlement date);
- Be received by the bank prior to 12 pm CST on the effective entry date;
- Be less than or equal to the dollar threshold currently specified by NACHA for same day ACH entries;
- The file is to contain PPD or CCD SEC codes unless others are specifically requested.
- In the event an ACH file is transmitted by Customer which contains a mix of Qualifying and Non Qualifying ACH Entries, the bank will make reasonable attempts to originate Qualifying Entries the same day and Non-Qualifying Entries on the next Banking Day; however, the Bank will not be responsible for any delay in same day settlement caused by the Customer's comingling of Qualifying and Non Qualifying Entries or any other consequences incurred due to delayed settlement.

### 4. Submission and Processing of Entries.

a. Entries will be made only to accounts held at Bank or other Depository Financial Institutions ("DFI") as defined by the Rules.

b. All Entries shall be initiated by Customer in Accordance with this Agreement and in accordance with the Rules, including the section of the Rules entitled "Rights and Obligations of Companies."

c. If the amount of a Debit Entry initiated by the Customer for processing to a Receiver's account maintained at the Bank, with respect to a particular transaction with a Receiver, differs from that of the next previous Debit Entry relation to the same authorization, or from the preauthorized amount, the Customer shall, at least ten 10 days before such succeeding Entry is scheduled to be debited to the Receiver's account, send such Receiver

written notification of the amount of such Entry and the date on or after which such Entry is scheduled to be debited to the Receiver's account. If the Customer informs a Receiver of the right to receive such notification, the Receiver may elect to receive notice only when an Entry does not fall within the specified range of amounts, or, alternatively, only when an Entry differs from the most recent Entry by more than an agreed upon amount.

- d. Where any customer has authorized Customer to initiate Debit Entries and the amount of billing day changes from the next preceding Debit Entry, Customer will notify such customer of the change at least seven 7 day before initiating the next Entry.
  - e. If the Customer is scheduled to initiate Credit Entries for processing to a Receiver's account maintained at the Bank at least once every sixty 60 days, the Customer shall provide to the Receiver notice that each Entry has been initiated.
  - f. All entries shall be received, processed and transmitted by Bank pursuant to the Rules. Bank's obligation hereunder in connection with the making of Entries shall be those of Origination Depository Financial Institution ("ODFI") under the rules, unless otherwise specified and provided herein.
  - g. If the amount of a Debit Entry or Credit Entry initiated by the Customer for processing is a corporate to corporate transaction, governing rules for such payment will apply.
  - h. Bank will originate the following entries: PPD and CCD. Additional types of entries requested by Customer are subject to additional terms and conditions contained in this Agreement.
- 5. Effective Date for Entries.** The effective date with respect to an Entry shall mean the business date upon which the Entry is to be posted to the account of Customer's customer.
- 6. Settlement by Customer for Entries.** Customer will maintain a checking account "Settlement Account" at Bank with balances sufficient to offset any Entries submitted and against which any rejected Entries may be credited or debited. Bank will either charge or credit Customer's Settlement Account for any Credit or Debit Entry initiated by Customer on the settlement date. Customer will reimburse with good and collected funds in the amount required by Bank if, after settlement has been made by Bank, any Debit Entry is rejected or if any adjustment memorandum that relates to any such Debit Entry is received by Bank. Such reimbursement will be made on the date such rejection or memorandum is received by Bank.
- 7. Erroneous Entry.** If the Customer discovers that any Entry it has initiated was in error, it must notify the Bank in writing of such error and must comply with the security procedures. The Bank will utilize its best efforts on behalf of Customer, consistent with the Rules to correct the Entry. In all such cases, it shall be the responsibility of the Customer to notify its affected customers that an Entry has been made, which is at variance with the customer's authorization or is otherwise erroneous. The Customer is responsible for the creation of reversing entries.
- 8. Rejected or Returned Entry.** In the event any Entries are rejected or returned by the ACH for any reason whatsoever, it shall be the responsibility of Customer to remake and resubmit such Entries or otherwise to resolve the rejection or return in accordance with the Rules, provided, however, the Bank shall remake such Entries in any case where rejection by the ACH was due to mishandling of such Entries by the Bank and sufficient data is available to the Bank to permit it to remake such Entries. The Customer shall retain and provide the Bank on request all information necessary to remake any files of Entries for Three 3 business days after midnight from the day Entries are made to the customer's account. In all other instance, Bank's responsibility will be to receive rejected and returned Entries from the ACH, perform necessary processing, control and settlement functions, and to forward such Entries to the Customer.

**9. Representations, Warranties and Indemnification.** With respect to each and every Entry initiated by Customer, the Customer represents and warrants, and will be deemed to have made the same at the time each Entry is initiated by Customer, that a) the Customer has complied with all the things with respect to each Entry required contemplated by this Agreement and the Rules, b) no warranties of an Originator and ODFI have been or shall later be breached, and c) each Entry shall in no way violate any Federal, State or local statute of regulation pertaining to electronic fund transfers, including the Electronic Fund Transfer Act and Regulation E, and all such other laws and regulations.

In the event of any breach of any of the warranties stated above or otherwise contained in this Agreement, the Customer will indemnify and defend Bank and hold it harmless at Customer's cost and expense from and against any and all losses, claims, demands, damages, actions, including reasonable attorney's fees, expenses and costs, except for losses solely attributable to the Bank's own negligence or willful misconduct.

**10. Bank's Responsibilities.** In the performance of the services required by this Agreement, Bank shall be entitled to rely solely on the information, representations and warranties provided by Customer pursuant to this Agreement, and shall not be responsible for the accuracy or completeness thereof. Bank shall be answerable for its own gross negligence or willful misconduct, but Bank shall not otherwise be responsible for any action taken, allowed or omitted by or under this Agreement or for anything arising therefrom, or for any liability, loss, claim or damage arising from an act of God, or from delay occasioned in transit of data or processed work or from other cause of event beyond the control of Bank.

Bank does not make any representations or warranties with respect to the legal effect or sufficiency, under any Federal, State or local statute or regulation or other law, of any forms, documents or other matters provided by Bank from time to time in connection with this Agreement, and disclaims any expressed or implied warranties in connection therewith, including any warranties in connection therewith, including any warranties or fitness for a particular purpose or use and any warranties of merchantability.

**11. Customer's Rights to Refund for Debit Entries.** Customer acknowledges the right of a Receiver to obtain a refund of the funds debited from Receiver's account by such customer's sending of a notice to the Receiving Bank within applicable regulatory timeframes. Such Receiver's notice must state the error, and demand that the amount of the Debit Entry be credited back to Receiver's account. Customer agrees to promptly reimburse Bank for all funds Customer has received when Receiver follows the procedures described in this paragraph 11.

### ***ACH File Transmission***

- 1. File Specifications.** Customer shall deliver an ACH file in the NACHA Standard format as specified in the NACHA manual *ACH Rules*. Said format may be derived from using software provided by the Bank.
- 2. Delivery of File to Bank.** Customer must deliver said file using the InBusiness product.

### ***ACH Transfer Security Procedures***

- 1. Requests.** The Bank will honor, execute, and charge to the Customer's account any request for the transfer of funds received through InBusiness. The Bank is authorized to communicate with any user entitled to use the ACH Service regarding the details of file transmissions or to accept requests for reversing transactions. Customer may enter into an agreement with a third party to perform Customer's ACH processing. Customer must notify the Bank in writing of such an arrangement at least 5 business days prior to the first ACH transfer performed by the third party. Customer remains subject to the terms of this entire Agreement regardless of any agreement it enters into with its own third party processor. All actions of the third party processors will be considered actions of the Customer. The



Bank assumes no liability for any action of Customer's third party processor. All requests shall be made in conjunction with the use of an Access Token.

2. **Verifications.** Confirmation of the request will be automatically emailed to the email address set up by the Primary Administrator for each of the subordinate users.
3. **Notice Method.** The Customer's notice of impending ACH transaction is automatically sent to bank, once the InBusiness ACH file is approved by customer.
4. **Receipt of Requests.** All Customer ACH origination requests must be received by the Bank no later than 6:00 p.m. central time in order to be processed that business day. All origination requests received after 6:00 p.m. central time will be processed the next business day.
5. **Refusal.** The Bank reserves the right to refuse processing of transfers drawn upon uncollected or insufficient balances. Notification of non-processing will be made to the authorized representative the same business day.
6. **Unauthorized Requests.** The Customer is solely responsible for all requests received by the Bank. If at any time the Customer suspects that an unauthorized request has been made or that Customer Codes have or may have become known to any unauthorized person or party, **THE CUSTOMER MUST IMMEDIATELY PROVIDE TELEPHONE NOTICE TO TREASURY MANAGEMENT SUPPORT AT 877-251-1953 TO BE FOLLOWED BY E-MAIL TO [TMSUPPORT@HTLF.COM](mailto:TMSUPPORT@HTLF.COM) AS SOON AS POSSIBLE, BUT NO LATER THAN THE END OF BUSINESS DAY, AFTER TELEPHONE NOTIFICATION.**
7. **Liability.** The Bank will exercise reasonable care in providing this service, but in no event will the Bank be liable for any loss to the Customer unless clearly attributable to gross negligence or willful misconduct on the part of the Bank.

### ***ACH Daily Limits***

The maximum daily ACH limit equals the amount of entries transmitted by customer to Bank on a banking day as well as the aggregate value of limits that may be transmitted with a common settlement day. This limit is subject to review at a minimum annually by Bank. Customer can request the limit be reviewed at any time. Bank will notify customer at the time the limit is changed for any reason (excluding temporary changes at the customer's request & authorized by Bank).

### **Provisions applicable to specific Standard Entry Class Codes (SEC)**

Customer agrees to comply with all NACHA Operating Guidelines applicable to its ACH origination activity as may be amended from time to time. The following requirements apply to particular Standard Entry Class Codes:

#### **1. Telephone Initiated Entries (TEL)**

A TEL is a consumer debit entry that is authorized orally via the telephone. A TEL may only be transmitted in circumstances in which:

- a. There is an existing relationship between the Originator and the Receiver; or
- b. There is not an existing relationship between the Originator and Receiver, but the Receiver originated the telephone call to the Originator.

The Originator and Receiver are considered to have an existing relationship when either:

- a. There is a written agreement in place between the Originator and Receiver for the provision of goods or services, or
- b. The Receiver has purchased goods or services from the Originator within the last two years.

An Originator of TEL transactions is required to:

- a. Establish and implement commercially reasonable procedures to verify the identity of the Receiver.
- b. Establish commercially reasonable procedures to verify routing numbers are valid.

Authorization Requirements. Originators of TEL transactions must obtain the Receiver's explicit oral authorization before initiating a debit entry to a consumer's account. For both Single Entry and recurring TEL entries, the Originator must clearly state during the telephone conversation that the consumer is authorizing an ACH debit entry to his account. The Receiver must explicitly express consent. Silence is not express consent. The following are additional authorization requirements:

- a. The date on or after which the Receiver's account will be debited;
- b. The amount of, or a reference to the method of determining the amount of, the debit entry to the Receiver's account;
- c. The Receiver's name or identity;
- d. The account to be debited;
- e. A telephone number that is available to the Receiver and answered during normal business hours for customer inquiries;
- f. The method by which the Receiver can revoke the authorization;
- g. The date of the Receiver's oral authorization; and
- h. A statement by the Originator that the authorization obtained from the Receiver is for a Single Entry. If the entry is to be recurring, then the timing, number, and/or frequency of the transactions should be outlined.

In addition to these requirements the Originator must comply with all requirements related to telemarketing practices including the Telephone Consumer Protection Act (TCPA) and all updates to these rules as they may be implemented.

## **2. Internet Initiated/Mobile Entries (WEB)**

Debit WEB entries are used by non-consumer Originators to debit a consumer based on an authorization that is communicated, other than by an oral communication, from the Receiver to the Originator via the Internet or a Wireless Network. Originators of WEB transactions must establish commercially reasonable methods of authentication to:

- a. Verify the identity of the Receiver;
- b. Detect fraudulent transactions;
- c. Establish secure internet sessions; and

- d. Procedures to verify the validity of the receiving bank's routing number.

Originators of WEB transactions must conduct an annual data security audit to ensure that Receiver's financial information is protected by security practices and procedures that ensure the financial information the Originator obtains from Receives is protected by commercially reasonable security practices that include adequate levels of:

- a. Physical security to protect against theft, tampering, or damage;
- b. Administrative, technical, and physical access controls to protect against unauthorized access and use; and
- c. Network security to ensure secure capture, transmission, storage, distribution and destruction of financial information.

This audit requirement can be met in several ways. It can be a component of a comprehensive internal or external audit, or it can be an independent audit that uses a commercially reasonable generally accepted security compliance program. An Originator that is already conducting an audit of these practices and procedures for another area of its business is not required to have two separate audits; however, the audit should address adequate levels of data security for the Originator's ACH operations.

#### ***Provisions Applicable to ACH Third Party Senders***

With respect to each and every Entry initiated by Customer, Customer represents and warrants to Bank and agrees that (a) Customer shall initiate Entries as a Third-Party Sender only in compliance with the provisions of this section, (b) in any case in which Customer acts as a Third-Party Sender with respect to the initiation of Entries on behalf of other Originators or Third-Party Senders, the Originator has agreed to assume the responsibilities of an Originator under the Rules, and Customer makes the warranties and assumes the liabilities of an Originating Depository Financial Institution as provided in Sections 5.3 and 5.5 of the Rules, (c) each person shown as the Receiver on an Entry received by Bank from Customer has authorized the initiation of such Entry and the debiting or crediting of its account in the amount and on the Effective Entry Date shown on such Entry, (d) such authorization is operative at the time of transmittal or at the time of debiting or crediting by Bank as provided herein, (e) Entries transmitted to Bank by Customer are limited to PPD and CCD unless Customer requests and is approved to originate others, (f) Customer shall perform its obligations under this Agreement in accordance with all applicable federal and state laws and regulations, including the sanctions laws administered by the United States Department of Treasury Office of Foreign Assets Control ("OFAC"), and regulations administered by the United States Department of Treasury Financial Crimes Enforcement Network ("FinCEN"), and (g) Customer shall be bound by and comply with the Rules as in effect from time to time. Customer specifically acknowledges that it has received notice of the Rules. Customer shall indemnify Bank against any claim, loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or agreements.

#### **1. Customer Acting as Third-Party Sender.**

Due Diligence; Bank Approval of Originators. In any case in which Customer proposes to act as a Third-Party Sender with respect to the initiation of Entries on behalf of other Originators, Customer shall perform due diligence on each proposed Originator and provide a summary of the results of the due diligence to Bank upon such form, and in such format, as Bank may from time to time require. Customer's due diligence shall include, but not be limited to, the following:

- a. Performing an initial check on the name of the proposed Originator against the list of prohibited persons and organizations published by OFAC prior to entering into any agreement to provide ACH services to such

Originator and repeating such check monthly, or as often as the OFAC listing is updated, to ensure no match is found.

- b. Implementing the requirements of Bank's Customer Identification Program ("CIP") for ACH Originators as may be adopted and provided to Customer from time to time.
- c. Obtaining general information on the proposed Originator including name, address, taxpayer identification or social security numbers, copies of corporate organization documents, identity of owners, type of business, purpose for the transactions and similar general information. This information must be compiled and provided to Bank as required by Bank.
- d. Obtaining sample copies of ACH authorizations, customer contracts and related materials to be used by the Originator.

Bank will review the due diligence information provided by Customer and approve, deny or request additional information regarding the proposed Originator in a timely fashion. Customer will not transmit Entries from the proposed Originator until receipt of Bank's written approval.

Contract Requirements. Customer shall enter into an agreement with each Originator pursuant to which the Originator is bound by the Rules and assumes the responsibilities of an Originator under the Rules. Such agreement must contain an acknowledgment that Entries that violate the laws of the United States may not be initiated. Customer shall provide Bank with the form of agreement to be used by Customer with respect to this requirement, and Customer shall provide Bank with any amendments to such form agreement.

## **2. Customer Agreements with Others Acting as Third-Party Senders.**

Due Diligence; Bank Approval of Third-Party Sender and Originators. In any case in which Customer proposes to act as a Third-Party Sender with respect to the initiation of Entries on behalf of another Third-Party Sender, Customer shall perform due diligence on each proposed Third-party Sender and provide a summary of the results of the due diligence to Bank upon such form, and in such format, as Bank may from time to time require. Customer's due diligence shall include, but not be limited to, the following:

- a. Performing an initial check on the name of the proposed Third-Party Sender against the list of prohibited persons and organizations published by OFAC prior to entering into any agreement to provide ACH services to such Third-Party Sender and repeating such check monthly, or as often as the OFAC listing is updated, to ensure no match is found;
- b. Implementing the requirements of Bank's CIP for ACH Originators, as may be adopted and provided to Customer from time to time, with respect to the proposed Third-Party Sender;
- c. Obtaining general information on the proposed Third-Party Sender including name, address, taxpayer identification or social security numbers, copies of corporate organization documents, identity of owners, type of business, purpose for the transactions and similar general information. This information must be compiled and provided to Bank as required by Bank;
- d. Obtaining sample copies of Agreement between Customer and the additional Third-Party Sender;

Bank will review the due diligence information provided by Customer and approve, deny, or request additional information regarding the proposed Third-Party Sender in a timely fashion. Customer will not transmit Entries from the proposed Third-Party Sender until receipt of Bank's written approval.

Contract Requirements. In any case in which Customer acts as a Third-Party Sender with respect to the initiation of entries for another Third-Party Sender, including instances in which there are multiple Third-Party Senders in the chain between Customer and the Originator, Customer shall require that (i) an agreement be entered into by each party in the chain pursuant to which each such party agrees to be bound by the Rules, (ii) each Third-Party Sender shall agree in

writing to assume the responsibilities and make the warranties of an Originating Depository Financial Institution as provided in Sections 5.3 and 5.5 of the Rules, and (iii) the Third-Party Sender whose relationship is with the Originator enters into an agreement, containing the provisions set forth in (a)(ii). Each of the aforementioned agreements must contain an acknowledgment that Entries that violate the laws of the United States may not be initiated. Furthermore, each of the agreements shall require the Third-Party Sender having a contract with the ultimate Originator to perform the due diligence required under (a)(i) and provide the results of the same to Bank for Bank's review and approval or denial of each proposed Originator. Customer shall provide Bank with the form of agreement to be used by Customer with respect to other Third-Party Senders and Customer shall provide Bank with any amendments to any such form agreements prior to their use. Customer shall obtain the prior consent of Bank with respect to any Third-Party Sender or Originator on behalf of whom Customer intends to initiate Telephone-Initiated (TEL) or Internet-Initiated ("WEB") Entries.

## **POSITIVE PAY, ACCOUNT RECONCILIATION AND ACH INFORMATION REPORTING**

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

Each time you issue checks drawn on your enrolled account(s), you will transmit an Issued Checks File of those checks to us via InBusiness. The Issued Checks File shall accurately state the check number, date, payee name and the exact dollar amount of each check issued. You shall transmit the Issued Checks File to the Bank in a format and medium as specified by the Bank. By entering into this agreement you acknowledge receipt of issue file formats accepted by the Bank. **The Issued Checks File must be transmitted so as to be received by the Bank no later than 7 a.m. Central Time on the business day after you issue the first check included in the Issued Checks File.** In the event of a failure of either your system or the Bank's system and the Issued Checks File cannot be received by the Bank or the Bank cannot process the file, the file shall not be considered received, even if the Bank is in possession of the file. As Eligible Checks are presented to the Bank for payment, the check number and dollar amount will automatically be compared to information in the Issued Checks File. Payee name matching is available as a separately contracted service with an additional fee. Customer acknowledges that the read rate for payee positive pay is influenced by the Customer's check stock and printing methods. Customer may be required to adhere to formatting requirements provided by the Bank in order ensure accuracy. The Bank will pay Eligible Checks that exactly match the information in the Issued Checks File without further inspection. If the check number or dollar amount (and payee name as applicable) of an Eligible Check does not exactly match the information in the Issued Checks File, that check will appear as a suspect on an exception report. **If we do not receive a timely decision from you by the cutoff time shown below authorizing the payment or return of a particular unmatched check, we will handle the check according to your requested default (mark one below):**

**Definitions and Cutoff Times.** "Eligible Checks" are defined as those checks appearing on their face to be drafted on Customer's account with Bank and presented to the Bank through inclearings and specifically excludes those checks presented for payment at one of the Bank's branches.

**You will receive notice to review for suspect items by 8:00 a.m. Central Time at the email address of the Primary Administrator. No later than 1:00 p.m. Central Time on the same business day that you receive notification of a suspect check, you must use InBusiness to make your decision whether to pay or return the check. Any checks not decided by the cutoff time will be handled according to the default decision type listed.**

If we receive timely notification from you to return a suspect check, we will stamp the front of the check with the appropriate reason code specified by you and return the check unpaid through the banking system. Your account will be credited for the amount of the returned checks by the opening of business on the banking day following the return. You may be required to submit additional documentation regarding the suspect item (e.g. an Affidavit of Forgery).

In the event that InBusiness is not operational, alternative modes of communication will be utilized.

## ***ACH Positive Pay/Blocks***

**Description of Services.** The ACH Positive Pay Service enables you to decision Automated Clearing House transactions ("ACH Transactions") associated with your deposit accounts (each, an "Authorized Account") based on the criteria set by you and the instructions you provide to us upon the initial setup of your user configuration. The Primary Administrator or, at the designation of the Primary Administrator, other Authorized Persons, will configure approval criteria for ACH transactions (ACH Rules or ACH White List). In the event an ACH Transaction which does not conform to your approval criteria posts to your account, you will receive a notice to review and decision the item through InBusiness. **Alerts will be produced by 8 a.m. Central Standard Time.**

**Your Responsibilities.** You are responsible for reviewing all ACH transaction activity and for decisioning ACH items by **1 p.m. Central Standard Time each day.** You will be required to complete a Written Statement of Unauthorized Debit for each transaction you designate for return. Your account will be credited by the opening of business on the banking day following the return. Transactions for which the Customer is the ACH Originator may not be returned (ACH Origination Offsets).

## ***Account Reconciliation***

InBusiness offers additional reporting features for partial, full and deposit reconciliation. The cutoff times for the deliver of issued check information align with those referenced above for Check Positive Pay. The Account Reconciliation Summary is used to assist in balancing online account balances with the Customer's bank statement. The report displays an activity summary of outstanding checks and a check register balances as of a given reconciliation date.

## ***ACH Information Reporting***

InBusiness offers an ACH Information Reporting module that contains ACH transactions, returns, notifications of change (NOCs) and EDI detail from ACH payments.

# **SWEEP SERVICES**

## ***Automated Account Sweep***

If Customer has elected to receive Automated Sweep Services ("Sweep Services") Customer authorizes Bank and Bank agrees to automatically transfer money from one or more of Customer's accounts ("Sweep Account(s)") (i) to a separate interest-bearing account (the "Deposit Account") by Customer with Bank; (ii) to and/or from a loan account (the "Loan Account") maintained by Customer with Bank (the "Loan Sweep Service"); or (iii) for investment in a Repurchase Agreement in accordance with the terms of this Agreement and the terms of any applicable Separate Agreement (the "Repurchase Agreement Sweep Service"). Except as provided in this Agreement, the Deposit Account is governed by the Account Terms. If Customer has elected to receive, and Bank has agreed to provide, the Cash Sweep Service or the Repurchase Agreement Sweep Service, Customer has designated the balance it wants to maintain in Customer's Sweep Account(s) (the "Target Balance") and specific to the Repurchase Agreement Sweep Service, the maximum daily investment amount (the "Investment Cap" which Investment Cap is subject to Bank's prior approval); Bank reserves the absolute right to change the Target Balance with written notice to Customer and the Investment Cap without notice to Customer, and, with the prior written consent of Bank, Customer may change the Target Balance and/or the Investment Cap; and any amount of Collected Funds in the Sweep Account that exceeds the Target Balance shall automatically be earmarked for transfer and shall be referred to herein as the "Sweep Balance." With respect to the Loan Sweep Service, Bank is authorized to cause advances or payments to be made with respect to the Loan Account as set forth in the Loan

Sweep Service Terms. Bank will act to invest on the order and for the benefit of Customer. Bank is authorized to execute as agent for Customer all certificates of ownership and other instruments required by law or contract. The Sweep Services described herein are provided by Bank to Customer solely as bona fide treasury management services. Bank does not undertake any fiduciary obligation to Customer with respect to Sweep Services. Bank's duties to act for Customer are solely mechanical and administrative in nature. As used in this Agreement, "Collected Funds" means the positive balance, if any, of the Sweep Account, after settlement at the close of each Business Day.

### ***Cash Sweep***

If Customer has elected to receive the Cash Sweep Service, each Business Day, after all transactions have been posted to Customer's Sweep Account, Bank shall transfer Collected Funds in excess of the Target Balance, to Customer's Deposit Account. If at the end of the Business Day, the balance in Customer's Sweep Account is less than the Target Balance, Customer authorizes Bank to transfer funds from Customer's Deposit Account to Customer's Sweep Account in amount necessary to meet the Target Balance in the Sweep Account.

Customer may not directly make deposits to or withdrawals from its Deposit Account. Customer may make withdrawals from Customer's Sweep Account, in accordance with the Account Terms.

Bank shall provide monthly account statements to Customer for both Customer's Sweep Account and Customer's Deposit Account.

### ***Loan Sweep***

**1. Applicability.** Customer maintains a deposit account (The "Account" or "Master Account") at the Bank for purposes of receiving deposits ("Credits") and paying transfers and withdrawals ("Debits") from the Account and/or Secondary Account). The Bank also has extended a Loan to Customer. At the end of each Business Day (as defined below), after giving effect to all debits and credits to the Account and/or Secondary Account, (a) There may remain in any or all Accounts (including Master and Secondary Account) an available Collected Balance of funds that is less than the Target Balance. Accordingly, Customer will desire to borrow and the Bank will desire to lend funds (A "Loan Advance Transaction") in an amount (The "Loan Amount") which is the lesser of (i) the amount by which the available balance is less than the Target Balance or (ii) the amount which is available to be borrowed under the Loan;

**One Way Sweep – Loan to Checking or Checking to Loan**

**Two Way Sweep – Loan to Checking and Checking to Loan**

There may remain in the Account an available balance of funds in excess of the Target Balance ("Excess Funds"), which Customer desires to remit to the Bank for application against the outstanding balance of the Credit (A "Repayment Transaction").

### **Multiple Account Sweep**

Accordingly, Customer directs the Bank to debit the Master Account and Credit the Secondary Accounts in amounts necessary to reach the target balances for the Secondary Accounts; and/or

There may remain in the Master Account an available balance of funds in excess of the Target Balance ("Excess Funds"), which Customer desires to remit to the Bank for application against the outstanding balance of the Loan (a "Repayment Transaction").

**Additional Definitions.** As used in this Agreement:

- a. Act of Insolvency.** The term "Act of Insolvency" shall mean any of The following: (i) Customer or any Guarantor (as defined below) shall die or cease to exist; or (ii) any Guarantor shall attempt to revoke such Guarantor's guaranty, or such guaranty becomes unenforceable in whole or in part for any reason; or (iii) any bankruptcy,

insolvency, or receivership proceedings, or an assignment for The benefit of creditors, shall be commenced under any federal or state law by or against Customer or any Guarantor; or (iv) Customer or any Guarantor shall become The subject of any out-of-court settlement with its creditors; or (v) Customer or any Guarantor is unable or admits in writing its inability to pay its debts as They mature.

- b. **Business Day.** The term “Business Day” shall mean any day other than a Saturday, Sunday, or a day on which commercial banks are authorized to close in the state where the Bank’s main office is located.
- c. **Guarantor.** The term “Guarantor” shall mean any guarantor, surety, accommodation party, or joint obligor of the obligations of Customer under the Loan.
- d. **Net Free Balance.** The term “Net Free Balance” means the collected balance, less Bank Reserve Requirements.
- e. **Target Balance.** The Target Balance shall designated by Customer.
- f. **Transaction.** The term “Transaction shall mean either (i) Loan Advance Transaction or (ii) a RepaymentTransaction.

## 2. Initiation of Transactions.

- a. By the close of business of each Business Day, the Bank will determine: (i) whether the Collected Balance in the Account is less than or greater than the Target Balance; and (ii) accordingly, the funds available for either a Loan Advance Transaction or a Repayment Transaction.
- b. If the Bank determines pursuant to Section 3(a) that the Collected Balance of the Account is less than the Target Balance, the Bank will initiate a Loan Advance Transaction, by charging the Loan in the Loan Amount and by crediting the Account in the Loan Amount, but only if all of the following are true: (i) Customer has not repaid or canceled the Loan; (ii) no default has occurred under the provisions of any Credit Agreement or this Agreement; (iii) no Event of Insolvency has occurred; (iv) the Bank has not made demand for payment under the Loan; and (v) the Bank is not otherwise excused or prohibited under the provisions of any Credit Agreement or applicable law from making an advance to Customer.
- c. If the Bank determines pursuant to paragraph 3(a) that there are Excess Funds, the Bank will initiate a Repayment Transaction by debiting the Account and crediting the Loan in the lesser of: (i) the amount of the Excess Funds; or (ii) the outstanding principal balance of the Loan.
- d. If Customer and the Bank have entered into any other agreement that authorizes the Bank to transfer any or all of the Excess Funds from the Account to another deposit or investment account, the provisions of this Agreement shall supersede the provisions of such other agreement.

3. **Incorporation.** All Provisions, Representations and Warranties that are included in any documentation of all previous loan agreements between the Bank and Customer are hereby affirmed and incorporated into this Agreement.

4. **Notice to Customers with Transfer or Sweep Arrangements.** The balance of your Deposit Account for purposes of determining FDIC insurance will be determined after giving effect to all sweep transactions to your Loan authorized or scheduled to occur before the Bank’s normal end of day cut-off time for sweep transactions, unless the FDIC establishes an earlier cut-off time. The funds then remaining in the Deposit Account will be deposits insured up to applicable FDIC limit and any excess amount will be uninsured and may not otherwise be offset against the balance of the Loan.

## ***Dynamic Business Sweep:***

### 1. Definitions.

- a. Dynamic Business Sweep – Product consists of two components, a transaction DDA account for check writing purposes, and an investment sweep account with an objective to provide a return on investment.
- b. Transaction DDA – A demand deposit account maintained at the Bank by Customer for check writing and other transaction oriented purposes.



- c. Investment Sweep Account – Customer balances in the Dynamic Business Sweep Program in excess of the Transaction DDA Target Balance, which have been swept from the Transaction DDA to the Investment Sweep Account in accordance with Section 3 below.
- d. Banking Day – The part of each day during which the Bank is open to the public for carrying on substantially all of its business, except Saturdays, Sundays and Federal Reserve holidays.
- e. Cut-Off Time – The time established by the Bank from time to time as its end-of-day cutoff for performing the sweep procedures described in section 3.
- f. Target Balance – The amount indicated by Customer as the target balance for Customer’s Transaction DDA; which amount may be adjusted from time to time by written agreement of Customer and the Bank.

**2. Terms of this agreement**

- a. Authorization to establish accounts. Customer authorizes the Bank to open an Investment Sweep Account for Customer.
- b. Authorization to process sweep transactions.
  - i. Customer authorizes the Bank as its agent to debit or credit Customer’s Transaction DDA for any debit or credit transactions into or from the Transaction DDA in accordance with the terms of this Agreement and the deposit account agreement governing the Transaction DDA. Should the Transaction DDA lack available funds to cover presentments made, Customer authorizes the Bank to transfer funds from the Investment Sweep Account to cover such presentments.
  - ii. Customer authorizes the Bank to invest balances in excess of Customer’s Target Balance into the Investment Sweep Account. All such transactions for the Investment Sweep Account shall be made in accordance with the sweep procedures described in section 3.

**3. Sweep Procedure.** Customer authorizes the Bank to transfer funds between the Transaction DDA and the Investment Sweep Account as described below:

- a. Review of Account: The Bank shall review the balance of available funds in the Transaction DDA after the Cut-Off Time each Banking Day to calculate necessary transfers to or from the Transaction DDA.
- b. Collected Balance Above Target Balance: If, upon review of the Transaction DDA, the Bank determines that the collected funds in the Transaction DDA exceed the Target Balance, the Bank shall transfer from the Transaction DDA to the Investment Sweep Account, in minimum increments of one cent (\$.01), an amount of funds equal to the excess of the Transaction DDA account balance over the Target Balance.
- c. Collected Balance Below Target Balance: If, upon review of the Transaction DDA, the Bank determines that the balance of collected funds is less than the Target Balance, the Bank shall transfer from the Investment Sweep Account, in minimum increments of one cent (\$.01), an amount of funds equal to the difference between the Transaction DDA balance and the Target Balance or the entire balance in Customer’s Investment Sweep Account, whichever is less.

**4. FDIC Insurance.** Funds in Customer’s Transaction DDA and Investment Sweep Account are deposits insured by the FDIC up to the maximum amount permitted by law for funds held in transaction accounts in the same ownership capacity.

**5. Operation of the Investment Sweep Account.** Customer shall receive a monthly statement itemizing all transactions in the Investment Sweep Account.

**6. Right of Offset.** To the extent permitted by applicable law, rule, or other regulation, the Bank may offset and charge against Customer’s Transaction DDA or Investment Sweep Account any liability, obligation, or indebtedness of Customer to the Bank and the amount of any fees owed by Customer to the Bank.

**7. Termination.**

- a. This Agreement may be terminated by either party at any time, with or without cause, by giving written notice to the other party. Upon termination, the Bank shall close the Investment Sweep Account and deliver the proceeds to Customer.
  - b. In the event access to the Investment Sweep Account is suspended, interrupted, or terminated, for whatever reason, the Bank will not be responsible for its inability to provide the services as stated herein and this Agreement may be terminated by the Bank.
- 8. Arbitration.** Customer and the Bank agree to submit any dispute or controversy arising out of or related to this Agreement to binding arbitration pursuant to the rules of the American Arbitration Association.

### ***Repurchase Sweep:***

**1. Applicability.** This Agreement sets forth the terms and conditions on which the Bank (“Seller”) will from time to time sweep funds from Customer’s (“Buyer’s”) checking account maintained with Seller and use such funds to purchase securities or other assets (“Securities”), with a simultaneous agreement by Buyer to transfer to Seller such Securities at a date certain or on demand, against the transfer of funds by Seller to Buyer’s account. Each such transaction shall be referred to herein as a “Transaction” and, unless otherwise agreed in writing, shall be governed by this Agreement.

**2. Definitions.**

- a. “Act of Insolvency” means, with respect to any party, (i) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (ii) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (A) is consented to or not timely contested by such party, (B) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (C) is not dismissed within 15 days, (iii) the making by such party of a general assignment for the benefit of creditors, or (iv) the admission in writing by such party of such party’s inability to pay such party’s debts as they become due;
- b. “Banking Day” means the part of each day during which the Seller is open to the public for carrying on Substantially all of its business, except Saturdays, Sundays and Federal Reserve holidays;
- c. “Collected Balance” means funds which are available for immediate withdrawal from the Master Account as stated in the Seller’s funds availability policy;
- d. “Confirmation” has the meaning specified in Paragraph 3(c) hereof;
- e. “Cut-Off Time” means the time established by the Seller from time to time as its end-of-day cutoff for performing the sweep procedures described in Paragraph 3(a);
- f. “Income” means, with respect to any Security at any time, any principal thereof and all interest, dividends or other distributions thereon;
- g. “Market Value” means, with respect to any Securities as of any date, the price for such Securities on such date obtained from a generally recognized source agreed to by the parties or the most recent closing bid quotation from 10/15 such a source, plus accrued Income to the extent not included therein (other than any Income credited or transferred to, or applied to the obligations of, Seller pursuant to Paragraph 6 hereof) as of such date (unless contrary to market practice for such Securities);
- h. “Master Account” means Buyer’s “master checking account” identified on the Set Up Sheet;
- i. “Minimum Balance” means the “threshold minimum balance” for the Master Account specified on the Set Up Sheet;

- j. "Price Differential" means, with respect to any Transaction as of any date, the aggregate amount obtained by daily application of the Pricing Rate for such Transaction to the Purchase Price for such Transaction on a 360 day per year basis for the actual number of days during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) the date of determination (reduced by any amount of such Price Differential previously paid by Seller to Buyer with respect to such Transaction);
- k. "Pricing Rate" means, the per annum percentage rate for determination of the Price Differential;
- l. "Prime Rate" means, the prime rate of U.S. commercial banks as published in The Wall Street Journal (or, if more than one such rate is published, the average of such rates);
- m. "Purchase Date" means, each date on which Purchased Securities are to be transferred by Seller to Buyer pursuant to Paragraph 3;
- n. "Purchase Price" means, (i) on the Purchase Date, the price at which Purchased Securities are transferred by Seller to Buyer, and (ii) thereafter, except where Buyer and Seller agree otherwise, such price decreased by the amount of any cash applied to reduce Seller's obligations under clause (ii) of Paragraph 6 hereof;
- o. "Purchased Securities" means, the Securities transferred by Seller to Buyer in a Transaction hereunder;
- p. "Repurchase Date" means, the date on which Seller is to repurchase the Purchased Securities from Buyer, including any date determined by application of the provisions of Paragraph 3(a) and 14 hereof;
- q. "Repurchase Price" means, the price at which Purchased Securities are to be transferred from Buyer to Seller upon termination of a Transaction, as provided in Paragraph 3(d);
- r. "Set Up Sheet" means the Repurchase Agreement Set Up Sheet completed by Buyer.

**3. Sweep Procedures; Confirmation; Transaction Termination.**

- a. Buyer authorizes and instructs Seller to initiate one or more Transactions after the Cut Off Time each Banking Day to purchase Securities with an aggregate Purchase Price equal to the sum of (i) the amount by which the Collected Balance in the Master Account exceeds the Minimum Balance plus (ii) the amount of any Price Differentials payable but not otherwise included in such Collected Balance. The Repurchase Date for each Transaction shall be the next Banking Day following the Purchase Date unless a different term is agreed to and documented on the Bank's term repo set up form. Buyer authorizes Seller to transfer the Purchase Price for each Transaction from the Master Account.
- b. On the Purchase Date for each Transaction, the Purchased Securities shall be transferred to Buyer or its agent against the transfer of the Purchase Price to an account of Seller.
- c. Seller shall promptly deliver to Buyer by United States Mail or electronically to the Primary Administrator a written confirmation of each Transaction (a "Confirmation"). The Confirmation shall describe the Purchased Securities (including CUSIP number, if any), identify Buyer and Seller and set forth (i) the Purchase Date, (ii) the Purchase Price, (iii) the Repurchase Date, (iv) the Pricing Rate or Repurchase Price applicable to the Transaction, and (v) any additional terms or conditions of the Transaction not inconsistent with this Agreement. The Confirmation, together with this Agreement, shall constitute conclusive evidence of the terms agreed between Buyer and Seller with respect to the Transaction to which the Confirmation relates, unless with respect to the Confirmation specific objection is made promptly after receipt thereof. In the event of any conflict between the terms of such Confirmation and this Agreement, this Agreement shall prevail.
- d. At the opening of business each Repurchase Date, all outstanding Transactions shall terminate and Seller shall repurchase all Purchased Securities. At that time, Seller shall pay Buyer, by credit to the Master Account, the Purchase Price of the Purchased Securities repurchased, which shall be the same as the Purchase Price paid under Paragraph 3(a).

**4. Handling of Purchased Securities.** The Purchased Securities in each Transaction will have a Market Value that equals or exceeds the Purchase Price and shall be held by Seller or maintained through an account at another institution under the control of Seller and will not be delivered out to Buyer.

**5. Price Differential.** On each Business Day, Seller will pay to Buyer, by credit to the Master Account or by inclusion in the Purchase Price for Transactions initiated that day, the aggregate amount of all accrued and unpaid Price Differentials for repurchases of Purchased Securities. The Pricing Rate used to calculate Price Differentials shall be

the per annum percentage rate determined by the Seller from time to time. The Pricing Rate is not necessarily related to the yield on the Purchased Securities.

- 6. Income Payments.** Seller shall be entitled to receive an amount equal to all Income paid or distributed on or in respect of the Securities that is not otherwise received by Seller, to the full extent it would be so entitled if the Securities had not been sold to Buyer. Buyer shall, as the parties may agree with respect to any Transaction (or, in the absence of any such agreement, as Buyer shall reasonably determine in its discretion), on the date such Income is paid or distributed either (i) transfer to or credit to the account of Seller such Income with respect to any Purchased Securities subject to such Transaction or (ii) with respect to Income paid in cash, apply the Income payment or payments to reduce the amount, if any, to be transferred to Buyer by Seller upon termination of such Transaction. Buyer shall not be obligated to take any action pursuant to the preceding sentence if an Event of Default with respect to Seller has occurred and is then continuing at the time such Income is paid or distributed.
- 7. Security Interest.** Although the parties intend that all Transactions hereunder be sales and purchases and not loans, in the event any such Transactions are deemed to be loans, Seller shall be deemed to have pledged to Buyer as security for the performance by Seller of its obligations under each such Transaction, and shall be deemed to have granted to Buyer a security interest in, all of the Purchased Securities with respect to all Transactions hereunder and all Income thereon and other proceeds thereof.
- 8. Payment and Transfer.** Unless otherwise mutually agreed, all transfers of funds hereunder shall be in immediately available funds. All Securities transferred by one party hereto to the other party (i) shall be in suitable form for transfer or shall be accompanied by duly executed instruments of transfer or assignment in blank and such other documentation as the party receiving possession may reasonably request, (ii) shall be transferred on the book-entry system of a Federal Reserve Bank, or (iii) shall be transferred by any other method mutually acceptable to Seller and Buyer.
- 9. Right to Offset.** To the extent permitted by applicable law, rule, or other regulation, the Seller may offset and charge against the Master Account any liability, obligation, or indebtedness of Buyer to the Seller and the amount of any fees owed by Buyer to the Seller.
- 10. Segregation of Purchased Securities.** To the extent required by applicable law, all Purchased Securities in the possession of Seller shall be segregated from other securities in its possession and shall be identified as subject to this Agreement. Segregation may be accomplished by appropriate identification on the books and records of the holder, including a financial or securities intermediary or a clearing corporation. All of Seller's interest in the Purchased Securities shall pass to Buyer on the Purchase Date and, unless otherwise agreed by Buyer and Seller, nothing in this Agreement shall preclude Buyer from engaging in repurchase transactions with the Purchased Securities or otherwise selling, transferring, pledging or hypothecating the Purchased Securities, and Seller shall, as agent for Buyer, effect instructions regarding the disposition of any Purchased Securities given by Buyer to effect transactions pursuant to Paragraph 14; provided that no such transaction shall relieve Buyer of its obligations to transfer Purchased Securities to Seller pursuant to Paragraph 3 or 14 hereof, or of Buyer's obligation to credit or pay Income to, or apply Income to the obligations of, Seller pursuant to Paragraph 6 hereof. Required Disclosure for Transactions in Which the Seller Retains Custody of the Purchased Securities Seller is not to substitute other securities for those subject to this Agreement and therefore must keep Buyer's securities segregated at all times, unless in this Agreement Buyer grants Seller the right to substitute other securities. If Buyer grants the right to substitute, this means that Buyer's securities will likely be commingled with Seller's own securities during the trading day. Buyer is advised that, during any trading day that Buyer's securities are commingled with Seller's securities, they may be subject to liens granted by Seller to third parties and may be used by Seller for deliveries on other securities transactions. Whenever the securities are commingled, Seller's ability to resegment substitute securities for Buyer will be subject to Seller's ability to satisfy any lien or to obtain substitute securities.

**11. Representations.** Each of Buyer and Seller represents and warrants to the other that (i) it is duly authorized to execute and deliver this Agreement, to enter into Transactions contemplated hereunder and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance, (ii) it will engage in such Transactions as principal (or, if agreed in writing, in the form of an annex hereto or otherwise, in advance of any Transaction by the other party hereto, as agent for a disclosed principal), (iii) the person signing this Agreement on its behalf is duly authorized to do so on its behalf (or on behalf of any such disclosed principal), (iv) it has obtained all authorizations of any governmental body required in connection with this Agreement and the Transactions hereunder and such authorizations are in full force and effect and (v) the execution, delivery and performance of this Agreement and the Transactions hereunder will not violate any law, ordinance, charter, bylaw or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected. On the Purchase Date for any Transaction Buyer and Seller shall each be deemed to repeat all the foregoing representations made by it.

**12. Events of Default.** In the event that (i) Seller fails to transfer or Buyer fails to purchase Purchased Securities upon the applicable Purchase Date, (ii) Seller fails to repurchase or Buyer fails to transfer Purchased Securities upon the applicable Repurchase Date, (iii) Buyer fails, after one business day's notice, to comply with Paragraph 6 hereof, (iv) an Act of Insolvency occurs with respect to Seller or Buyer, (v) any representation made by Seller or Buyer shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, or (vi) Seller or Buyer shall admit to the other its inability to, or its intention not to, perform any of its obligations hereunder (each an "Event of Default"):

- a. The non-defaulting party may, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), declare an Event of Default to have occurred hereunder and, upon the exercise or deemed exercise of such option, the Repurchase Date for each Transaction hereunder shall, if it has not already occurred, be deemed immediately to occur (except that, in the event that the Purchase Date for any Transaction has not yet occurred as of the date of such exercise or deemed exercise, such Transaction shall be deemed immediately canceled). The non-defaulting party shall (except upon the occurrence of an Act of Insolvency) give notice to the defaulting party of the exercise of such option as promptly as practicable.
- b. In all Transactions in which the defaulting party is acting as Seller, if the non-defaulting party exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Paragraph, (i) the defaulting party's obligations in such Transactions to repurchase all Purchased Securities, at the Repurchase Price therefore on the Repurchase Date determined in accordance with subparagraph (a) of this Paragraph, shall thereupon become immediately due and payable, (ii) all Income paid after such exercise or deemed exercise shall be retained by the non-defaulting party and applied to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder, and (iii) the defaulting party shall immediately deliver to the non-defaulting party any Purchased Securities subject to such Transactions then in the defaulting party's possession or control.
- c. In all Transactions in which the defaulting party is acting as Buyer, upon tender by the non-defaulting party of payment of the aggregate Repurchase Prices for all such Transactions, all right, title and interest in and entitlement to all Purchased Securities subject to such Transactions shall be deemed transferred to the non-defaulting party, and the defaulting party shall deliver all such Purchased Securities to the non-defaulting party.
- d. If the non-defaulting party exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Paragraph, the non-defaulting party, without prior notice to the defaulting party, may: (i) as to Transactions in which the defaulting party is acting as Seller, (A) immediately sell, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the non-defaulting party may reasonably deem satisfactory, any or all Purchased Securities subject to such Transactions and apply the proceeds thereof to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Securities, to give the defaulting party credit for such Purchased Securities in an amount equal to the price therefore on such date, obtained from a generally recognized source or the most recent closing bid quotation from such a source, against the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party

hereunder; and (ii) as to Transactions in which the defaulting party is acting as Buyer, (A) immediately purchase, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the non-defaulting party may reasonably deem satisfactory, securities ("Replacement Securities") of the same class and amount as any Purchased Securities that are not delivered by the defaulting party to the non-defaulting party as required hereunder or (B) in its sole discretion elect, in lieu of purchasing Replacement Securities, to be deemed to have purchased Replacement Securities at the price therefore on such date, obtained from a generally recognized source or the most recent closing offer quotation from such a source. Unless otherwise provided in Annex I (if applicable), the parties acknowledge and agree that (1) the Securities subject to any Transaction hereunder are instruments traded in a recognized market, (2) in the absence of a generally recognized source for prices or bid or offer quotations for any Security, the non-defaulting party may establish the source therefore in its sole discretion and (3) all prices, bids and offers shall be determined together with accrued Income (except to the extent contrary to market practice with respect to the relevant Securities).

- e. As to Transactions in which the defaulting party is acting as Buyer, the defaulting party shall be liable to the non-defaulting party for any excess of the price paid (or deemed paid) by the non-defaulting party for Replacement Securities over the Repurchase Price for the Purchased Securities replaced thereby and for any amounts payable by the defaulting party under Paragraph 6 hereof or otherwise hereunder.
- f. For purposes of this Paragraph 14, the Repurchase Price for each Transaction hereunder in respect of which the defaulting party is acting as Buyer shall not increase above the amount of such Repurchase Price for such Transaction determined as of the date of the exercise or deemed exercise by the non-defaulting party of the option referred to in sub-paragraph (a) of this Paragraph.
- g. The defaulting party shall be liable to the non-defaulting party for (i) the amount of all reasonable legal or other expenses incurred by the non-defaulting party in connection with or as a result of an Event of Default, (ii) damages in an amount equal to the cost (including all fees, expenses and commissions) of entering into replacement transactions and entering into or terminating hedge transactions in connection with or as a result of an Event of Default, and (iii) any other loss, damage, cost or expense directly arising or resulting from the occurrence of an Event of Default in respect of a Transaction.
- h. To the extent permitted by applicable law, the defaulting party shall be liable to the non-defaulting party for interest on any amounts owing by the defaulting party hereunder, from the date the defaulting party becomes liable for such amounts hereunder until such amounts are (i) paid in full by the defaulting party or (ii) satisfied in full by the exercise of the non-defaulting party's rights hereunder. Interest on any sum payable by the defaulting party to the non-defaulting party under this Paragraph 14 shall be at a rate equal to the greater of the Pricing Rate for the relevant Transaction or the Prime Rate.
- i. The non-defaulting party shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or applicable law.

**13. Single Agreement.** Buyer and Seller acknowledge that, and have entered hereinto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and have been made in consideration of each other. Accordingly, each of Buyer and Seller agrees (i) to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, (ii) that each of them shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transactions hereunder and (iii) that payments, deliveries and other transfers made by either of them in respect of any Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Transactions hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

**14. Notices and Other Communications.** Any and all notices, statements, demands or other communications hereunder may be given by a party to the other by mail, facsimile, telegraph, messenger or otherwise to the address specified in the Set Up Sheet, or so sent to such party at any other place specified in a notice of change of address hereafter

received by the other. All notices, demands and requests hereunder may be made orally, to be confirmed promptly in writing, or by other communication as specified in the preceding sentence.

#### **15. Use of Employee Plan Assets.**

- a. If assets of an employee benefit plan subject to any provision of the Employee Retirement Income Security Act of 1974 ("ERISA") are intended to be used by either party hereto (the "Plan Party") in a Transaction, the Plan Party shall so notify the other party prior to the Transaction. The Plan Party shall represent in writing to the other party that the Transaction does not constitute a prohibited transaction under ERISA or is otherwise exempt therefore, and the other party may proceed in reliance thereon but shall not be required so to proceed.
- b. Subject to the last sentence of subparagraph (a) of this Paragraph, any such Transaction shall proceed only if Seller furnishes or has furnished to Buyer its most recent available audited statement of its financial condition and its most recent subsequent unaudited statement of its financial condition.
- c. By entering into a Transaction pursuant to this Paragraph, Seller shall be deemed (i) to represent to Buyer that since the date of Seller's latest such financial statements, there has been no material adverse change in Seller's financial condition which Seller has not disclosed to Buyer, and (ii) to agree to provide Buyer with future audited and unaudited statements of its financial condition as they are issued, so long as it is a Seller in any outstanding Transaction involving a Plan Party.

#### **16. Intent.**

- a. The parties recognize that each Transaction is a "repurchase agreement" as that term is defined in Section 101 of Title 11 of the United States Code, as amended (except insofar as the type of Securities subject to such Transaction or the term of such Transaction would render such definition inapplicable), and a "securities contract" as that term is defined in Section 741 of Title 11 of the United States Code, as amended (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).
- b. It is understood that either party's right to liquidate Securities delivered to it in connection with Transactions hereunder or to exercise any other remedies pursuant to Paragraph 11 hereof is a contractual right to liquidate such Transaction as described in Sections 555 and 559 of Title 11 of the United States Code, as amended.
- c. The parties agree and acknowledge that if a party hereto is an "insured depository institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Transaction hereunder is a "qualified financial contract," as that term is defined in FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).
- d. It is understood that this Agreement constitutes a "netting contract" as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") and each payment entitlement and payment obligation under any Transaction hereunder shall constitute a "covered contractual payment entitlement" or "covered contractual payment obligation", respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a "financial institution" as that term is defined in FDICIA).

#### **17. Disclosure Relating to Certain Federal Protections.**

The parties acknowledge that they have been advised that:

- a. in the case of Transactions in which one of the parties is a broker or dealer registered with the Securities and Exchange Commission ("SEC") under Section 15 of the Securities Exchange Act of 1934 ("1934 Act"), the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 ("SIPA") do not protect the other party with respect to any Transaction hereunder;
- b. in the case of Transactions in which one of the parties is a government securities broker or a government securities dealer registered with the SEC under Section 15C of the 1934 Act, SIPA will not provide protection to the other party with respect to any Transaction hereunder; and FDIC INSURANCE Buyer acknowledges that the Transactions and Purchased Securities are:
  - Not FDIC Insured;
  - Not deposits of Seller; and

- Subject to investment risks, including the possible loss of the principal amount invested.

In the event of a bank closure, the availability of FDIC insurance will be determined after giving effect to all sweeps scheduled to occur under this Agreement before the cut-off time established by the FDIC, which may be earlier than the Cut-Off Time specified in this Agreement. Any funds remaining in the Master Account after the FDIC's cut-off time will be deposits insured up to the maximum amount permitted by law for deposits in the same type of account and same ownership capacity. The Buyer will have a secured claim against the Seller for the value of any Purchased Securities that have not been repurchased by the Seller as of the FDIC's cut-off time.

- c. in the case of Transactions in which one of the parties is a financial institution, funds held by the financial institution pursuant to a Transaction hereunder are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, as applicable.

## ELECTRONIC CHECK PROCESSING

- 1. Background.** Bank offers the Program for the electronic clearing of checks, which enables Customer to convert checks to electronic items and to transmit those items electronically for deposit into Customer's account at Bank. Customer desires to use the Program to electronically transmit and process checks for deposit and collection purposes.
- 2. Definitions.** Capitalized terms used in this Agreement shall have the meanings indicated herein.
- 3. Customer Obligations.** Customer represents and warrants that with respect to each Check processed by Customer hereunder and the corresponding Electronic Item: (i) the Electronic Item is a digitized image of the front and back of the Check and accurately represents all of the information on the front and back of the Check as of the time Customer converted the Check to an Electronic Item; (ii) the Electronic Item contains all endorsements applied by parties that previously handled the Check in any form for forward collection or return; and (iii) all transfer and presentment warranties made under applicable law and the Account Agreement. If Customer captures a digital image of a previously truncated and reconverted Substitute Check for processing, Customer shall ensure that such Substitute Check meets the requirements for legal equivalency under Regulation CC and the identifications of previous truncating and reconvert bank(s) (as such terms are defined in Regulation CC) are preserved.
- 4. Compliance with Laws.** Each party will comply with all applicable federal, state and local laws and regulations with respect to this Agreement and such party's activities covered by or related to this Agreement.
- 5. Construction and Interpretation.** Section headings used herein are for the convenience of reference only, and shall not affect the meaning or interpretation of this Agreement. This Agreement shall be deemed to have been drafted by both parties, and in the event of dispute, no party shall be entitled to claim that any provision hereof should be construed against the other party by reason of the fact that it was drafted by any particular party. The failure of either party to enforce any rights granted under this Agreement or to take action against the other party in the event of any breach shall not be considered a waiver of that right or breach unless the waiver has been reduced to writing and signed by the waiving party. If a party effectively waives a right or breach, that waiver will not constitute a waiver of any other right or breach or of a subsequent breach of the same obligation. If any provision of this Agreement is held invalid, illegal or unenforceable in any particular jurisdiction or circumstance, the remaining provisions of this Agreement shall remain valid and enforceable in such jurisdiction or circumstance, and such provision shall remain valid and enforceable in any other jurisdiction or circumstance.
- 6. Relationship Between Parties.** This Agreement will not be construed as creating an agency, partnership, joint venture, or any other form of association, for tax purposes or otherwise, between the parties, and the parties will at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party will have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect



whatsoever.

7. **Security Interest.** Customer grants Bank a security interest in the Account, including any present and future principal and interest, as collateral security for the Performance of Customer hereunder.
8. **Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of Bank and Customer and is not intended to benefit any third party, except Bank licensors. Customer and Bank acknowledge and agree that any party that licenses the Software to Bank, directly or indirectly through one or more sub-licensees, is a third party beneficiary to this Agreement with respect to those provisions dealing with use and protection of intellectual property.

## ***Definitions***

**Account:** Customer's account at Bank into which Checks transmitted electronically will be deposited. Account Agreement with respect to any Account means Bank's standard deposit agreements and disclosures governing the Account, as they may be amended from time to time.

**Authorized Equipment:** Equipment that has been approved by Bank for use with the Software.

**Check:** A draft that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution, whether negotiable or not, and payable or endorsed to Customer, and includes Original Checks and Substitute Checks. Such term does not include Non-cash Items or items payable in a medium other than United States money. [Note: Bank processing of items that do not meet this definition shall not constitute a waiver by Bank or obligate it to process nonconforming items in the future. Bank may discontinue processing of nonconforming items at any time, without cause or prior notice.]

**Documentation:** All documentation, manuals and instructions relating to the Program or the Authorized Equipment, which Bank provides to Customer from time-to-time pursuant to this Agreement, including without limitation documentation regarding installation and use of the Software.

**Electronic Item:** A digitized image of a Check, an Image Exchange Item, or any other electronic version of a Check or other electronic item (such as items processable through the automated clearinghouse (ACH) system) approved by Bank for processing through the Program. Bank reserves the right to review and approve any Electronic Items that are designed in the future.

**Image Exchange Item:** A digitized image of a Check cleared and settled directly with a Payor Financial Institution without conversion to a Substitute Check. **Noncash Item:** An item that would otherwise be a Check, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice of payment or dishonor; (iii) it consists of more than a single thickness of paper, except a Check that qualifies for handling by automated check processing equipment; or (iv) it has not been pre-printed or post-encoded in magnetic ink with the routing number of the Payor Financial Institution.

**Original Check:** The first paper Check issued with respect to a particular payment transaction.

**Payor Financial Institution:** The United States Financial Institution ordered in a Check to make payment to the payee(s) named on the Check.

**Program:** Collectively the procedures, protocols, and software used by Bank and its licensors and contractors in connection with the electronic processing of Checks, and includes without limitation the Software and the Services.

**Regulation CC:** 12 C.F.R. Part 229, as it may be amended from time to time.

**Services:** The services described to be provided by Bank, or an agent or designee of Bank, to enable Customer to process Checks digitally and through Substitute Checks.

**Software:** That portion of the software developed, licensed and/or provided by Bank and its licensors for operation of the Program, that Bank delivers or provides to Customer hereunder.

**Substitute Check:** A paper reproduction of a Check that satisfies the requirements and definition of "substitute check" set forth in Regulation CC.

**United States Financial Institution:** (i) any person, located in the United States, engaged in the business of banking; (ii) a Federal Reserve Bank; (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service, or a State or local government.

## SERVICE TERMS AND CONDITIONS

### 1. Bank's Responsibilities.

- a. Bank will deliver to Customer, or otherwise provide access to, the Software.
- b. Bank will provide installation and training support as reasonably required for Customer's implementation of the Program. Any onsite installation or training support shall be on such terms and conditions as the parties agree, including reimbursement for Bank reasonable travel costs.
- c. Bank will provide maintenance and support for the Software as reasonably necessary to permit Customer's processing of Checks through the Program. Such maintenance and support shall include (i) corrections, workarounds and bug fixes, (ii) such modifications, enhancements and updates as Bank elects to make generally available to its customers without additional license fees, and (iii) telephone support to Customer during Bank regular business hours.
- d. Bank will accept for deposit to the designated Account digitized images of Checks that are transmitted to Bank in compliance with this Agreement. Digitized images shall be deemed received upon successful receipt of the transmission of such images that are complete, usable, and adhere to the data specifications set forth in the Documentation. If the digitized images are not complete, are not useable, or do not adhere to such data specifications, the images may not be processed by Bank or its agents, in which event Customer's deposit will be adjusted and notification will be provided.
- e. Bank will provide Customer an e-mail notification of Customer's transmission of digitized images as outlined in the Documentation.
- f. Customer's digitized images will be processed after Bank has received Customer's transmission of the digitized images. Bank will use commercially reasonable efforts to present Image Exchange Items and Substitute Checks for collection. Unless Bank notifies Customer otherwise, Bank will provide same day credit to the Account for all items transmitted by Customer and received by Bank in accordance with the requirements of this Agreement and the Documentation, and within the timelines established by Bank.
- g. If a Payor Financial Institution returns an item to Bank, Bank will charge the Account for such returned item, and may either (i) return the item to Customer, or (ii) re-present it to the Payor Financial Institution before returning it to Customer. Items may be returned as Image Exchange Items, rather than Substitute Checks, as agreed by the parties. If a Payor Financial Institution or other third party makes a claim against Bank or seeks a re-credit with respect to any Check processed hereunder, Bank may provisionally freeze or hold aside a like amount in the Account pending investigation and resolution of the claim.
- h. Bank may suspend immediately the Services or the processing of any Check or corresponding Electronic Item if Bank has reason to believe that there has been a breach in the security of the Program, fraud involving Customer's Account or such Check, or any uncertainty as to the authorization or accuracy of Electronic Items. Bank reserves the right at any time to process Electronic Items on a collection basis.

### 2. Customer Responsibilities.

- a. Customer will maintain an Account at Bank for the receipt of deposits of digitized images of Checks, in accordance with applicable Account Agreement.
- b. Customer will initiate security procedures so that no individual will be allowed to initiate electronic transmissions using the Program without proper authorization, supervision, and safeguards, and agrees to take all reasonable steps to maintain the confidentiality of the security procedures and any related security features. Customer will safeguard the confidentiality of all passwords used to access the Program, limit access to its passwords to persons who have a need to know such information, closely and regularly monitor the activities of employees who access the Program, and prohibit its employees and agents from initiating entries without proper supervision and adequate controls. It shall be the sole responsibility of Customer to properly secure all information including non-public information (e.g. account numbers) exported from the Authorized Equipment and stored on external media (e.g. hard drives, tapes, diskettes, thumb drives, disk drives).
- c. Customer will install the Software in accordance with the Documentation, and will install and implement any changes and upgrades to the Software as Bank may require, within 30 days of receipt of such change or upgrade,

or within such shorter time frame as Bank may reasonably require in the event such change or upgrade is necessary to comply with statutory or regulatory changes or developments, or to protect the integrity and security of the Program.

- d. Customer may use only Authorized Equipment in connection with the Software. Unless otherwise provided in an addendum to this Agreement or in a separate agreement, Customer, and not Bank, shall be responsible for ordering, obtaining and maintaining all Authorized Equipment.
- e. Customer will use the Authorized Equipment and the Software, including the entering, processing and transmittal of items, in accordance with the Documentation. Without limiting the foregoing, Customer will comply with all security procedures described in the Documentation, and will not bypass, override or disable any security mechanisms in the Authorized Equipment or Software. Customer will be responsible for cost of equipment and/or replacement of such, if authorized equipment is damaged due to negligence on their part.
- f. Customer will ensure the Authorized Equipment is clean and operating properly, and inspect and verify the quality of images and that the digitized images of Checks are legible for all posting and clearing purposes.
- g. Customer will be responsible for training its employees in the use of the Program, and for supervising and auditing their use of the Program.
- h. Customer will ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser with respect to a Check processed by Customer will receive presentment or return of, or otherwise be charged for, the Check (including the Original Check or Substitute Check), corresponding Electronic Item, and/or other paper or electronic representation of the Check such that such person will be asked to make payment based on an item that it already has paid.
- i. Customer will retain each Check for a reasonable period of time, but in no event fewer than 30 days after such Check has been digitized and processed. Customer will store the Checks in a secure container located in an area that restricts the possibility that the non-public information contained in the Checks can be accessed by unauthorized persons, or that the original paper Checks could be accidentally reprocessed and deposited at a future date. Customer will promptly provide any retained Check (or, if the Check is no longer in existence, a sufficient copy of the front and back of the Check) to Bank as requested to aid in the clearing and collection process or to resolve claims by third parties with respect to any Check. Subsequent to the aforementioned retention period, but no later than 90 days after processing, it is the responsibility of Customer to destroy the original Checks in a manner that will prevent the disclosure of the non-public information (e.g. account numbers) contained in the Checks.
- j. Customer will retain all information about its digitizing of Checks as created by the Software for no less than 7 days. In the event of lost, mistaken, incomplete or unusable Electronic Items, or in the event of claims of fraud, alteration, counterfeit or otherwise, Customer shall cooperate fully with Bank in providing information, including access to such records.
- k. In the event that communication, equipment or software outages prevent Customer from electronically transmitting Electronic Items to Bank, whether or not the fault of Customer, Bank, or a third party, the Customer will physically transport checks and deposits to the closest office of Bank and make such deposits until such time that the outage can be identified and resolved. Customer agrees to bear all of its expenses associated with this contingency plan.
- l. Upon request, Customer will grant Bank the opportunity to conduct audits of Customer's compliance with this agreement. Such audits may include, when appropriate, onsite evaluations of Customer's physical and information security controls. In the event Customer security controls do not meet commercially reasonable standards, Bank reserves the right to provide notice to Customer in accordance with Section 7- TERM AND TERMINATION of this Electronic Check Processing Agreement.
- m. Endorsement. Customer will endorse all deposited items with a restrictive endorsement as follows: *For Remote Deposit Only to "Insert Bank Name"*.

## **INTELLECTUAL PROPERTY PROVISIONS**

### **1. Protection and Security of Software and Documentation.**

- a. Customer will establish reasonable precautions and use commercially reasonable efforts, no less rigorous than those Customer uses to protect its own confidential information to protect and maintain the confidentiality and security of the Software and the Documentation. Without limiting the generality of the foregoing, Customer will use reasonable measures to protect the Software and Documentation from unauthorized copying, dissemination, disclosure or other unauthorized use.
- b. Customer will not, and will not permit any third party to, (i) copy or use the Software or Documentation except as expressly authorized by this Agreement (including this Schedule); (ii) sublicense, rent, distribute, transfer, publish, disclose, display or otherwise make available the Software to others; (iii) use the Software or Documentation for third-party training, commercial time-sharing or service bureau use; or (iv) alter, change, modify or otherwise create derivative works of the Software or Documentation.
- c. Customer will not, and will not permit any third party to, reverse engineer, disassemble or decompile any Software, except to the extent expressly permitted by applicable law. If Customer intends or begins to take any such action based on any applicable law, Customer shall notify Bank and Bank shall have the right to immediately terminate this Agreement and/or the license to the Software upon notice to Customer.
- d. Customer will maintain a complete and accurate list of all locations where Customer has loaded and maintains the Software, and make such list available to Bank upon Bank request.

## **2. Ownership of Intellectual Property.**

- a. Customer acknowledges and agrees that all right, title and interest in and to the Software and the Documentation, together with modifications, enhancements and derivative works, and all intellectual property rights such as copyrights, patents, and trade secrets, pertaining to the Software and the Documentation, (i) are and shall remain owned exclusively throughout the universe by Bank and its licensors, (ii) represent or contain valuable rights of Bank and its licensors, and (iii) are protected under United States patent, copyright, trademark and trade secret laws of general applicability. This Agreement does not create in Customer any rights to, and does not constitute an assignment of any rights of Bank or its licensors in and to, any copyrights, trade secrets, patents, or other intellectual property rights of Bank or such licensors. Other than the license set forth above in this Schedule, no other license or interest in the Software or Documentation, either express or implied, is granted under this Agreement.
- b. Customer will not at any time, either directly or indirectly, (i) put to issue the scope, validity or ownership of Bank or its licensors' intellectual property rights in the Software and Documentation; (ii) do any act which could reasonably be expected to impair the scope, validity or ownership of such intellectual property rights, or (iii) assert any ownership rights to the Software or Documentation. Customer acknowledges and agrees that this Agreement does not grant or convey to Customer (i) an interest in or to the Software or Documentation, but only a limited right of use, revocable in accordance with the terms hereof; or (ii) any right, title, interest or license in or to any trademark of Bank or its licensors, other than the right to use "powered by Test Deposit".
- c. Customer hereby assigns to Bank and/or its licensors, as directed by Bank, any rights, including any patent, copyright, mask work rights, trademarks, and trade secrets, which Customer may now have or which it may acquire at any time in the future to the Software or the intellectual property rights to the Software, and any other computer code using any of the Software.
- d. Customer shall not remove or alter any copyright, trademark, or other intellectual property or proprietary right notices, legends, symbols or labels appearing on or in the Software, Documentation or any packaging, and shall include on any copy of the Software or Documentation any copyright, trademark, or other intellectual property or proprietary right notices contained on the original.
- e. Customer will (i) cooperate with Bank and its licensors to protect the Software, including in connection with any lawsuits or disputes involving the Software; (ii) promptly notify Bank and provide to it relevant background and other facts upon becoming aware of any actual or potential claim made by a third party regarding infringement, misappropriation, imitation, illegal use or misuse, or reasonable likelihood thereof, by the Software; and (iii) in the event of any actual or potential infringement, misappropriation, imitation, illegal use or misuse, or reasonable likelihood thereof of the Software by others, (a) grant to Bank and its licensors the sole right to determine the course of action with respect to such infringement and to bring any proceeding with respect thereto, and to settle, and collect any settlement amount or judgment for any such proceeding, and (b) agree

that such licensors shall be solely entitled to any proceeds of any such proceeding, including without limitation any settlement proceeds, insurance proceeds, arbitration award, judgment, or other consideration in any form.

- 3. Compliance with Law.** Customer shall not export, re-export or otherwise transfer, directly or indirectly, the Software or any portion thereof to any location outside the United States without first complying with all applicable foreign and United States federal, state and Electronic Check Processing Agreement local laws, rules, regulations or controls (including without limitation those regarding import, export, marketing, distribution or use of software programs).
- 4. Further Assurances.** Customer will, at its expense, promptly execute and deliver such further documents and take any and all other actions reasonably requested by Bank from time to time, for the purpose of fully effectuating the intent and purposes of this Schedule, and to protect the interests of Bank, its licensors, and their respective successors and assignees.