



TREASURY MANAGEMENT SERVICES TERMS & CONDITIONS

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Part I INTRODUCTION

Thank you for choosing Nicolet National Bank to assist you in meeting your Treasury Management needs. This document provides descriptions of the Treasury Management Services currently available, along with the proper disclosures and contract terms. Please read all documents carefully.

1. **Definitions.** The following terms used in this Agreement have the meanings set forth below. Where appropriate, terms defined in the singular are deemed to include plural.

a. **"Account"** means each deposit and/or loan Account at Nicolet National Bank that is used to access a Service.

b. **"Account Recon"** means the reconciliation of Customer's Account by matching the Electronic Issue File against Checks paid from Customer's Account.

c. **"ACH"** means monetary transactions processed via the Automated Clearing House.

d. **"Agreement"** means this Nicolet National Bank Treasury Management Services Terms & Conditions and any amendments, supplements and addenda hereto, as well as all other documents incorporated herein by reference. The Agreement includes this Part I and the following Part II that are applicable to all Services; Part III that is applicable to all Internet Services; and Parts IV and V that include additional terms for specific Services.

e. **"Authorized Signer"** means the business organizations' authorized person(s) via Nicolet National Bank's Deposit Account Agreement who may execute any document requested by Bank concerning Service and has authority to appoint Delegate(s) and User(s) authority to Service(s) by executing a Treasury Management Services Enrollment and Authorization Form.

f. **"Authorized User"** means the person(s) appointed by a Delegate to act alone, without further authority from Customer, and may execute any documents requested by Bank concerning the Service for which Authorized User is granted full authoritative rights to make all decisions concerning the Service as if such person was Customer. Customer hereby warrants and represents that Customer has the authority to appoint each Authorized User in the Treasury Management Services Enrollment and Authorization Form and Bank is entitled to rely on this delegation until written notification changing such delegation is received by Bank and Bank has a reasonable opportunity to act upon it.

g. **"Bank"** means Nicolet National Bank and each subsidiary or affiliate of Nicolet National Bank that provides Service(s) to Customer.

h. **"Bill Payment"** means the electronic bill payment function available via Business Online Banking and subject to the Terms of Service.

i. **"Business Day"** means any day during which the office of Bank is open to the public for conducting all banking functions. Saturdays, Sundays, federal or state holidays or any day recognized by a Federal Reserve Bank as a holiday are not Business Days, even if Bank's offices are opened.

j. **"Business Online Banking"** means the Bank's Internet banking system that permits Account access for a variety of functions.

k. **"Check"** means, unless otherwise defined in Part IV or V, a draft, payable on demand and drawn on or payable through or at an office of a Bank, whether negotiable, that is handled for forward collection.

l. **"Check Image"** means an electronic image of an original paper Check, or an electronic image of a Substitute Check that is created by Customer, Bank or another bank or depository institution in the check collection system. Check Images may be deposited via a scanning device under the Remote Deposit Capture Service or via a Mobile Device under the Mobile Banking Service.

m. **"Check Information"** means the Account number, serial number, issue date and dollar amount of any Check.

n. **"Clientele"** means Customer customers, clients, account debtors, or other contributors to an Account.

o. **"Codes"** means user IDs, personal identification numbers, passwords, digital certificates/signatures, private keys or other security devices required by Bank to log into Business Online Banking and execute certain transactions in Account(s).

p. **"Credit Agreement"** means any loan agreement, promissory note, guaranty or other agreement, instrument or document that evidences, secures or guarantees the Line of Credit.

q. **"Customer"** means you or any individual that you have authorized to use the System or Service(s) according to this Agreement.

r. **"Deadline"** means the cut-off time for delivery of certain information, Entries or orders through the System. Deadlines are posted in the Business Online Banking User Guide on the Online Banking website.

s. **"Delegate"** means the person(s) appointed by an Authorized Signer to act alone, without further authority from Customer, and may execute any documents requested by Bank concerning the Service for which Delegate is granted full authoritative rights to make any and all decisions concerning the Service as if such person was Customer. Customer hereby warrants and represents that Customer has the authority to appoint each Delegate in the Treasury Management Services Enrollment and Authorization Form and Bank is entitled to rely on this delegation until written notification changing such delegation is received by Bank and Bank has a reasonable opportunity to act upon it.

t. **"Designated Account"** means one or more Accounts, that Customer has designated as being covered by the Sweep Service. On a daily basis, transfers from (or to) a Target Balance Account in order to achieve the selected sweep of funds. The Destination Account will be another Account at Bank if the Sweep Service selected is a Zero Balance or Target Balance Sweep; the Destination Account will be the Line of Credit if the Sweep Service selected is a Line of Credit Sweep; the Destination Account will be an Investment Account if the Sweep Service selected is an Investment Sweep.

u. **"ECCHO"** means the Electronic Check Clearing House Organization.

v. **"ECCHO Rules"** means the Electronic Check Clearing House Organization and its Rules.

w. **"Electronic Deposit"** means electronic information (including Check Images, MICR Data, and dollar amount information), obtained from capturing information from an original paper Check and remittance documentation that is transmitted to Bank for deposit, processing and collection.

x. **"Electronic Funds Transfer"** means ATM withdrawals, preauthorized transactions, point of sale transactions, and transfers to and from Customer's Accounts using the System or Services.

y. **"Electronic Issue File"** means Customer's prepared, transmitted file of Items issued against Customer's Account for purposes of performing Account Recon.

z. **"Earnings Credit"** means, business customers Deposit Account(s) run through an analysis each statement cycle to assess service charges appropriate for Service(s) used and activity processed during that period. An Earnings Credit rate is applied to the average balance in the Account(s) for the statement cycle, this is the Earnings Credit. This Earnings Credit is used to offset service charges accumulated during the statement cycle.

aa. **"Entry"** means, with regard to ACH, an order or request complying with the requirements of the NACHA Rules (i) for the transfer of money to the account of a Receiver (a **"Credit Entry"**); (ii) for the withdrawal of

money from the transaction account or general ledger account of a Receiver (a **"Debit Entry"**; (iii) a zero dollar Entry; or (iv) means the data received from Customer from which Bank prepares an Entry.

bb. **"Event of Insolvency"** means any of the following: (A) Customer or Guarantor shall die or cease to exist; (B) any Guarantor shall attempt to revoke its guaranty or other obligation to Bank, or such guaranty or other obligation shall become unenforceable in whole or in part; (C) any bankruptcy, insolvency or receivership proceeding, or any assignment for the benefit of creditors, shall be commenced under any Federal or state law by or against Customer or any Guarantor, (D) Customer or any Guarantor shall become the subject of any out-of-court settlement with its creditors; or (E) Customer or any Guarantor is unable or admits in writing its inability to pay its debts as they mature.

cc. **"Excess" or "Excess Funds"** means the amount of Transfer/Sweep Funds as of the close of business on any Business Day, which exceeds the Target Balance.

dd. **"FinCEN"** means the Department of the Treasury's Financial Crimes Enforcement Network, tasked with anti-money laundering enforcement.

ee. **"Guarantor"** means any guarantor, surety, accommodation party or joint obligor of the obligations of Customer under the Credit Agreement.

ff. **"IAT"** means International Automatic Clearing House Transaction.

gg. **"Investment Account"** means an interest-bearing Deposit Account.

hh. **"Item"** means a Check, cashier's check and, unless otherwise noted, in a disclosure applicable to a particular Service, excludes any Item drawn on foreign institutions outside of the United States or Territories of the United States.

ii. **"Line of Credit"** means any loan arrangement to Customer that is designated as a revolving Line of Credit or which Bank and Customer have otherwise agreed will be subject to the Sweep Service

jj. **"MICR Data"** means information from the Magnetic Ink Character Recognition stylized printing on the bottom of Checks comprising of routing, transit, account and Check serial numbers.

kk. **"Mobile Account"** means those Accounts that Customer has enabled to be accessed from a Mobile Device.

ll. **"Mobile Banking Service" or "Mobile Banking"** permits User(s) to obtain information about Customer's Mobile Account(s), make transfers and Bill Payments and view alerts with a Mobile Device.

mm. **"Mobile Deposit"** permits User(s) to make deposits online to Customer's Account(s) from remote locations with a Mobile Device.

nn. **"Mobile Device"** means a cell phone or other handheld device that can send and receive information using Mobile Banking.

oo. **"NACHA"** means the National Automated Clearing House Association

pp. **"NACHA Rules"** means the rules of the NACHA and Appendices to the rules of the NACHA and the Green Book as amended from time to time.

qq. **"OFAC"** means the US Treasury Department's Office of Foreign Asset Control, which issues the list of Specially Designated Nationals and Blocked Persons. OFAC information may be obtained directly from the OFAC Compliance Hotline at 1-800-540-OFAC or at <http://www.treasury.gov/resource.aspx>.

rr. **"On-Us"** means an Entry, Request or deposit when a Receiver's account also resides at Bank.

ss. **"Outstanding Items List"** means Bank's report summary in electronic form provided at the end of the Reconciliation Period and providing the information required by Customer.

tt. **"Paid Items List"** means Bank's report summary listing the

reconciliation of Customer's Account reflecting the information required by Customer.

uu. **"P.O. Box "** means Post Office Box opened and maintained by Bank for Lockbox Services.

vv. **"Provider"** means any agent, licensor, independent contractor or subcontractor that Bank may involve in the provision of a Service.

ww. **"Reconciliation Period"** means the accounting period that Customer has designated as being covered by the Service.

xx. **"Remote Deposit Capture System"** means Bank's computer systems and databases that Customer may access in order to obtain the Remote Deposit Capture Services.

yy. **"Request"** means Customer's instruction to Bank or directly to a funds-transfer system for a Fedwire or Wire Transfer to a specified Account or beneficiary.

zz. **"Security Procedures"** means the use of Codes and additional procedures, including challenge questions, Security Tokens, call-back confirmations, dual control, encryption and other systems and Software that Bank utilizes from time to time to protect Customer information and mitigate against fraud.

aaa. **"Security Token"** means an electronic device that will permit User(s) to generate a one-time use numeric code to provide authentication to effect transactions in connection with certain Service(s). Security Tokens may be tangible – "hard" tokens - or intangible – "soft" tokens.

bbb. **"Service" or "Service(s)"** means each Treasury Management Service provided pursuant to this Agreement, the specific terms and conditions of which are set forth in Parts IV and V of this Agreement.

ccc. **"Shortfall"** means the amount by which the Target Balance exceeds the amount of Transfer/Sweep Funds as of the close of business on any Business Day.

ddd. **"SFTP"** means Secure File Transfer Protocol, a secure means of transferring files between computers on the Internet, used to download a file from a server using the Internet or to upload a file to a server in connection with certain Services.

eee. **"Software"** means any proprietary or third-party program, application or any related data or any combination thereof necessary to enable a computer or a component to perform.

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

ggg. **"System"** means the Software, systems and other procedures that comprise Bank's suite of Services available via Business Online Banking.

hhh. **"System Service" or "Internet Service"** means a Service accessed via the System.

iii. **"Target Balance Account"** means a Deposit Account that Customer has designated on the Implementation Document as being covered by a Sweep Service described herein and on which Customer authorizes Bank to transfer out on a daily basis funds in the amount of any Target Balance Excess, and/or, in some Sweep Services, to transfer funds in the amount of any Target Balance Shortfall so that at the opening of each Business Day the Target Balance Account will have the Target Balance.

jjj. **"Target Balance"** means that amount of funds that Customer desires to maintain in the Target Balance Account. The Target Balance will be established as a range consisting of a minimum ("Low Balance"), a maximum ("High Balance"), and "Increment." The High and Low Balance may be the same amount. For the Zero Balance Sweep, the Target Balance will be zero.

kkk. **"TPSP"** means a Third-Party Service provider Customer appoints to access a Service on its behalf.

lll. **"Transfer/Sweep Funds"** means the total of the funds in the Account as of the close of business on any Business Day, after taking into account all deposits and Checks and other Items drawn on the Account less holds.

mmm. **"User"** means those representatives and employees designated to access one or more Accounts through one or more Services. Any Authorized Signer, or Delegate if established in the Treasury Management Services Enrollment and Authorization Form, may be a User. This Agreement acts as Customer's authorization to allow the User(s) to access and process transactions, which may directly affect Customer's Account(s) and liability to Bank.

nnn. **"Wire Transfer"** means the process of electronically transferring funds to a beneficiary, beginning with a Request.

2. **Other Agreements, Laws and Regulations.** The Service(s) are provided to Customer subject to the following other agreements, laws and regulations, which are hereby incorporated into and made part of this Agreement:

- a. The set-up materials, user guides, and any supplement hereto required by Bank to implement a specific Service (referred to in the Agreement as the "Implementation Documents");
- b. The provisions of the then current Account Agreement and Regulations and accompanying disclosures and fee schedules ("Account Agreement"), which govern standard deposit Accounts and other depository services;
- c. The Uniform Commercial Code ("UCC"), as enacted in the State of Wisconsin;
- d. Any applicable automated clearinghouse operating rules, including, without limitation, the NACHA Rules and the ECCHO Rules; and
- e. Federal, state and local laws and regulations applicable to Bank or Customer, including without limitation, Regulation CC, 12CFR Section 229.1, et seq., all Operating Circulars promulgated by the Board of Governors of the Federal Reserve System, and the regulations promulgated by OFAC. (the regulations identified in subsections c-d are collectively referred to as the "Regulations")

3. **Change of Terms/Amendment to Agreement.** Bank may change the terms of this Agreement at any time upon reasonable written or electronic notice to Customer or by any other method permitted by law. Customer's continued use of the applicable Service(s) will be deemed acceptance of any such change. In the event the performances of the Service(s) in accordance with the terms of the Agreement would result in violation of any present or future statute, regulation or government policy to which Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank shall incur no liability to Customer as a result of such violation or amendment. No course of dealing between Bank and Customer will constitute a modification of this Agreement or constitute an agreement between Bank and Customer regardless of whatever practices and procedures Bank and Customer may use.

4. **Representations and Warranties.** Customer and Bank each represent and warrant to the other, as of the date this Agreement is entered into and at the time any Service is used or performed, that: (a) it is validly existing and in good standing under the laws of the jurisdiction of its organization; (b) it has all requisite power and authority to execute and deliver, and to perform its obligations under, this Agreement and each Service used or performed by it; (c) this Agreement has been duly authorized and executed by it and constitutes its legal, valid and binding

obligation; and (d) any consent or authorization of any governmental authority or third party required to be obtained by it in connection with this Agreement or any Service used or performed by it has been obtained.

5. **Business Purpose.** Customer will use the Service(s) only for its own internal business use in accordance with the terms of this Agreement. Further, Customer represents and warrants that, unless Customer otherwise provides access to a consumer account in the Implementation Documents, none of the Account(s) have been established or are being or will be used for personal, family or household purposes and that Customer is not a consumer under the Electronic Funds Transfer Act.

6. **Termination.**

- a. Any Services may be terminated by either party upon thirty (30) days' prior written notice to the other.
- b. Bank may also terminate or suspend any Service(s) without notice to Customer if any of the following occurs: (i) Customer becomes insolvent or files, or has filed against it, any bankruptcy or other insolvency, reorganization, liquidation or dissolution proceeding of any kind; (ii) a material adverse change occurs in Customer's business or financial condition; (iii) Bank has reason to believe that Customer has engaged in fraudulent or illegal activity; (iv) Customer fails to maintain balances in Account(s) sufficient to cover overdrafts; (v) Customer violates the terms of this Agreement or any financing arrangement with Bank; (vi) Customer fails to comply with Security Procedures or fails to provide financial information reasonably requested by Bank; (vii) Bank determines it is impractical or illegal to provide any Service(s) because of changes in laws, regulation or rules; (viii) Bank, in good faith, is unable to satisfy itself that any Service(s) have been properly authorized by Customer; (ix) Customer violates applicable law or any applicable rules; or (x) Bank, in good faith, deems itself insecure.
- c. Notwithstanding any termination, the terms of this Agreement shall apply to all transactions which have been initiated prior to termination.

Part II TERMS APPLICABLE TO ALL TREASURY MANAGEMENT SERVICES

1. **Setup and Use of Services.** To use the Service(s), Customer must have at least one eligible Account with Bank. If Customer has more than one Account or Accounts held by related businesses, Customer will have access through the System to those Account(s) for which there is the same Authorized Signer, provided Customer completes the appropriate Implementation Documents and otherwise satisfies Bank that the Authorized Signer has the required formal authorization to effect transactions in the Account(s). Combined access to such Account(s) will then apply to all Service(s) to which Customer subscribes. Customer must notify Bank immediately if any such business is no longer related, the Authorized Signer is changed or Customer otherwise seeks to stop combined access.

2. **Authorized Signers and Users.** Customer shall appoint certain Authorized Signer(s) on the Nicolet National Bank Treasury Management Services Enrollment and Authorization Form or in such other format or document as may be agreed by Bank. Customer agrees that Authorized Signer(s) shall be authorized to act on behalf of Customer in all actions taken under this Agreement and may enter into all transactions contemplated in this Agreement, including, without limitation, selecting Service(s) for the benefit of Customer, appointing the Delegate for Business Online Banking Service(s) and User(s) for Business Online Banking Service(s), and signing additional documentation that may be necessary to implement Service(s). User(s) may act on behalf of Customer for a particular Service in accordance with the relevant Implementation Documents or other document(s) establishing the Users' responsibilities or in accordance with the authority granted by Customer. Customer may

revoke the authority of or change the Authorized Signer(s) or User(s) at any time upon prior written notice or electronic notice (if permitted by Bank) and execution of additional documentation required by Bank. Such change or revocation shall not be binding upon Bank until it has received the required written notice or electronic notice (if permitted by Bank) and has had a reasonable opportunity to act thereon. In any event, Bank may act on instructions that it believes in good faith were provided by an Authorized Signer or User, or anyone purporting to be an Authorized Signer or User.

3. **Security Procedures.**

- a. Bank has implemented Security Procedures to protect Customer information and the transactions Customer executes in Accounts. Unless otherwise provided in the additional terms applicable to a Service, Security Procedures are as provided in Part III Terms Applicable to Business Online Banking and Mobile Services.
- b. Customer must actively participate in fraud mitigation in order to prevent cybercrime. Customer shall comply with the Security Procedures Bank directs it to use, and Customer acknowledges that the Security Procedures, including (without limitation) the Codes and Security Tokens, constitute commercially reasonable Security Procedures under applicable law for the initiation of the Services Customer utilizes, including without limitation, Account access, transfers and access to confidential information.
- c. Customer agrees to be bound by any transfer, Wire Transfer, transaction or service change order that is acted upon by Bank in accordance with the Security Procedures. Customer understands that the Security Procedures are not for the purpose of detecting errors in the transmission or content of information controlled by Customer. If Customer selects certain Security Procedures to use in connection with a Service and those Security Procedures provide less protection against unauthorized transactions or activity than other Security Procedures offered by Bank in connection with such Service, the Security Procedures selected by Customer shall be deemed commercially unreasonable to the same extent as the Security Procedures offered by Bank that provide greater protection.
- d. Customer is solely responsible for maintaining its own internal security and agrees to use the utmost care in selecting any company or individual given access to use one or more of the Services. Codes that are assigned to individual User(s) shall not be shared with any other person, including other User(s) and Customer shall not disclose any information regarding the Service(s) that an unauthorized user would find helpful to obtain access to all or part of any Service. Customer assumes all risk of accidental disclosure or inadvertent use of any Codes by any party, whether such disclosure or use is on account of Customer's negligent or deliberate acts or otherwise.
- e. Bank reserves the right to modify, amend, supplement, or cancel any or all Security Procedures, and/or to cancel or replace any Codes at any time and from time to time in its discretion. Bank will give Customer reasonable notice of any change in Security Procedures; provided that Bank may make any change without advance notice to Customer if Bank, in its judgment and discretion, believe such change to be necessary or desirable to protect the security of our systems and assets. Customer's implementation and use of any changed Security Procedures after a change shall constitute Customer's agreement to the change and Customer's agreement that the applicable Security Procedures, as changed, are commercially reasonable and adequate for the purposes intended.

4. **Secondary Authorization.** Bank strongly recommends that Customer utilize a second individual to review and approve transactions prior to submission to Bank for applicable Service(s). Customer acknowledges and agrees that this dual review Security Procedure is

commercially reasonable and Customer's failure to use this procedure substantially increases Customer's risk of an unauthorized transactions.

5. **Security Breach Notice.** If Customer has reason to believe that any Security Procedures or Codes have been or may become known by unauthorized persons (whether or not employed by Customer) or if Customer believes its network or computer systems have been compromised or its computers infected, **Customer shall immediately notify Bank by calling the Treasury Management Support Team at 855-451-4793 and confirming such verbal notification in writing to Bank within 24 hours.** If Customer believes there has been a security breach or that someone has transferred or may transfer money from Customer's Account without Customer's permission, Bank will replace the Security Procedures and/or Codes in accordance with Bank's procedure. Customer shall be solely responsible for funds transfers or instructions and other communications or transactions initiated before Bank received Customer's notice and had a reasonable time to act on such notice. Customer agrees to defend and indemnify Bank against any claims, losses, damages, costs, expenses, fines and other liabilities arising out of Customer's failure to maintain the security and confidentiality of the Codes or arising out of the unlawful use of any website or portal by Customer or any person who obtains access to a website or portal using the Codes.

IF CUSTOMER'S AUTHORIZED SIGNER, DELEGATE OR USER DISCLOSES CUSTOMER'S CODES OR SECURITY PROCEDURES TO ANYONE, AND/OR IF CUSTOMER ALLOWS SOMEONE TO USE SECURITY DEVICES TO GAIN ACCESS TO ACCOUNT(S), CUSTOMER HAS AUTHORIZED THEM TO ACT ON CUSTOMER'S BEHALF AND WILL BE RESPONSIBLE FOR ANY USE OF THE SERVICE BY THEM.

6. **Fraud Prevention Measures.** Bank offers certain products and Service(s) such as Check Positive Pay and ACH Positive Pay that are designed to detect or deter fraud. Failure to use such Service(s) could substantially increase the likelihood of fraud. If Customer fails to implement any of these product(s) or Service(s), or if Customer fails to follow these or other precautions reasonable for its particular circumstances, Customer agrees (a) it will be precluded from asserting any claims against Bank for paying any unauthorized, altered, counterfeit or other fraudulent Item that such product, Service, or precaution was designed to detect or deter; (b) Bank will not be required to re-credit Customers Account or otherwise have any liability for paying such Items; (c) Customer will pay all costs and expenses incurred by Bank for all efforts undertaken by Bank to recover any losses incurred by Customer.

7. **Compliance.** Bank and Customer will each comply with all laws, rules and regulations in connection with Service(s). This includes, but is not limited to, the Electronic Funds Transfer Act and its implementing regulations, Article 4A of the UCC and sanctions enforced by OFAC. It is Customer's responsibility to obtain information regarding OFAC sanctions.

8. **Unlawful Internet Gambling Notice.** Restricted transactions as defined in Federal Reserve Regulation GG are prohibited from being processed through the Account(s). Restricted transactions generally include those in which credit, Electronic Funds Transfers, Checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by others in unlawful Internet gambling.

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

10. **Fees.**

- a. Unless otherwise agreed by Bank in writing, Customer shall pay Bank the fees, charges and assessments set forth for the Service(s) provided in the most current fee schedules and other account or fee disclosures provided to Customer (including Account statements), plus additional fees and expenses for extraordinary Service(s). The price schedule for each Service is deemed accepted by Customer upon provision of the Service to Customer. In addition, Customer shall pay Bank the amount of any taxes levied or leased on fees charged pursuant to this Agreement, including, without limitation, federal, state, or local privileged excise or sales taxes based on gross revenue, any taxes or amount in lieu thereof paid or payable by Bank, excluding Bank's income taxes and any assessments charged to Bank directly as a result of providing the Service. Bank may change the amount or type of service charges from time to time.
- b. Fees for Service(s) used by Customer may be charged in full to Customer's Account(s) or may be offset through account analysis by applying Earnings Credit to Customer's service charges to determine a single monthly net service charge. The applicable Earnings Credit rate is established by Bank and will change from time to time without advance notice to Customer. Customer's net service charge could be zero if such Earnings Credit exceeds total charges in a given month. If Customer's Earnings Credit is insufficient to offset the amount due hereunder, Customer agrees to pay such amount to Bank. Customer authorizes Bank to debit Customer's Account(s) with Bank for any and all fees, expenses or other charges owed by Customer to Bank under this Agreement.

11. **Security Interest.** To secure the payment and performance of Customer's obligations set forth herein, Customer grants to Bank a security interest in and pledges and assigns to Bank all of Customer's rights, title, and interest in the following property, whether now owned or hereafter existing or acquired and wherever located: (a) all monies, instruments, and Account(s) of Customer (excluding IRA, trust account(s) and other Accounts subject to tax penalties if so assigned) that are now or in the future in Bank's custody or control; (b) any other collateral described in a security instrument securing the obligations of Customer to Bank under this Agreement or any other obligation of Customer to Bank; and (c) all proceeds and products of the property as well as any replacements, accessions, substitutions, and additions to any of the above.

12. **Credits and Debits to Accounts.** All Checks, Wire Transfers, ACH Credit Entries and other Items deposited into Accounts are provisionally credited and taken subject to later verification by Bank and Bank's receipt of final settlement. Deposited Items that are deposited and later returned unpaid will be charged against the Account without prior notice. Customer agrees to pay Bank for any overdraft or overpayment in any of Customer's Account(s). Bank will first attempt to recover such amounts from the Account associated with the debt. If the available balance of such Account is insufficient to compensate Bank, Customer authorizes Bank to charge any account Customer maintains with Bank for any amount remaining due under this Section.

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

14. **Confidentiality and Data Security.**

- a. Customer and Bank represent, warrant and mutually agree that all confidential information concerning the other party or parties

that comes into its possession in connection with any of the Service(s) will be maintained in strictest confidence and shall not be used or divulged to any other party except as may be necessary or advisable for the due performance of any of the Service(s) or as required by applicable law. Bank shall maintain physical, electronic, and procedural safeguards to keep Customer's confidential information secure. Customer's obligation to maintain the confidentiality of all Security Procedures shall survive the termination of any Service or this Agreement. Customer acknowledges that certain Services may involve the handling of confidential consumer information that may be subject to privacy laws and regulations, including unauthorized access or breach notification regulations.

- b. Customer acknowledges that this Agreement, all related documentation and computer programs and systems used in providing Service(s), and all information related thereto constitute proprietary property of Bank that is of great commercial value. Customer agrees that it shall not acquire any proprietary interest or rights therein as a result of its use of the Service(s) and shall keep all such proprietary information strictly confidential.
- c. Bank has implemented and shall maintain information Security Procedures designed to meet the requirements of the Guidelines Establishing Information Security Standards as adopted by the Bank regulatory agencies who oversee Bank's operations. These security measures include appropriate disposal of consumer information as required, and taking appropriate actions to address incidents of unauthorized access to Customer's sensitive information, including notification to Customer as soon as possible of any such incident, which notice shall include appropriate details regarding such incident and a description of steps taken by Bank to remedy the incident and prevent its recurrence. Customer understands that Customer is solely responsible for any damages sustained as a result of an incident that occurs because of a virus or other breach of security on Customer's system.

Check Samples, Forms Approval and Service Implementation. Bank reserves the right to approve the form of Customer's Checks, drafts, deposit slips and similar documentation. Prior to initiating a new Account or Service, or at any other necessary time, Customer agrees to provide all information and conduct any test that Bank may reasonably request, including, without limitation, completing Implementation Documents, signature cards, corporate resolutions and other documents and assessing test files and transmission. Customer acknowledges that Service(s) will not commence or continue until such time as the item or test is provided to Bank and determined by Bank to be satisfactory. Customer shall be responsible for initial product installation, whether or not Bank provides telephone or on-site installation support.

15. **Instructions.**

- a. For some Services, Customer may authorize Bank to honor Customer's request to give Bank oral or written instructions regarding the Service. Bank may in good faith rely on such oral or written instructions or call-back verifications that purport to come from a User without independent verification by Bank.
- b. Customer may elect to send or receive instructions or reports from Bank related to Service(s) via electronic transmission. Customer acknowledges that such electronic transmissions are an inherently insecure communication method due to the possibility of error, delay and observation or receipt by unauthorized personnel. Bank may rely in good faith on Customer's instructions regarding how and to what number or email address electronic transmissions should be sent and may rely on any electronic transmission that it reasonably believes to have been

initiated by Customer. Should Customer elect to send or receive electronic transmissions to or from Bank, Customer assumes all risks, and Bank shall not be liable for any loss, that results from the non-receipt, disclosure or alteration of any such electronic transmission.

- c. Bank may provide Customer the option of entering into this Agreement or any Implementation Documents with a digital signature. Customer hereby agrees that Customer's use of such digital signature shall represent the written signature(s) of Customer's Authorized Signer(s) and shall bind Customer to the terms and conditions of the applicable agreement, addendum or form.

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

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

18. **Transactions on Non-Business Days/Deadlines.** Transactions, deposits, Wire Transfers, Entries or other requests by Customer received by Bank on a non-Business Day or after established Deadlines may be treated by Bank as received on the next Business Day. Bank may change any cutoff time or other Deadline at any time. Bank will make a reasonable effort to notify Customer of any changes in advance.

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

20. **Intercompany Services/Authority to Transfer or Comingle Funds.** In the event that Customer requests Bank to provide Service(s) to a parent company, subsidiary, affiliate, or other commonly owned company, Customer agrees that it shall be jointly and severally liable for such company's obligations under this Agreement. Customer hereby represents and warrants to Bank that any and all transfers and commingling of funds required or permitted by any Service or requested by Customer,

and all other aspects of the performance hereby by Bank and Customer, have been duly authorized by all necessary parties, including without limitation, the account holder of each Account, and that Customer has obtained and shall maintain in its regular business records and make available to Bank upon reasonable demand, for a period of seven (7) years after termination of the Service, adequate documentary evidence of such authorization from the Account holder of each Account, executed by the duly Authorized Officer(s) of each such Account holder in accordance with that Account holder's bylaws and/or board resolutions. Customer further represents and warrants that each transfer or commingling of funds authorized hereunder is not in violation of any agreement, bylaw or board resolution of Customer or any of its affiliates or subsidiaries, nor is it in violation of any applicable federal, state, local law, regulation, of any decree, judgment, order of any judicial or administrative authority. Each representation and warranty contained herein shall be continuing and shall be deemed to be repeated upon Bank's effecting each transfer authorized hereunder.

21. **Customer Records.** This Agreement and the performance of Services by Bank shall not relieve Customer of any obligation imposed by law, clearinghouse rules (including NACHA Rules and ECCHO Rules) or by contract regarding the maintenance of records or from employing adequate audit, accounting and review practices as are customarily followed by similar businesses. In addition, Customer shall retain and provide Bank, upon request, all information necessary to remake or reconstruct any deposit, transmission, file or Entry for ninety (90) days following receipt by Bank of the deposit, file, Entry, transmission or other order affecting an Account.

22. **Account Correspondence and Review Period.** Customer agrees to regularly and promptly review and verify all statements, reports, Check payment records, Wire Transfer instructions, confirmations, adjustments, charges, and other transactions ("Account Correspondence"). Customer may receive or access Account Correspondence electronically, including without limitation, delivery via secure email or the Business Online Banking site. Customer acknowledges that Account Correspondence provided by Bank through electronic delivery is deemed to constitute good and effective delivery when posted by Bank, regardless of whether Customer actually or timely receives or accesses the Account Correspondence. Unless a different review period is specified elsewhere in this Agreement. Customer must exercise reasonable care in reviewing account statements and reasonable promptness in notifying Bank of any discrepancies, such as alterations or forged or unauthorized signatures, even if by the same wrongdoer. Reasonable promptness will not exist if Customer fails to notify Bank within fourteen (14) days ("Review Period") after Bank mails or otherwise makes the account statement available to Customer. If Customer fails to notify Bank of such unauthorized transaction within the Review Period, Customer agrees that the failure to report any such errors or unauthorized transactions shall relieve Bank of any liability for the unreported erroneous or unauthorized transaction. In accordance with NACHA Rules, Customer must report an unauthorized ACH Debit Entry to Customer's Account by the established Deadline on the Business Day following the settlement date of the unauthorized Entry. Otherwise, Customer's sole resource is to the originator of the transaction.

23. **Communications by Bank.**

- a. In the event Customer receives an email or other electronic communication that Customer believes, or has reason to believe, is fraudulent, Customer should not respond to the email, provide any information to the email sender, click on any links in the email, or otherwise comply with any instructions in the email.
- b. All electronic communications will be provided by one of the following methods: (i) by access to a website that Bank will designate in an email notice Bank sends to Customer at the time the information is available; (ii) by posting the communications to Business Online Banking; or (iii) by requesting Customer download a PDF containing the communication.

- c. In addition, in order for Bank to service Customer's Account, mitigate fraud or to collect any amounts Customer owe, Bank or Bank's Provider may from time to time make calls and/or send text messages to Customer at any telephone number(s) associated with Account(s), including wireless telephone numbers that could result in charges to Customer. The manner in which these calls or text messages are made to Customer may include, but is not limited to, the use of prerecorded/artificial voice messages and/or an automatic telephone dialing system.

24. **Monitoring and Recording Communications.** Customer acknowledges and agrees that Bank, and anyone acting on Bank's behalf, may monitor and/or record any communications between Customer and Bank, or anyone acting on Bank's behalf, for quality control and other purposes. Customer also acknowledges and agrees that this monitoring or recording may be done without any further notice to Customer. The communication that may be monitored or recorded includes telephone calls, cellular or mobile phone calls, electronic messages, text messages, instant or live chat, or any other communication in any form. Bank shall not be obligated to make such recordings.

25. **Standard of Care.** Bank will use commercially reasonable care and good faith in providing the Service(s) to Customer. Bank's care is to be evaluated based on reasonable commercial banking standards prevailing in Bank's industry and location for similarly situated commercial banks and Applicable Law. Occasional unintentional deviations by Bank from the procedures set forth in this Agreement shall not be deemed a failure to exercise reasonable care in respect to the transactions in which the deviations occur. Clerical errors or mistakes in judgment shall not constitute failure to exercise reasonable care. Further, reliance on any oral, telephonic, electronic, written or other communication believed in good faith to have been given by or on behalf of Customer will in no event constitute a failure to exercise reasonable care.

26. **Limitation of Bank's Liability for Service.**

Bank's willingness to provide Service(s) is based on the liability limitations contained in this Agreement. In addition to greater limitations on Bank's liability that may be provided elsewhere, Bank's liability related to any Service shall be limited exclusively to actual proven damages arising directly from its own gross negligence or willful misconduct. BANK WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR SIMILAR DAMAGES, WHETHER OR NOT THE LIKELIHOOD OF SUCH LOSSES OR DAMAGES WAS KNOWN BY EITHER PARTY AT THE TIME CUSTOMER FIRST OBTAINS SERVICE(S) FROM BANK OR AT THE TIME ANY INSTRUCTION OR ORDER IS GIVEN TO A BANK PURSUANT TO ANY SERVICE, AND WHETHER SUCH LOSSES OR DAMAGES ARISE FROM TORT, CONTRACT OR OTHERWISE.

- a. Bank's maximum liability for any loss of interest shall be calculated using a rate equal to the average Federal Funds rate at the Federal Reserve Bank of Chicago, for the period involved. Notwithstanding the foregoing, Bank shall not be liable for any losses or damages caused in whole or part, by the action or inaction of Customer, or any agent or employee of Customer, whether or not such action or inaction constitutes negligence or a breach of this Agreement. Customer agrees that the fees charged for the performance of the Service(s) shall be deemed to have been established in contemplation of these liability limitations.

27. **Events Beyond Bank's Control.**

- a. Under no circumstances shall Bank be responsible for liability, loss or damages resulting from any delay in performance or failure to perform in connection with a Service which is caused by interruption of telephone, facsimile or communication

facilities, delay in transportation, equipment breakdown or mechanical malfunction, electrical, power or computer failure, accidents, fire, flood, explosion, theft, natural disaster or other catastrophe, acts or failure to act by Customer or any third-party strikes or lockouts, emergency conditions, riots, war, events of terrorism, nuclear events, acts of government or other circumstances which are unavoidable or beyond Bank's control. Bank shall not be liable for failure to perform its obligations in connection with any Service if such performance would result in it being in breach of any Applicable Law.

- b. Bank has no responsibility and will incur no liability for an act or failure to act by any other financial institution, intermediary or any other third party including any failure, delay or error by any Federal Reserve Bank or other intermediary bank in presenting data or Checks to Bank in a timely manner.
- c. Bank shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Bank having exceeded any limitation upon its intraday net funds position established pursuant to present or future Federal Reserve guidelines or in Bank's reasonable judgment otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

28. **Risk Assessment and Audit.**

- a. Customer may be required to complete an annual risk assessment, on a form provided by Bank, in order to use certain Service(s). Bank may terminate those Service(s) immediately if Customer fails to conduct the risk assessment and provide the results to Bank or if Customer's risk assessment demonstrates weaknesses.
- b. During the term of this Agreement and for a period of two (2) years thereafter, Bank, and any third party representatives designated by Bank, including Bank regulatory agencies, independent auditors and forensics experts, shall have the right, upon reasonable prior notice to Customer (except in the event of fraud, unauthorized access to Account(s) or any other circumstance where delay could result in loss to Customer, in which case this right shall be immediate), to audit Customer's books, records, systems, IT infrastructure, internal controls, computers and procedures to the extent necessary to verify Customer's compliance with the this Agreement and, as applicable, the NACHA Rules, which may include, in Bank's sole discretion and with reasonable notice, the right to enter onto the premises of Customer's business for such purpose.

29. **Records and Reporting.** Customer acknowledges that Bank may have certain legal record keeping and reporting requirements with respect to Service(s) and consents to Bank's disclosures to governmental authorities of information concerning Customer and Service(s) provided to Customer, which Bank believes to be appropriate or necessary to fulfill such legal requirements.

30. **Dispute Resolution.**

- a. **Governing Law.** This Agreement shall be governed by the laws of the State of Wisconsin, without regard to conflicts of law principles.
- b. **Arbitration and Class Action Waiver.** Either Customer or Bank can require that the sole and exclusive forum for resolution of a Claim (as defined below) be final and binding arbitration pursuant to this Arbitration Provision unless Customer opts-out of this Arbitration Provision (as described in section (10) below). If Customer does not opt-out of this Arbitration Provision, and either Customer or Bank demand arbitration of a Claim, then arbitration of the Claim shall be mandatory. This Arbitration

Provision is governed by the Federal Arbitration Act and made in connection with a transaction in interstate commerce.

- i. **Waiver of Legal Rights.** THIS ARBITRATION PROVISION AFFECTS YOUR LEGAL RIGHTS. You understand that you have a right to litigate disputes through a court but, by not opting out of this Arbitration Provision, you waive that right and agree to resolve Claims exclusively and finally through binding arbitration. A neutral arbitrator, not a judge or jury, will determine your rights. You are entitled to a fair hearing, but the arbitration procedures are generally more simplified and limited than rules applicable in court. Final arbitrator decisions are enforceable as any court order would be and are subject to very limited review by a court.
- ii. **Claims subject to arbitration.** For purposes of this Arbitration Provision, "Claim" includes any past, present, or future claim, dispute, or controversy involving you (or persons claiming through you) and us relating to or arising out of the Account Agreement and/or the activities or relationships that involved or result from the Account Agreement including the validity or enforceability of this Arbitration Provision. Claims are subject to this Arbitration Provision regardless of whether they arise from contract, tort, statute, regulations, common law, principals of equity, or otherwise. Notwithstanding the foregoing, this Arbitration Provision does not include actions brought in small claims court (or an equivalent court) as long as the claim is pending only in that court.
- iii. **Notice of Claim and Opportunity to Cure.** Prior to initiating an arbitration that asserts a Claim, the party asserting the Claim shall give the other party written notice of the Claim (a "Notice of Claim") and not less than forty-five (45) days to resolve the Claim. If you are sending a Notice of Claim to us, send it to Nicolet National Bank, ATTN: Deposit Operations, P.O. Box 23900, Green Bay, WI 54305 and include the claimant's name, address, account number, an explanation of the nature of the Claim, and a description of the relief demanded.
- iv. **Arbitration Provider.** You or may choose the following arbitration provider with its applicable rules: the American Arbitration Association or any other arbitration provider that is neutral and independent. If the parties cannot agree on an arbitration provider, a court of law will select a substitute provider. You can obtain a copy of the rules of the selected Arbitration Provider by contacting them or by visiting their website. The Arbitration Provider shall follow substantive law of the Location (as defined in section (6) below) in making an award and shall have the authority to order the specific performance, compensatory damages, punitive damages, and any other relief allowed by applicable law.
- v. **Rules and Costs.** The Arbitration Provider shall maintain written rules regarding administration of the arbitration (governing activities such as discovery, hearing, appeal, and costs), and both parties agree to abide by such rules. The administrative fees, arbitrator compensation, and other costs related to the arbitration shall be paid in accordance with the rules of the Arbitration Provider and shall be reasonable. Each party shall bear the expense of their own attorneys' fees, expert fees, witnesses, and other expenses, except as otherwise provided by the rules of the Arbitrator Provider or by law. If a statute gives you the right to

recover any fees from us, those statutory rights shall apply in the arbitration notwithstanding anything to the contrary herein. If the Arbitrator Provider finds that either of us did not assert a Claim in good faith or that the Claim was frivolous, the party bringing that Claim agrees to reimburse the other for all costs.

- vi. **Location.** Any arbitration initiated pursuant to this Arbitration Provision will take place in the city nearest to your primary residence where a federal district court is located or at such other location as agreed by the parties. If your Claim seeks damages of \$10,000 or less, you may choose whether the arbitration will be conducted solely based on documents, in a telephonic or remote-video hearing, or in an in-person hearing.
- vii. **Class Action Waiver.** YOU AGREE TO BRING ANY ARBITRATION IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF, CLASS REPRESENTATIVE, OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. The Arbitration Provider may not consolidate your claim with any other person's claim and may not otherwise preside over any form of a representative or class proceeding. The Arbitration Provider will have no power to conduct a class or representative arbitration. The Arbitration Provider will have no power to make any award for the benefit of, or against, any person other than the individual who is the named party in the arbitration.
- viii. **Judgement and Appeals.** Judgment upon the Arbitration Provider's award may be entered by a court having competent jurisdiction. The Arbitration Provider's decision shall be final and binding, except for any right of appeal provided by the Arbitration Provider's rules. Any finding, award, or judgment from an arbitration of any Claim shall apply only to that specific arbitration, and no finding, award, or judgment from any other arbitration shall impact the arbitration of any Claim.
- ix. **Other Exceptions.** This Arbitration Provision does not apply to military members or their dependents, as defined by the Military Lending Act.
- x. **Opt-Out.** YOU MAY CHOOSE NOT TO AGREE TO THIS ARBITRATION PROVISION ("OPT-OUT") BY SENDING A WRITTEN LETTER TO NICOLET NATIONAL BANK, ATTN: DEPOSIT OPERATIONS, P.O. BOX 23900, GREEN BAY, WI 54305 WITHIN THIRTY (30) DAYS AFTER: (I) THE DATE THAT BANK OPENS CUSTOMER ACCOUNT, OR (II) THIRTY (30) DAYS AFTER YOU RECEIVE THIS AGREEMENT, WHICHEVER IS LATER (THE "OPT-OUT" DEADLINE). The written notice must state that you do not agree, and you must postmark the notice no later than the Opt-Out Deadline. The written letter must include your name, address, and Account number(s) to which the opt-out applies. All owners of the Account must sign the written notice for it to be effective.
- xi. **Severability.** If any portion of this Arbitration Provision is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect.
- c. **Jury Trial Waiver.** To the fullest extent permitted by law, Bank and Customer hereby agree to waive trial by jury in any judicial proceeding involving, directly or indirectly, any matter (whether in tort, contract or otherwise) in any way arising out of, related to or connected with these Service(s) or this Agreement. Bank

and Customer represent and warrant to each other that the jury trial waiver is knowingly, willingly and voluntarily given.

- d. **Jurisdiction and Venue.** Customer consents to the jurisdiction of the courts of the State of Wisconsin, waives any argument that such venue is inconvenient and agrees to bring litigation commenced in connection with this Agreement in either the Circuit Court of Brown County, Wisconsin or the United States District Court, Eastern District of Wisconsin.
- e. **Collection Costs.** Should Bank have to undertake an action to recover any amount due under this Agreement for the Service(s), including, without limitation, fees, overdrafts, or overpayment, Customer will be liable to Bank for the cost of such effort, plus reasonable attorney fees in any court action or appeal therefrom.
- f. **Adverse Claims.** If Bank receives an adverse claim against any Account, and Bank reasonably believes that it will not be protected if the claim is ignored, Customer agrees that Bank may place a hold on the affected Account. Any hold will remain in place only so long as reasonably necessary to resolve the claim or employ legal remedies to allow a court to decide such claim. Assuming compliance with this Section, Bank shall have no liability for dishonored transactions due to the hold, and Customer agrees to reimburse Bank all costs, including attorney fees, incurred due to such adverse claim.

31. **Notices.**

- a. Except as stated herein, Bank shall not be required to act upon any notice or instruction received from Customer or any other person, or to provide any notice or advice to Customer or any other person with respect to any matter. Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an authorized representative of Customer, and any such communication shall be deemed to have been signed by such person. Such notice shall be effective on the second Business Day following the day received by Bank.
- b. Except as stated herein, any written notice or other written communication required or permitted to be given under this Agreement shall be delivered or sent by US mail or reputable overnight carrier as follows: (i) if to Customer, at the address of Customer on the books of Bank and (ii) if to Bank, at the following address:

*Nicolet National Bank
Attn: Treasury Management
111 N. Washington Street
P.O. Box 23900
Green Bay, WI 54301*

Except as otherwise stated herein, any such notice shall be deemed given when received.

Treasury Management Support team may be reached via telephone at **855-451-4793**, by email at TreasuryManagement@NicoletBank.com
The Bank website is www.NicoletBank.com.

32. **Third-Party Service Providers (TPSP).**

- a. **Networks.** Some Services are provided by Bank through access to a third-party network. Such Service(s) are dependent upon the availability of the third-party network. Bank reserves the right to discontinue any Service or provide the Service through an alternative third-party network and shall have no liability should such network become unavailable.

- b. **Providers.** Bank may act on any communication and provide any Service using any payment system or Provider which Bank reasonably selects. Bank's performance of Service(s) is subject to the rules and regulations of any such system or organization. Bank shall have no obligation to disclose arrangements with third parties to Customer or obtain Customer's consent thereto. Customer authorizes the transfer of information relating to Customer to Bank's Providers for use in connection with Service(s) or as required or permitted by law. Bank will provide Customer with all necessary instructions for contact with such Provider, if necessary.
- c. **TPSP.** Some Services and/or computer equipment and Software are provided to Customer by a TPSP selected by Customer who is unaffiliated with Bank. In those cases, the TPSP is acting as Customer's agent rather than an agent of Bank, and Customer agrees to be bound with such third party's acts and omissions. Customer authorizes Bank to disclose to any TPSP information concerning Customer to the extent required to deliver the requested Service.

33. **Miscellaneous.**

- a. **No Third-Party Beneficiaries.** Service(s) provided by Bank are for the sole and exclusive benefit of Customer, and no other persons or organizations shall have any of the rights and remedies arising under this Agreement.
- b. **Severability.** In the event that any provision of this Agreement shall be determined to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.
- c. **Waiver.** A waiver by Bank or Customer of any term or provision shall not be construed as a waiver of such term or provision at any other time, or of any other term or provision. Bank's waiver of the enforcement of any of the terms of this Agreement with respect to any transaction or series of transactions will not affect Bank's right to enforce any of its rights with respect to other Customer(s) or to enforce any of its rights with respect to later transactions with Customer.
- d. **Assignment.** Bank may at any time assign or Delegate its rights and duties under this Agreement. Customer may not assign or transfer its rights or obligations hereunder to any other person or entity without Bank's written consent.

Part III TERMS APPLICABLE TO ALL SERVICES ACCESSED VIA THE INTERNET

1. **Terms of Service.** Bank may post terms or rules of use ("Terms of Use") governing Customer's use of certain System Services and functions on its Business Online Banking website. This includes certain rules for the website and for functions like Bill Pay. Such Terms of Use shall supplement and amend the terms set forth in this Section. In the event of a conflict between the Terms of Use and the rules set forth in this Agreement, the Terms of Use shall govern. Customer's initial use of an Internet Service shall constitute an acceptance of the Terms of Use. Bank may change the Terms of Use for any Internet Service at any time by posting notice of such change via an alert or message on a broadcast or message page of the Business Online Banking website. All changes shall have an effective date. Customer's use of the Internet Service after the effective date of any such change shall constitute an acceptance of the revised Terms of Use by Customer. Customer is responsible for establishing an internal procedure for reviewing the website on a regular basis to obtain timely notice of changes to the Terms of Use. Neither Bank nor Customer will contest the validity, enforceability, or admissibility of hard copy printouts of the Terms of Use or notices of changes to such Terms of Use provided in accordance with this Section. Copies of such Terms of Use or notices, if introduced as evidence in tangible form in any judicial or administrative proceeding, will be admissible to the same extent

and under the same conditions as other business records originated and maintained in documentary form.

2. **Hours of Access.** Unless otherwise agreed upon, Customer may use the System seven (7) days a week, twenty-four (24) hours a day, although some or all System Services may not be available occasionally due to emergency or scheduled System maintenance. Bank agrees to post notice of any extended periods of nonavailability on the System website.

3. **Enrollment Forms.** To establish the Business Online Banking Service, Customer must complete certain enrollment forms evidencing Customer's desire to access Customer's Account(s) using the Internet Service. The specific Services available to Customer are identified in Customer's Treasury Management Services Enrollment and Authorization Form. Bank provides on-line training guides on use of Business Online Banking and other products via the link on Bank's website www.nicoletbank.com or Customer can call Bank's main office and ask for Bank's Treasury Management Support team.

4. **Authorization.** By utilizing the System Services, Customer will be entitled to authorize various transactions electronically that otherwise would require written authorization. Customer agrees that Bank is authorized to complete each transaction initiated electronically by means of the Internet, including but not limited to, transfer of funds, credit payments and issuances of Checks or electronic payments. Customer's designation of the Delegate may be amended or revoked from time to time upon notice to Bank. Bank must have a reasonable time to act on such notice.

5. **Internet Security and Security Procedures.**

- a. Customer shall use the System Services in accordance with the Internet Security Procedures established by Bank. Without limiting the foregoing, Customer shall at all times use a web browser that supports the level of encryption used by Bank as part of its Security Procedures.
- b. For security purposes, User(s) are required to change Codes upon initial login to the System. User(s) determine what password they will use and the identity of password is not communicated to Bank. User(s) may not make Codes available to any non-authorized persons. **To deliver a higher level of security for Bank's Treasury Management Customers, an additional layer of security is part of Bank's log in process with Security Tokens for applicable Service(s), including ACH and Wire Transfers.** This helps ensure that Customer's information is secure, protecting Customer from fraud and identity theft. Security Tokens will verify Customer's identity in two ways. Every time a User logs in to Business Online Banking, it identifies Customer, and it permits Customer to identify Bank.
- c. Bank is not responsible for Customer's actions or negligence in setting up subsequent security access and assigning Codes to appropriate User(s). Customer accepts responsibility for the confidentiality and security of Codes and Security Tokens. Customer understands and agrees that Customer is responsible for all transactions incurred using Customer's Codes and Security Tokens. Anyone to whom Customer discloses Codes and Security Tokens and anyone who has access to Codes and Security Tokens will have full access to the Service(s) Customer can perform on Business Online Banking, including full access to Customer's Account(s). The person's authority will be limited only to the extent that the Code was established by Customer with limitations on the Service(s) that could be performed using that Code.
- d. Customer agrees that Bank is entitled to presume that all communications containing a proper Code and/or Security Token are authorized by Customer and to act upon those communications, and Customer will be bound by any transaction

performed. Customer assumes full responsibility and liability for the consequences of any misuse or unauthorized use of or access to System Services or disclosure of any confidential information or instructions by Customer's employees, agents or other third parties that gain access to Customer's Codes and Security Tokens.

- e. **The Security Procedures for online access to System Services replace any requirements Customer has imposed on Customer's Account(s) otherwise. This includes multiple signature requirements, which are replaced by enhanced User administration, tiered approvals and Account entitlements.**

6. **Security Tokens.** Bank requires use of a one-time access code generated by Customer's Security Tokens for Customer(s) according to the Bank's risk matrix. The generated code can only be used once to provide a Business Online Banking authentication. A different code will be generated by the Security Token each time it is used. Bank will have no responsibility for ensuring compliance with the procedures Customer develops for protecting the security of the Security Tokens.

- a. Customer is responsible for tracking Security Tokens issued to User(s). In particular, Customer must confirm that the Security Tokens issued in tangible form are kept safe and secure, in Customer's possession and or the possession of User(s) at all times and that User(s) do not share Security Tokens or permit them to be copied, reverse engineered or otherwise tampered with. Further, Customer and Customer's User(s) must not use the Security Tokens for other than for the purpose of identifying themselves to Bank in relation to Business Online Banking, and Customer may not transmit or otherwise send the Security Tokens to any other unauthorized party.
- b. If Customer suspects any impropriety on the part of any User in connection with use of a Security Token or if a User with a tangible Security Token is leaving Customer's employment, Customer must take immediate steps to ensure that the User is prevented from further access to Business Online Banking, including recovery, returning any tangible Security Token to Bank, or reassignment of the Security Token issued to the relevant User in such manner as designated by Bank.
- c. Bank will not be liable to Customer or to third parties for any loss whatsoever arising from unauthorized use of Security Tokens.
- d. Bank grants Customer and User(s) non-exclusive, non-transferable rights to the Security Tokens. Title to and rights in the Security Tokens reside in Bank and, except for specific rights granted to Customer by license, neither Customer nor User(s) will acquire any rights whatsoever in the Security Tokens. Bank will make all reasonable efforts to ensure that the Security Tokens will perform as necessary to permit Customer's access to Business Online Banking. Customer must notify Bank immediately if any Security Token fails to function and is responsible for the cost of replacing lost or damaged devices.

7. **SFTP.** Customers using a SFTP site for Service(s) will establish credentials to permit them to upload or download files from the site. Customer acknowledges that the purpose of such Security Procedures is for verification of authenticity and not to detect an error in the transmission or content of a transaction. No Security Procedures for the detection of any such error has been agreed upon between Bank and Customer.

8. **Other Customer Responsibilities.**

- a. **Equipment and Software.** Customer is responsible for obtaining (from Bank, in some instances), installing and maintaining the computer and communications equipment (including, without limitation, personal computers and modems), Software, Web browsers, Internet access and communications

services necessary to access and use the System Service(s) in accordance with this Agreement.

- b. **Antivirus Protection.** Customer agrees to run antivirus Software before transmitting data to or through any Website. Customer may use any commercially available, industry recognized antivirus Software of the type that detects and disinfects viruses automatically, without the need for Customer to execute virus scanning for each file manually. Customer shall update its antivirus Software on a regular basis and in no event less often than once every month.
- c. **Anti-Malware Protection.** Customer agrees to have anti-malware Software that is designed to detect, deter, or destroy different types of malware. Failure to install anti-malware Software could substantially increase the likelihood of fraud and other losses. If Customer fails to install Software, Customer agrees it will be precluded from asserting claims against Bank for any losses caused by malware which such Software would have detected, deterred or destroyed. Bank will not be required to re-credit Customer's Account or otherwise have any liability for such losses.
- d. **Network Security.** Customer agrees to install and utilize current industry-standard network security for its information technology systems that access Service(s) via the Internet. Network security protection includes, but is not limited to, firewalls and intrusion detection systems. For certain Services, Bank may require Customer maintain specific network security protection to access the Service(s).

9. **Disclaimer of Warranties.** NOTICE: BANK PROVIDES ALL INTERNET SERVICES, SOFTWARE AND SECURITY TOKENS ON AN "AS IS", "AS AVAILABLE" BASIS AND MAKES NO REPRESENTATION OR WARRANTIES OF ANY KIND WITH RESPECT TO THE SYSTEM OR THE CONTENT OR SECURITY OF ANY WEBSITE. BANK DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING,

BANK DOES NOT WARRANT THAT THE OPERATION OF ANY WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER IS RESPONSIBLE FOR TAKING APPROPRIATE PRECAUTIONS AGAINST DAMAGE TO ITS OPERATIONS WHICH COULD BE CAUSED BY INTERRUPTIONS OR MALFUNCTIONS OF ANY WEBSITE AND ASSUMES THE RISK OF SUCH OCCURRENCES.

Part IV TERMS APPLICABLE TO BUSINESS ONLINE BANKING AND MOBILE SERVICES

The following are additional terms and conditions applicable to Business Online Banking and Mobile Services. Customer shall not be bound by the terms and conditions for the specific Services to the extent Customer is not using such Service(s).

A. BUSINESS ONLINE BANKING SYSTEM SERVICES AND FUNCTIONS

Products and Services. As discussed further below or in the applicable additional terms are functions and Services that are accessible via the Business Online Banking System and are subject to this Agreement.

- 1. Bank may add or remove certain features and/or functionality available from time to time at its sole discretion.

- a. Bank is authorized to store, process, transmit and make available through the System and through its Providers information regarding Accounts designated by Customer. Bank or its Providers will transmit to Customer information regarding its Account(s) and/or other financial data through the System on a periodic basis. Customer may elect to receive data through one or more delivery mechanisms, including, without limitation, the Internet, telephonic delivery, secure email or unsecured email. Bank will make every reasonable effort to deliver information by the mutually agreed upon time but does not guarantee a specific delivery time.
- b. Bank will use reasonable efforts to provide the information requested through the System in a prompt fashion but shall not be liable for temporary failure to provide timely information. In such event, Customer shall be responsible for carrying out banking business through alternative delivery channels.
- c. Bank shall not be liable for any inaccurate or incomplete information with respect to transactions which have not been completely processed or posted to the System prior to being made available pursuant to the Service(s). Information with respect to all transactions is provided solely for Customer's convenience, and Customer shall have no recourse to Bank as to use of such information.
- d. **Statements and Account Access.** All Business Deposit Accounts will automatically be enrolled in electronic statement delivery through Business Online Banking or other electronic means deemed appropriate by Bank. If Customer desires paper delivery it must notify Bank and pay any and all fees associated with paper delivery. Customer understands and agrees Bank will provide Account access to User(s) indicated on the Treasury Management Services Enrollment and Authorization Form for all accounts open at time of enrollment and opened in the future. Customer is responsible for requesting Account restrictions for Business Online Banking User(s).

2. Internal Funds Transfers.

- a. Customer authorizes Bank to transfer funds of Customer between any Accounts of Customer at Bank when requested to do so in an instruction by Customer to Bank. Any such transfer shall be in an amount not to exceed any limit established by Bank from time to time.
- b. If more than one funds transfer is made at or about the same time and the available funds in the applicable Account do not cover all such funds transfer orders, Bank at its option may execute as many of such funds transfer orders as possible within the dollar limits of such available funds, in any order convenient to Bank.

3. **Automated Stop Payment Requests.** If Customer has chosen to use the Automated Stop Payment function, Customer agrees that stop payment orders or cancellations initiated using the System will be handled as provided in the Terms and Conditions of those deposit and/or loan Accounts which Customer has chosen to be accessible through the Service(s). Customer is responsible for verifying that stop payment orders and cancellations are entered correctly.

- a. Customer will initiate stop payment orders through the System in accordance with the specifications established by Bank. Customer is solely responsible for determining whether a Check has been paid prior to initiating a stop payment order. Customer acknowledges that placing a stop payment order on a Check may not relieve Customer's obligations on the Check or the underlying obligation. Orders received after 4:30PM CST, on a Business Day, or on a day other than a Business Day, will be considered received on the next successive Business Day.

- b. A stop payment placed by Customer shall be considered to be “in writing” for all legal purposes. Customer will not receive written confirmation of an order placed using Automated Stop Payment. An order shall remain effective for six (6) months unless Customer removes the order before it expires. Customer acknowledges that (i) Bank shall not, and shall not be required to, notify Customer of the expiration of any order, and (ii) it is Customer’s sole responsibility to keep track of the expiration dates of, and/or renew, all such orders.
- c. Customer is responsible to ensure that only those User(s) authorized by Customer to use Automated Stop Payment have access to the System and that those persons use it only in the manner authorized. Bank shall incur no liability for any damages caused by such unauthorized use. Customer is also responsible for ensuring that all orders contain accurate information, including, without limitation, the accurate name to which the Check is made payable, the Check number, the Account number and the exact amount of the Check.
- d. Customer shall be liable to Bank for any damages or claims arising out of Bank’s refusal to pay a Check on which Customer has placed a stop, or paying any Check on which: (i) Customer has released the order; (ii) the order has expired; (iii) the order has been improperly or inaccurately entered in the System; or (iv) the order has not been entered in a timely manner. Bank will exercise good faith and ordinary care in implementing Customer’s instructions under the System. Should Bank inadvertently pay a Check or permit a transaction over a valid stop payment order, Customer is required to prove that a direct loss has been suffered and, if so, the amount of such loss. If Bank determines that it is legally obligated to credit the Account, and in fact does so, Bank shall have all of Customer’s rights and remedies against the payee or the beneficiary of the transaction and Customer agrees to cooperate and assist Bank in its effort to collect the amount of the Check or transaction.

B. MOBILE BANKING

1. Registration for Mobile Banking.

- a. To access Mobile Banking, Customer must contact Bank and enroll. As part of the registration process, Customer may be required to provide information about Mobile Device(s), as well as the telephone number for the Mobile Device(s) to access the Mobile Banking Services and the wireless carrier that provides service to Customer’s Mobile Device(s). It is Customer’s responsibility to provide Bank with accurate, complete and current information about Customer and the Mobile Device(s) and to notify Bank immediately if any of this information changes or if service to a Mobile Device is terminated. It is also Customer’s responsibility to update such information as necessary to ensure that the information Customer has provided to Bank is current and accurate, including not only the telephone number and wireless carrier for a registered Mobile Device, but also Customer’s name, address, other phone numbers, and email address. Bank reserves the right to refuse or cancel Customer’s registration for Mobile Banking if Bank cannot verify information about the Mobile Device(s).
- b. Once Customer has registered for the Service, registered Mobile Device(s) may be used to access Mobile Banking. Except as otherwise provided in this Agreement, Customer is responsible for all transfers made using Mobile Device(s) accessing the Mobile Account(s). Although Mobile Banking will not display the full Account number for any of Customer’s Mobile Account(s), it will display other sensitive information about Customer’s Mobile Account(s), including but not limited to

balances and transfer amounts. Anyone with access to the Mobile Device(s) may be able to view this information. No information is stored on the Mobile Device, and no information is available on the Mobile Device once a User has logged off of Mobile Banking.

2. Limitations on Use of Mobile Banking.

- a. The balance of a Mobile Account may be subject to change at any time, and the information provided to Customer through Mobile Banking may become quickly outdated. Because Mobile Banking is accessible only through a Mobile Device, Customer’s access to Mobile Banking may be limited by the service provided by Customer’s wireless carrier. Neither Bank nor any of Bank’s Providers and affiliates guarantee: (a) either the delivery or the accuracy of any information requested or provided through Mobile Banking; or (b) that Customer will have continuous or uninterrupted access to Mobile Banking. Bank is not responsible for any delay, failure or error in the transmission or content of information provided through Mobile Banking. Neither Bank nor any of Bank’s Providers and affiliates will be liable for damages arising from the non-delivery, delayed delivery, or improper delivery of any information through Mobile Banking, from any inaccurate information provided through Mobile Banking, from Customer’s use of or reliance on any information provided through Mobile Banking, or from Customer’s inability to access Mobile Banking.

3. Account Access.

- a. With the Mobile Banking Service, a User may use a Mobile Device to:
 - View balances and recent transactions for each Mobile Account;
 - Make immediate, one-time transfers of funds between Customer’s Mobile Accounts, subject to the terms governing transfers set forth in this Agreement;
 - View alerts as long as Customer has enabled the option through the System;
 - Use Treasury Management Services based on Customer Agreements and availability; and
 - Deposit Checks, subject to the Mobile Deposit Terms and Conditions set forth in Section C.
- b. A transfer, requested through Customer’s Mobile Device, cannot be stopped.
- c. Customer may also access additional non-transfer Services through Mobile Banking, such as a service to assist Customer in locating Bank’s nearest branch.

4. Short Message Service “SMS” Texting.

- a. The SMS Online Banking function enables Customer to access Customer’s Mobile Account(s) through an SMS text enabled Mobile Device. By registering a Mobile Device for this function, Customer agrees to receive and send electronic text messages about Customer’s Mobile Account(s) and/or request certain information on Customer’s Mobile Account(s). Bank will send text messages to Customer based upon the instructions Customer provides at the time of the SMS request that Customer sent. Customer hereby acknowledges and accepts that each message is sent to Customer without being encrypted and will include certain information requested on Customer’s Mobile Account(s). Customer may request and receive text messages concerning Customer’s Mobile Account(s) on any text enabled Mobile Device. It is Customer’s responsibility to determine if Customer’s wireless carrier provider supports text messaging and

Customer's Mobile Device is capable of receiving text messages. Bank's SMS messages are subject to the terms and conditions of Customer's agreement with Customer's wireless carrier provider even if Customer's use of the SMS service results in additional or changed fees.

- b. Once a Mobile Device is activated for this Service, Customer is responsible for keeping any personal information in Customer's Mobile Device secure. For Customer's protection, Customer agrees to:

- Log on to the System and cancel Customer's SMS service if a Mobile Device is lost or stolen and contact Bank immediately;
- Log on to the System and cancel or edit Customer's SMS service if there are changes to Customer's wireless carrier provider or Mobile Device number (cell phone number); and
- Erase Customer's "Sent Messages" and "Inbox" that may contain SMS PIN number or other personal information.

- c. Customer acknowledges, agrees and understands that Customer's receipt of any SMS messages may be delayed or prevented by factor(s) affecting Customer's wireless carrier provider and/or other factors outside Bank's control. Bank neither guarantees the delivery nor the accuracy of the contents of any message(s). Customer agrees not to hold Bank liable for any losses, damages or costs that may arise in whole or in part, from:

- Non-delivery, delayed delivery, or the misdirected delivery of any message.
- Inaccurate or incomplete content in any message; and
- Customer's reliance on or use of the information provided in any SMS service message for any purpose.

- d. Bank provides this Service as a convenience to Customer. Bank does not use text messaging for any purpose not included in this system and will not respond to text messages sent to Bank that do not comply with appropriate action codes. An SMS message does not constitute an official record for the Mobile Account to which it pertains. Bank reserves the right to terminate this Service or begin charging a fee for this Service at any time without prior notice to Customer, except where required by law.

5. **Limit of Liability.** Unless Customer notifies Bank immediately that a Mobile Device is subject to unauthorized use or that Customer suspects unauthorized transactions on a Mobile Account, Bank is entitled to rely on and deem the use of a Customer User's Mobile Device to gain access to the Service as Customer's authorization for every transaction involving Customer's Mobile Accounts.

C. MOBILE DEPOSIT

1. **Uses and Functions.** Mobile Deposit is designed to allow Customer to make deposits to Customer's Account(s) from home, place of business or other remote locations by capturing Check Images and delivering the Check Images and associated deposit information to Bank or Bank's designated processor for Electronic Deposit.

2. **Check Requirements.**

- a. **Eligible Checks.** To be eligible to be transmitted to Bank through Mobile Deposit, a Check must meet all of the following requirements:

- The Check must be a paper Check made payable only to Customer; and
- The paper Check must be payable on demand and drawn on or payable in U.S. dollars at a financial

institution whose corporate headquarters is located in the United States.

- b. **Ineligible Checks.** Customer may not image and deposit any of the following types of Checks:

- Checks payable to any person or entity other than the person or entity that owns the account that the Check is being deposited into;
- Checks containing an alteration on the front of the Check or Checks that Customer knows or suspects, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the Check is drawn;
- Checks payable jointly, unless deposited into an account in the name of all payees;
- Checks previously converted to a Substitute Check;
- Checks drawn on a financial institution located outside the United States;
- Checks that are remotely created checks, as defined in Reg CC;
- Checks not payable in U.S. dollars;
- Checks dated more than thirty (30) days prior to the date of deposit;
- Checks that are future dated;
- Checks prohibited by Bank's current procedures relating to the Service or which are otherwise not acceptable under Customer's Account Agreement;
- Checks payable on sight or payable through drafts, as defined in Regulation CC;
- Checks with any endorsement on the back other than that specified in this Agreement;
- Checks that have previously been submitted through Mobile Deposit or through a Remote Deposit Capture service offered at Bank or any other financial institution; and
- A photocopy of a Check

3. **Endorsements and Procedures.** Customer must physically endorse any Check transmitted through the Services as "**For mobile deposit to NNB**" or as otherwise instructed by Bank and ensure that other necessary endorsements are obtained prior to capturing Check Images for transmission to Bank. If Customer does not properly endorse the Check, the deposit may fail. Bank reserves the right to reject all Items that are not endorsed as specified. Customer agrees to follow any and all other procedures and instructions for use of Mobile Deposit as Bank may establish from time to time.

4. **Image Quality.** The Check Image transmitted to Bank using Mobile Deposit must be legible, as determined in Bank's sole discretion. Each Check Image must provide all information on the front and back of the original Check at the time presented to Customer by the drawer, including, but not limited to, information about the drawer and the paying bank that is preprinted on the original Check, MICR information at the bottom of the Check, signature(s), any required identification written on the front of the original Check and any endorsements applied to the back of the original Check. The Check Image quality must meet the standards established by the American National Standards Institute, the Board of Governors of the Federal Reserve, and any other regulatory agency, clearing house or association.

5. **Receipt of Checks.** Bank reserves the right to reject any Check transmitted through Mobile Deposit, at Bank's discretion, without liability to Customer. Bank is not responsible for Checks Bank does not receive or for Check Images that are dropped during transmission. A Check Image shall be deemed received when Customer receives a confirmation from Bank that Bank has received the Check Image. Receipt of such confirmation does not mean that the transmission was

error free, complete or will be considered a deposit and credited to Customer's Account. Bank further reserves the right to charge back to Customer's Account at any time, any Check that Bank subsequently determines was not an eligible Check. Bank is not liable for any loss, costs, or fees Customer may incur as a result of Bank's chargeback of an ineligible Check.

- a. Following receipt, Bank may process the Check Image by preparing a Substitute Check or clearing the Check as an image. The manner in which the Check(s) are cleared, presented for payment, and collected shall be in Bank's sole discretion, subject to the Account Agreement governing Customer's Account.
 - b. All Electronic Deposits are subject to Bank's verification and final inspection and may be rejected by Bank for any reason.
6. **Electronic Deposit Limits.** Bank may establish limits on the dollar amount and/or number of Checks or Electronic Deposits from time to time. If Customer attempts to initiate an Electronic Deposit in excess of these limits, Bank may reject Customer's Electronic Deposits. If Bank permits Customer to make an Electronic Deposit in excess of these limits, such Electronic Deposits will still be subject to the terms of this Agreement, and Bank will not be obligated to allow such an Electronic Deposit at other times.
7. **Disposal of Transmitted Checks.** Upon Customer's receipt of a confirmation from Bank that Bank has received a Check Image, Customer agrees to retain the original Check for at least ninety (90) calendar days from the date of the Check Image transmission. After ninety (90) days, Customer agrees to destroy the Check that Customer transmitted as a Check Image, mark it "VOID", or otherwise render it incapable of further transmission, deposit, or presentment. During the time the retained Check is available, Customer agrees to promptly provide it to Bank upon request.
8. **User Warranties and Indemnification; Errors in Transmission.**
- a. **Warranties and Indemnification.** By using Mobile Deposit and sending Bank a Check Image, Customer represents and warrants to Bank that:
 - Customer will only transmit eligible Checks;
 - Customer will not transmit duplicate Checks;
 - The Check sent to Bank as a Check Image is current and, was at the time of its creation, a bona fide and existing obligation of the drawer, free and clear of all security interests, liens and claims whatsoever of third parties and is not now nor has it ever been declared in default;
 - The documentation under which the Check is payable authorizes the payee to charge and collect monies owed;
 - Customer will not deposit, re-deposit, present or represent the original Check, except as required by this Agreement;
 - All information Customer provides to Bank is accurate and true;
 - Customer will comply with this Agreement and all applicable rules, laws and regulations;
 - Customer is not aware of any factor that may impair the collectability of the Check; and
 - Customer will indemnify and hold Bank harmless from any loss for breach of this warranty provision.

If Customer deposits a Check made payable to a business into a Consumer Account, the consumer account holder is deemed to have made the warranties, and agreed to the indemnification, provided above.

- b. **Errors in Transmission.** By using Mobile Deposit, Customer accepts the risk that a Check Image may be intercepted or

misdirected during transmission. Bank bears no liability to Customer or others for any such intercepted or misdirected Checks or information disclosed through such errors.

- c. **Cooperation with Investigations.** By using Mobile Deposit, Customer agrees to cooperate with Bank in the investigation of unusual transactions, poor quality transmissions, and resolution of customer claims, including by providing, within five (5) Business Days of request and without further cost, any originals or copies of Checks deposited through Mobile Deposit in Customer's possession and Customer's records relating to such Checks and transmissions.

Part V TERMS APPLICABLE TO SPECIFIC TREASURY MANAGEMENT SERVICES

The following are additional Terms and Conditions applicable to specific Treasury Management Service(s) offered by Bank. Bank may change the number or type of Service(s) offered at any time. Customer shall not be bound by the Terms and Conditions for the specific Service(s) to the extent Customer is not using such Service(s).

A. ACH ORIGINATION

Bank will act as the Originating Depository Financial Institution ("ODFI") with respect to ACH Entries originated by Customer through Business Online Banking, as provided in these additional terms and conditions.

Capitalized terms not otherwise defined in the Agreement have the meaning provided to them in the NACHA Rules.

1. **General Rights and Obligations.**
 - a. If requested by Customer and agreed to by Bank, Customer or its User may initiate Entries, including Credit Entries and/or collections Debit Entries on ACH Business Days to its Account(s) or the Account(s) of others ("Receivers") in accordance with Bank's operating rules and Security Procedures for electronic Entries, including any exhibits or appendices, and this Agreement. Bank may process Entries directly, through one or more clearinghouses, or through a mechanism selected by Bank.
 - b. Customer's rights and obligations with respect to Entries are governed by applicable laws and the rules of NACHA, as amended from time to time. Customer has access to a copy of the NACHA Rules which can be purchased online at www.nacha.org at current NACHA prices.
 - c. Customer shall comply with the NACHA Rules and acknowledges that it shall be bound by NACHA Rules or applicable federal, state, international law or regulation or clearinghouse rules, including, without limitation, Regulation E of the Bureau of Consumer Financial Protection, FinCEN, rules of the Canadian Payments Association, the Mexican Interbanking Electronic Payment System (SPEI), Operating Circular 4 of the Federal Reserve Bank, and regulations promulgated by OFAC (collectively referred to herein as the "Rules"). It shall further be the responsibility of Customer to obtain information regarding OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at (800) 540-OFAC).
 - d. Bank will charge Customer with any fines or penalties imposed by OFAC, NACHA or any organization which are incurred as a result of non-compliance by Customer and Customer agrees to fully reimburse and/or indemnify Bank for such charges or fines.
 - e. Customer further acknowledges and agrees that Bank shall have the right to examine Customer's books, records, and systems to ensure Customer's compliance with the Rules and this Section

and Bank shall further have the right to suspend Service(s) if Bank determines, in its sole and absolute discretion, that Customer is not complying with the Rules and/or this Section.

2. **Credit Approval and Exposure Limits.** In utilizing ACH in the performance of this Agreement, Bank must make certain warranties on behalf of Customer. Specifically, Bank is charged with assuring the financial soundness of Customer to make the intended Entries. Bank may request financial information from Customer and/or a separate credit agreement. Bank shall also be authorized to obtain a credit report(s) on Customer as may be necessary from time to time. Bank may also assign Customer a limit representing the maximum aggregate dollar amount of Entries that may be initiated by Customer each day ("Exposure Limit"). Establishment of an Exposure Limit should not be interpreted or construed by Customer as a commitment or agreement to provide any credit or loans to a Customer and is subject to modification or termination at any time by Bank. Bank may establish, monitor and periodically review Customer's Exposure Limit and Customer's compliance thereof, and may, in Bank's sole discretion, cease processing Entries based on such review. Customer acknowledges that the Exposure Limit is solely for the protection of Bank and its assets. Customer understands that daily requests for Entries exceeding this amount are honored solely at the discretion of Bank. Requests not honored would be communicated to Customer.

3. **Pre-Funding.** Bank reserves the right to require Customer to prefund an Account maintained at Bank prior to the Settlement Date of the ACH file. Bank shall determine whether pre-funding is required based on criteria established from time to time by Bank. Bank will communicate directly to Customer if pre-funding is required and, if requested by Customer, will provide Customer with an explanation of its pre-funding criteria. If it is determined that pre-funding is required, Customer will provide immediately available and collected funds sufficient to pay all Entries initiated by Customer (a) not later than 8:00 a.m. local time five (5) Business Days before each Settlement Date, or (b) prior to initiating any Entries for which pre-funding is required

4. **Origination, Transmission, Processing Deadlines.**

- a. Customer may initiate Entries via Business Online Banking in the manner and format agreed to by Bank and Customer in the ACH Service Implementation Documents. Bank processes Prearranged Payment and Deposit Entries ("PPD"); Corporate Credit and Debit Entries ("CCD"); Corporate Trade Exchange ("CTX"); Telephone-Initiated Entries ("TEL"); International ACH Transactions ("IAT") and Web-Initiated Entries ("WEB") Entries as part of its standard Service package. Bank has the right to restrict the standard Entry class codes utilized by Customer. If notified by Bank of such restriction, Customer must cease use of the SEC code and the underlying transaction type.
- b. Bank will establish a Deadline for the receipt of Entries from Customer. Bank may establish different Deadlines for Entries depending on the method of delivery employed by Customer and all such Deadlines are subject to change. Bank must receive Customer's Entries at or prior to Deadline for the Entries to be processed on the ACH Business Day of receipt. Entries received after the Deadline shall be deemed to have been received on the next Business Day and will be processed on the next ACH Business Day.
- c. Same day Credit and same day Debit Entries may be initiated with the prior approval of Bank and subject to a fee disclosed by Bank, as long as the amount is less than the per Item amount established by NACHA from time to time and the format requirements are met.

5. **Content.** In submitting any Entry, Customer shall be responsible for providing all information required by Bank. Customer bears sole and exclusive responsibility to verify that the information set forth in Entries submitted to Bank is authentic, accurate and conforms to the Rules. The

Service(s) hereunder are only designed to respond to information provided by Customer. Accordingly, any inaccuracy in any information provided by Customer may result in unintended processing by Bank. Bank bears no responsibility for detecting or reporting any error in data supplied by Customer and shall not be liable to customer for any information provided by Customer with respect to an Entry which is inaccurate, incomplete, or otherwise incorrect.

6. **Prenotification.** Customer may send prenotification that Customer intends to initiate an Entry to a particular account in accordance with the procedures set forth in the NACHA Rules or as established by Bank. Customer may initiate live dollar Entries at least three (3) Business Days following the Settlement Date of the prenotification as long as there is not a return or Notice of Change Entry (NOC) related to the prenotification received by Bank. If the prenotification is returned, Customer must research the reason for return and make any necessary corrections before transmitting, if permitted, another Entry. If the prenotification results in an NOC that Bank receives by the opening of business on the second Business Day following such Settlement Date, Customer must make the required changes prior to a subsequent Entry to the Receiver's Account. If the NOC is received after that time, Customer must make required changes within six (6) Business Days or prior to a live Entry, whichever is later.

7. **Transmission of Entries by Customer.** User(s) shall initiate the Debit or Credit Entries on behalf of and selected by Customer. Bank shall be entitled to deem any person having knowledge of any Security Procedure to be a User. User(s) shall transmit Entries to Bank in computer readable form in compliance with the formatting and other requirements set forth in the NACHA file specifications or as otherwise specified by Bank. Entries shall be transmitted to Bank no later than the time and number of days prior to the Effective Entry Date specified in the Implementation Documents for the ACH Origination Service.

8. **Credit and Debit Entries; Records Retention.** Customer shall obtain an Authorization as required by the NACHA Rules from the person or entity whose account will be debited or credited as the result of a Debit or Credit Entry initiated by Customer and Customer shall retain the Authorization in original form while it is in effect and the original or a copy of each Authorization for two (2) years after termination or revocation of such Authorization as stated in the NACHA Rules. Customer must provide a copy of the Authorization to Consumer Receivers for Debit Entries to be initiated and must respond to Bank within five (5) Business Days of a request with an accurate record evidencing the Receiver's Authorization.

9. **Processing, Transmittal, and Settlement by Bank.**

- a. Except as otherwise provided for in this Agreement and if Bank elects to accept Entries, Bank shall: (i) use commercially reasonable efforts to comply with the instructions of Customer, (ii) process Entries received from Customer to conform with the file specifications set forth in the Rules, (iii) transmit such Entries as an ODFI to the ACH processor selected by Bank, (iv) settle for such Entries as provided in the Rules, and (v) in the case of an On-Us Credit Entry received for credit to an account with Bank, Bank shall credit the Receiver's account in the amount of such Credit Entry on the Effective Entry Date contained in such Credit Entry provided such Credit Entry is received by Bank at the time and in the form prescribed by Bank in Section 4.
- b. Bank shall transmit such Entries to the ACH processor by the deposit Deadline of the ACH processor, provided: (i) such Entries are completely received by Bank's Deadline at the location specified by Bank to Customer from time to time; (ii) the Effective Entry Date satisfies the criteria provided by Bank to Customer; and (iii) the ACH processor is open for business on such Business Day. Customer agrees that the ACH processor selected by Bank shall be considered to have been selected by and designated by Customer. Customer will receive immediately

available funds for any electronic Debit Entry initiated by it on the Settlement Date.

10. Settlement of Credit Entries and Returned Debit Entries.

Customer shall at all times maintain a settlement Account with Bank for the purpose of funding Customer's Entries. The total dollar amount of Entries initiated by Customer through Bank under all ACH Services and pending on a given day shall not exceed the lesser of collected or available balances in the Account. Customer agrees to settle for all Credit Entries issued by Customer, User(s), or Credit Entries otherwise made effective against Customer. Customer shall make settlement at such time on the date of transmittal by Bank of such Credit Entries as Bank, in its discretion, may determine, and the amount of each On-Us Entry at such time on the Effective Date of such Credit Entry as Bank, in its discretion, may determine. Customer shall settle with Bank for the amount of each Debit Entry returned by a RDFI or Debit Entry dishonored by Bank. Settlement shall be made by Customer to Bank in any manner specified by Bank. Notwithstanding the foregoing, Bank is hereby authorized to charge Customer's Account or any other account with Bank as settlement for Credit Entries issued by Customer or returned or dishonored Debit Entries. Customer shall maintain sufficient collected funds in the Account to settle for credit Entries at the time the Credit Entries are issued by Customer. In the event the Account or any other Customer account with Bank does not have collected funds sufficient on the Settlement Date to cover the total amount of all Entries to be paid on such Settlement Date, Bank may take any of the following actions:

- a. Refuse to process all Entries, in which event Bank shall return the data relating to such Credit Entries to Customer, whereupon Bank shall have no liability to Customer or to any third party as a result thereof;
- b. Process that portion of the Credit Entries as Customer has sufficient collected funds in the Authorized Account to cover, in whatever order Bank in its sole discretion shall elect to process, in which event Bank shall return the data relating to such Credit Entries as are not processed to Customer, whereupon Bank shall have no liability to Customer or any third party as a result thereof; or
- c. Process all Credit Entries. In the event Bank elects to process Credit Entries initiated by Customer and Customer has not maintained sufficient collected funds in the Authorized Account with Bank to cover them, the total amount of the insufficiency advanced by Bank on behalf of Customer shall be immediately due and payable by Customer to Bank without any further demand from Bank. If Bank elects to pay Customer's Account in the overdraft on any one or more occasions, it shall not be considered a waiver of Bank's rights to refuse to do so at any other time nor shall it be an agreement by Bank to pay other Items in the overdraft.

11. On-Us Entries. Except as provided in Section 13, Rejection of Entries, in the case of an On-Us Entry, Bank shall credit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in Section 10.b are met. If any of those requirements are not met, Bank shall use reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next Business Day following such Effective Entry Date.

12. Rejection of Entries. Customer agrees that Bank has no obligation to accept Entries and therefore may reject any Entry issued by Customer. Bank has no obligation to notify Customer of the rejection of an Entry but Bank may do so at its option. Bank shall have no liability for rejection of an Entry and shall not be liable to pay interest to Customer even if the amount of Customer's Entry is fully covered by a withdrawable credit balance in an Account of Customer or Bank has otherwise received full payment from Customer.

13. Returns and Notifications of Change.

a. **Returns.** Bank will advise Customer by secure email of Entries returned by the ACH Operator. Except for an Entry retransmitted by Customer in accordance with the requirements of Section 10, Bank shall have no obligation to reinitiate a returned Entry to the ACH Operator if Bank complied with the terms of this Agreement with respect to the original Entry. Customer shall be responsible for remaking and resubmitting any Debit Entries that may be returned. Bank may debit the Account for all funds that Customer has received for Entries that are subsequently returned.

b. **Limits on Reinitiation of Returned Entries.** Customer's rights to reinitiate a returned Entry is limited: (i) where Customer requests, and Bank is capable, Bank may reinitiate Debit Entries returned due to insufficient or uncollected funds, but not more than two (2) times following the return; (ii) Customer may also reinitiate an Entry when corrective action has been taken to remedy the reason for the return; (iii) neither Customer nor Bank shall knowingly resubmit Debit Entries returned due to stop payment unless reinitiation has been separately authorized by the Receiver after the Entry was returned; and (iv) Customer may not reinitiate Entries returned as unauthorized or returns due to revocation or termination of an authorization. Entries must in all events be reinitiated no later than 180 days of the Settlement Date of the original Entry.

c. **Excess Return Rates.** Bank will monitor the return rates of Customer's Entries and will require, within ten (10) Business Days of request, a detailed plan from Customer to reduce return rates considered excessive under the NACHA Rules within thirty (30) days from NACHA's request for information or may terminate this Agreement. Bank may charge Customer any fines or fees assessed against it by NACHA or an RDFI for returned Entries.

d. **Dishonor of Returned Entry.** Bank may dishonor a returned Entry to the RDFI if the returned Entry was untimely, contained incorrect information, was misrouted, was a duplicate, or resulted in an unintended credit to a Receiver related to the reversal process. Bank will transmit any dishonored return Entry within five (5) Business Days of the Settlement Date of the return.

e. **Notifications of Change.** Bank shall provide Customer all information, as required by the NACHA Rules, with respect to each NOC Entry or Corrected NOC Entry received by Bank relating to Entries transmitted by Customer. Bank will provide such information to Customer by fax, electronic transmission or secure email no later than one Business Day after the Business Day of such receipt of each NOC or Corrected NOC Entry. Customer shall ensure that changes requested by the NOC or Corrected NOC are made within six (6) Business Days of Customer's receipt of the NOC information from Bank or prior to initiating another Entry to the Receiver's account, whichever is later. Bank may refuse an NOC containing incorrect or incomplete information.

14. Reversals, Adjustments, Cancellations and Amendments.

a. **Reversals.** Customer or Bank may initiate Reversing Entries as permitted by the NACHA Rules in the event that previously originated data is erroneous or duplicated. In so doing, Customer warrants that it has initiated Reversing Entries or files within five (5) Business Days of the original Entry or Entries and within twenty-four (24) hours of discovery of the error. Upon proper and timely request by Customer, Bank will use reasonable efforts to effect a reversal of an Entry or File. To be "proper and timely," the request must (i) be made within five (5) Business Days of the Effective Entry Date for the Entry or File to be reversed; and (ii) be accompanied by a written Reversal/Cancellation Request on Customer letterhead and comply with all of the Rules. In

addition, if Customer requests reversal of a Debit Entry or Debit File, it shall concurrently deposit into the Customer Account an amount equal to that Entry or File. Customer also warrants that the account holder of a Reversing Entry has been notified of the reversal, and the reason for the reversal, no later than the settlement day of the reversal. For both Reversing Entries and files, Customer shall indemnify all parties to the transactions(s) from and against any claim, demand, loss, liability or expense. Under no circumstances shall Bank be liable for interest or related losses if the requested reversal of an Entry is not effected. Customer shall reimburse Bank for any expenses, losses or damages it incurs in effecting or attempting to effect Customer's request for reversal of an Entry

- b. **Adjustments.** Bank will give Customer prompt notice of Adjustment Entries received by Bank, and Bank is authorized to debit or credit the Account for such Adjustment Entries.
- c. **Cancellations or Amendment by Customer.** Customer shall have no right to cancel or amend any individual Entry after release to the ACH Operator, except as permitted by the NACHA Rules. However, if such request complies with the Security Procedures, Bank will use reasonable efforts to act on a request by Customer for cancellation of an Entry batch or file prior to transmitting it to the ACH Operator or, in the case of an On-Us Entry, prior to crediting a Receiver's Account. Bank shall not be responsible if such cancellation is not effected. Customer shall reimburse Bank for any expenses, losses, or damages Bank may incur in effecting or attempting to effect the cancellation or amendment of an Entry.

15. **Error Detection.** Bank has no obligation to discover and shall not be liable to Customer for errors made by Customer, including but not limited to errors made in identifying the Receiver, or an Intermediary or RDFI or for errors in the amount of an Entry or for errors in Settlement Dates. Bank shall likewise have no duty to discover and shall not be liable for duplicate Entries issued by Customer. Notwithstanding the foregoing, if Customer discovers that any Entry it has initiated was in error, it shall notify Bank of such error. If such notice is received no later than four (4) hours prior to the ACH receiving Deadline, Bank will utilize reasonable efforts to initiate an adjusting Entry or stop payment of any On-Us Credit Entry within the time limits provided by the Rules. In the event that Customer makes an error or issues a duplicate Entry, Customer shall indemnify, defend all claims, and hold Bank harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by Bank as result of the error or issuance of duplicate Entries.

16. **Prohibited Transactions.** Customer agrees not to use or attempt to use the Services (a) to engage in any illegal purpose or activity or to violate any applicable law, rule or regulation, (b) to breach any contract or Agreement by which Customer is bound, (c) to engage in any Internet or online gambling transaction, whether or not gambling is legal in any applicable jurisdiction, or (d) to engage in any transaction or activity that is not specifically authorized and permitted by this Agreement. Customer acknowledges and agrees that Bank has no obligation to monitor Customer's use of the Services for transactions and activity that is impermissible or prohibited under the terms of this Agreement; provided, however, that Bank reserves the right to decline to execute any transaction or activity that Bank believes violates the terms of this Agreement.

17. **Customer Representation and Warranties Indemnity.** With respect to each and every Entry transmitted by Customer, Customer represents and warrants to Bank and agrees that (a) each person or entity shown as the Receiver on an Entry received by Bank from Customer has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry; (b) such authorization is operative at the time of transmittal or crediting or debiting by Bank as provided herein; (c) Entries transmitted to Bank by Customer are limited to those types of Credit and Debit Entries set

forth in Implementation Document for ACH Origination; (d) Customer shall perform its obligations under this Agreement in accordance with all applicable laws, regulations, and orders, including, but not limited to, the sanctions laws, regulations, and orders administered by OFAC; laws, regulations, and orders administered by FinCEN; and any state laws, regulations, or orders applicable to the providers of ACH payment Services; and (e) Customer shall be bound by and comply with the provision of the NACHA Rules (among other provisions of the Rules) making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry. Customer specifically acknowledges that it has received notice of the rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Customer shall not be deemed to have paid the Receiver the amount of the Entry. Customer shall defend, indemnify, and hold harmless Bank, and its officers, directors, agents, and employees, from and against any and all actions, costs, claims, losses, damages, or expenses, including attorney's fees and expenses, resulting from or arising out of (i) any breach of any of the agreements, representations or warranties of Customer contained in this Agreement or (ii) any act or omission of Customer or any other person acting on Customer's behalf.

18. **Financial Information and ACH Audit.**

- a. Bank may from time to time request information from Customer in order to evaluate a continuation of the Service to be provided by Bank hereunder and/or adjustment of any limits set by this Agreement. Customer agrees to provide the requested financial information immediately upon request by Bank, in the form required by Bank. Customer authorizes Bank to investigate or reinvestigate at any time any information provided by Customer in connection with this Agreement or the Service.
- b. Upon request by Bank, Customer hereby authorizes Bank to enter Customer's business premises for the purpose of ensuring that Customer is in compliance with this Agreement and Customer specifically authorizes Bank to perform an audit of Customer's operational controls, risk management practices, staffing and the need for training and ongoing support, and information technology infrastructure.
- c. Customer hereby acknowledges and agrees that Bank shall have the right to mandate specific internal controls at Customer's location(s) and Customer shall comply with any such mandate. In addition, Customer hereby agrees to allow Bank to review available reports of independent audits performed at Customer location related to information technology, the Service and any associated operational processes. Customer agrees that if requested by Bank, Customer will complete a self-assessment of Customer's operations, management, staff, systems, internal controls, training and risk management practices that would otherwise be reviewed by Bank in an audit of Customer. If Customer refuses to provide the requested financial information, or if Bank concludes, in its sole discretion, that the risk of Customer is unacceptable, if Customer violates this Agreement or the Rules, or if Customer refuses to give Bank access to Customer's premises, Bank may terminate the Service and this Agreement according to the provisions hereof.

19. **ACH Security and Transmission Requirements.**

- a. Customer shall, with respect to banking information transmitted or exchanged between Customer and Bank as ODFI, and an RDFI, ACH Operator or Receiver using an Unsecured Electronic Network, both prior to the key entry and through transmission of any such information (i) encrypt the information or (ii) transmit or receive the information via a secure session, in either case using a commercially reasonable security technology that complies with applicable regulatory requirements. Customer

shall implement advancements to such encryption technology as they become available.

- b. Customer will comply with the NACHA ACH Security Framework and will establish, implement, and update, as appropriate, policies, procedures, and Systems with respect to the initiation, processing, and storage of Entries that are designed to: (i) protect the confidentiality and integrity of Protected Information until its destruction; (ii) protect against anticipated threats or hazards to the security or integrity of Protected Information until its destruction; and (iii) protect against unauthorized use of Protected Information that could result in substantial harm to a natural person. "Protected Information" for this purpose means the non-public personal information, including financial information, of a natural person used to create, or contained within, an Entry and any related addenda record. Such policies, procedures, and Systems must include controls that comply with applicable regulatory guidelines on access to all Systems used by such Customer to initiate, process, and store Entries. Customer agrees to develop and implement policies and procedures and establish oversight that will comply with the ACH Security Framework rule to ensure the protection of security and integrity of ACH sensitive data throughout its lifecycle. Customer shall notify Bank immediately upon learning that any unauthorized person may have gained access to sensitive ACH data as defined by the ACH Security Framework rule.

20. **Limitation of Liability for ACH Services.** In the performance of the ACH Services, Bank shall be entitled to rely solely on the information, representations, and warranties provided by Customer herein and shall not be responsible for the accuracy or completeness thereof. Bank shall not be responsible for Customer's acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal or authorization of any Entry received from Customer) or those of any other person, including, without limitation, any Federal Reserve Bank, ACH operator or transmission or communications facility, any receiver or RDFI (including, without limitation, the return of any Entry by such receiver or RDFI), and no such person shall be deemed Bank's agent. Customer agrees to indemnify Bank against any loss, liability or expense (including attorneys' fees and costs) resulting from or arising out of any claim of any person that Bank is responsible for any act or omission of Customer or any other person described in this Section.

21. **Data Retention.** Customer shall retain data on file adequate to permit the remaking of Entries for five (5) Business Days following the date of their transmittal by Bank as provided herein and shall provide such Data to Bank upon its request.

22. **Cooperation in Loss Recovery Efforts.** In the event of any damages for which Bank or Customer may be liable to each other or to a third party pursuant to the Service(s) provided under this Agreement, Bank and Customer will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.

23. **Customer's Use of Third-Party Service Provider.** Customer may not engage a TPSP to generate and/or transmit Entries to Bank without the prior written consent of Bank and without requiring such TPSP to first enter into a written agreement with Bank setting out the relationship, rights and duties between such TPSP and Bank. Customer agrees any such TPSP shall be Customer's agent for all purposes under this Service, including the right of Bank to give notices to the TPSP and receive directions from the TPSP, all on behalf of Customer. The TPSP must also comply with the ACH Security Framework rule described above, must initiate Entries to Bank using secure, encrypted email, if it does not use Business Online Banking and must perform an annual audit to determine its compliance with the NACHA Rules as if it were ODFI. Documentation supporting completion of the audit must be maintained for six (6) years and must be

made available to NACHA upon request. Customer shall indemnify Bank against any loss, liability or expense, including reasonable attorney's fees, with regard to a breach of these Service Terms that may result from the actions of a TPSP.

24. **Certain Credit Entries.** For a non-consumer Credit Entry subject to UCC Article 4A, Customer understands:

- a. The Entry may be transmitted through the ACH System;
- b. The rights and obligations of the Originator concerning the Entry are governed by and construed in accordance with the laws of the State of New York, unless the Originator and the ODFI have agreed that the laws of another jurisdiction govern their rights and obligations;
- c. Credit given by the RDFI to the Receiver for the Entry is provisional until the RDFI has received final settlement through a Federal Reserve Bank or otherwise has received payment as provided for in Section 4A-403(a) of UCC Article 4A; and
- d. If the RDFI does not receive such payment for the Entry, the RDFI is entitled to a refund from the Receiver in the amount of the credit to the Receiver's Account, and the Originator will not be considered to have paid the amount of the credit Entry to the Receiver.

B. ACH POSITIVE PAY

The Service permits Customer to allow specified ACH Debits to be debited to Customer's Account and to decline to allow other specified ACH Debits to be so debited. Customer may also use the Service to establish rules to apply to future ACH Debits, so that such future ACH Debits will be allowed automatically.

Customer agrees to comply with the NACHA Rules for all Entries.

1. Terms of Service.

- a. Bank will establish Deadlines within which Customer may act on a particular ACH Debit and may change such time periods and deadlines at any time without notice. Customer may establish limits and restrictions on the types or rules that Customer may establish with respect to ACH Debits.
- b. User permissions are established online. Customer must access the daily reports of Exception Items ("Exceptions Items") via Business Online Banking. Using such website, Customer must then notify Bank which Exception Items to Pay/Accept or which to Return. If Customer fails to notify Bank by the Deadline, Bank will Return the Entry.

2. Bank Rights.

- a. Customer acknowledges that the Service does not preclude Bank's standard ACH processing procedures, which may cause an ACH Entry to be dishonored even if Customer instructions do not otherwise require Bank to return such ACH Entry.
- b. Customer acknowledges that the ACH Positive Pay Service is intended to be used to identify and return ACH Entries which Customer suspects in good faith are unauthorized. The Service is not intended to be used as a substitute for authorization instructions or to delay Customer pay/accept return decisions on Exception Items, including and not limited to stop payment orders on ACH Entries which are not suspected in good faith to be unauthorized. If Bank suspects or deems, in its sole discretion, that Customer is using the Service contrary to those intentions, Bank may require Customer to provide evidence that ACH Entries Bank returns pursuant to Customer instructions were in fact unauthorized. In addition, Bank may hold Customer liable for losses Bank sustains on ACH Entries which Bank is requested

to return under such Service and which Customer does not reasonably establish as unauthorized ACH Entries.

C. ACCOUNT RECONCILIATION

The purpose of the Service is to provide automated reconciliation of Customer's Account on the basis of an Electronic Issue File created in accordance with Bank and Customer's specifications. Bank offers several account reconciliation features as part of the Service to help Customer manage payment reconciliation with respect to any deposit Account(s) (such specific Account(s) subject to this Service shall be referred to collectively as the "Designated Account" the type of Service you are trying to achieve, Financial Institution can provide you with certain reports and statements over specific time periods relating to your deposits or other Items. Service consists of the following:

1. **Deposit Reconciliation.** With deposit reconciliation, you can track deposits based on special encoding on the deposit ticket of the Designated Account. Financial Institution can produce reports for you on a daily, weekly, or monthly basis.
2. **Partial Reconciliation.** With partial reconciliation, Financial Institution can provide you with a listing of all Checks paid on the Designated Account.
3. **Full Reconciliation.** With full reconciliation, you shall deliver to Financial Institution, via an Electronic File as required by Financial Institution, all Checks written on the Designated Account. Financial Institution will then in turn, reconcile such Designated Account.
 - a. You shall review any Account Reconciliation reports received from Financial Institution immediately upon receipt and advise Financial Institution in writing of any missing or inaccurate information in accordance with the Agreement.
 - b. Financial Institution does not assume a duty to identify and/or return any duplicate Items, Checks with duplicate Check numbers, misencoded items, or Checks lacking a Check number unless you have enrolled for another Service that Financial Institution offers such as Check Positive Pay which identifies such inconsistencies.
4. **Accuracy and Timeliness of Information.**
 - a. Bank will use reasonable efforts to provide the Paid Items List requested through the Service in a prompt fashion, but shall not be liable for temporary failure to provide timely information. In such event, Customer shall be responsible for carrying out banking business through alternative delivery channels.
 - b. Customer will notify Bank of non-receipt of Paid Items List no later than three (3) Business Days after the Reconciliation Period.
5. **Discrepancy.** Customer agrees to review Paid Items List and the Outstanding Items List promptly to insure accuracy, and completeness of the information. Customer shall notify Bank within fourteen (14) Business Days after receipt of any discrepancy. If Customer fails to notify Bank within fourteen (14) Business Days after receipt of the Paid Items List that any information on the Paid Items List is inaccurate, incomplete, unclear, unreadable, or otherwise unacceptable, Customer shall be deemed to have accepted the Paid Items List and Outstanding Items List and to have waived (a) any and all objections including but not limited to objections concerning its accuracy, completeness, clarity, readability or quality, and (b) the right to bring any action or raise any claim against Bank based on any such objection. Bank shall not be liable for any loss, including loss of interest, resulting from Customer's failure to give such notice and Customer shall be precluded from asserting such discrepancy against Bank.

6. **Stop Payment or Void** If Customer desires to stop payment on an issued Check, Customer must issue a stop-payment order with respect to such Check in accordance with Bank's usual stop-payment procedures. Service fees will apply in accordance with such stop payment procedures. If Customer desires to void a Check serial number or range of Check serial numbers not yet issued, Customer must deliver to Bank a void file in a method or format mutually agreed upon by Customer and Bank.

D. CHECK POSITIVE PAY

The Service permits a mean for Customers to minimize loss from fraudulent Check issuance or payment. If the Service is requested by Customer and agreed to by Bank, Customer and Bank agree that in the event of an inconsistency between this Agreement and Applicable Law, the provisions of this Agreement shall prevail to the extent permitted. Nothing in this Agreement is intended to limit Bank's right to return an Item unpaid if there are insufficient available funds in the "Designated Account".

1. **Format Specifications.** Customer shall comply at all times with Bank's format and data transmission standards for the Positive Pay Service. Customer agrees to Issue Items in accordance with Bank's specifications and will change the Item format when requested to do so by Bank. Bank shall not be responsible for correcting or resolving processing problems caused by substandard quality magnetic encoding. Customer shall supply Bank with sample Items for testing.
2. **Customer Responsibilities.** Customer shall designate to Bank all Account(s) that are to be used with the Service. Customer will provide Bank with a file of all outstanding Items prior to activation of this Service. On each day that an Item is written against "DesignatedAccount", Customer shall supply Bank with all required Item Issue Information. Such information shall include, without limitation, the Account number, the Item number, the issue date, the face amount and in some cases the payee name. Customer shall be responsible for the accuracy and completeness of information provided to Bank.
3. **Bank's Responsibilities.** In reliance on the information provided by Customer, Bank shall create a master Issue File for each "Designated Account" ("Issue File"). Excluding valid stop-payment orders and issue records voided by Customer request, all Items, including those that have been electronically converted, that match by serial number and amount to Bank's Issue File will be deemed properly payable and Bank is authorized to pay all such Items.
4. **Paid Not Issued.**
 - a. Each Business Day, Bank shall make reasonable efforts to report to Customer any Item serial numbers that do not match the Issue File ("Paid Not Issued") and, if requested and available, provide the front and back images of those Items for that day's presentment; provided, however, no images shall be provided in the case of electronically converted Items.
 - b. Customer agrees to review and make payment decisions on the Paid Not Issued Items prior to Bank's established Deadline. If Customer does not make decisions by the Bank's established Deadline, all Paid Not Issued items will be returned.
 - c. Bank may rely on any instructions received from Customer that Bank reasonably believes to be genuine. Bank shall have no responsibility for any liability, loss or damage resulting from: (i) payment in accordance with this Section of a Paid Not Issued Item that is altered or unsigned or which bears the forged or unauthorized signature of Customer; (ii) the return of any Paid Not Issued Item to the depository bank in accordance with this Section; or (iii) Customer's failure to meet Bank's established Deadlines. Customer may be required to place a stop payment order on any returned Paid Not Issued Item, which shall be subject to Bank's customary stop payment fee. Bank's failure to report a discrepancy will not discharge Customer's obligation

with regard to any Item, and shall not obligate Bank to return any Item if it is otherwise properly payable.

5. **Teller Positive Pay.** All Positive Pay Accounts will interface with Bank's teller system unless otherwise agreed by Bank. Bank will compare Items presented for cash at an office of Bank with Customer's Issue File. Customer agrees that Bank may refuse to cash any Paid Not Issued Item and such refusal will not be deemed to be a wrongful dishonor. In the event of dishonor, Bank will refer the presenter to Customer. Customer acknowledges that under some circumstances Item Issue Information submitted by Customer may not be reflected in Customer's Issue File until the opening of the following Business Day. Customer agrees to follow established procedures should it need to manually add an Item to the Issue File. Bank will make reasonable efforts to assist Customer, but Customer acknowledges that Bank may be unable to process such request on a same day basis. If a special handling process for teller cashed Items is selected by Customer and agreed to by Bank, Bank shall attempt to contact Customer for approval prior to the encashment of any Item that does not appear in the Issue File. In the event that Customer requests Bank not activate or temporarily deactivate teller Positive Pay, Customer agrees to assume all risk of loss for any Bank teller-cashed Item that would have been identified as a Paid Not Issued Item prior to acceptance.

6. **Payee Positive Pay.** In addition to the Item Issue Information provided by Customer for the Positive Pay Service, Customer shall supply Bank with the payee name(s) for each Item issued by Customer. Customer shall be responsible for the accuracy and completeness of the payee information provided to Bank. In reliance on the payee information provided by Customer, Bank will compare the payee information on the Item presented for encashment at a Bank teller line with Customer's Issue File. Customer agrees that Bank may refuse to cash any Item where the payee name is not an exact match and such refusal will not be deemed to be wrongful dishonor. In the event of dishonor, Bank will refer presenter to Customer. Customer acknowledges that under some circumstances issuance information submitted by Customer may not be reflected in the System until the opening of the following Business Day.

E. ELECTRONIC DATA INTERCHANGE (EDI)

Electronic Data Interchange (EDI). EDI allows Customer to receive detailed information concerning Automated Clearing House ("ACH") transactions to / from Account(s) which are translated into a readable format.

- a. The report provided by Bank shall include, as applicable, the company name, company description, individual name, individual ID/customer ID, and dollar amount of the ACH transaction.
- b. Bank shall use commercially reasonable efforts to provide the reports to Customer each Business Day.

F. LOCKBOX

1. **P.O. Box Rental and Mail Collection.** Bank is authorized to rent a P.O. Box to receive mail in the name of the Customer, and to have unrestricted and exclusive access to such P.O. Box for the purposes of collecting all mail and any other Items deposited therein. Bank will collect the mail from the P.O. Box every day (except on Bank holidays, weekends, and when the Bank is closed due to circumstances beyond its control, including without limitation, an act of God, etc.). Bank reserves the right to change the Post Office Box address in accordance with the Changes and Notices provisions below.

2. Lockbox Administration.

- a. Customer is responsible for mailing invoices to its Clientele and for instructing its Clientele to mail payments to the P.O. Box and the other requirements of this Agreement.
- b. Customer may make a written request to Bank to return to Customer a Clientele payment without depositing to the Lockbox Account. Bank shall use reasonable efforts to act upon such request, but shall have no liability if such request is not affected.
- c. Payment envelopes will be destroyed immediately and coupons/invoices will be retained for fifteen (15) calendar days and then destroyed. Extraneous material will be forwarded to Customer at Bank's convenience, and Bank reserves the right to charge reasonable handling or postage fees if the volume is significant.

3. **Application of Payments.** Bank is authorized to endorse Checks, drafts or other Items on Customer's behalf for deposit into the Lockbox Account. Customer agrees to indemnify and hold Bank and its third-party providers harmless for any Items that are so endorsed which were not properly payable to Customer but are nevertheless credited to the Lockbox Account.

- a. **Payee Designation.** The Item's payee must be Customer's business or trade (dba) name, or a reasonable variation thereof as determined by Bank at any time in our sole discretion. If the payee is blank, Bank may insert Customer's name. Items deemed by Bank to be unacceptable for deposit will be forwarded to the Customer.
- b. **Instruments Payable in Foreign Money.** Instruments payable in foreign money will be processed as an in-branch deposit using our then current foreign exchange process.
- c. **Missing Date.** All undated Items will be dated as of the processing date and processed as hereinafter provided.
- d. **Predefined Instructions.** Written Payment Application instructions that are provided to and accepted by Bank from Customer in writing, and which may be amended from time to time pursuant to the Changes and Notices provisions below.
- e. **Postdated.** Postdated Items may be processed according to the Predefined Instructions on a best effort basis.
- f. **Stale Date.** Items dated six (6) months or older may be deposited.
- g. **Signature Missing.** Items missing a signature may be processed according to the Predefined Instructions on a best effort basis. Customer warrants that any unsigned Items (e.g. remotely created checks) have been properly authorized by Clientele.
- h. **Items Bearing Restrictive Legends or Notations.** Items bearing restrictive legends or notations such as, without limitation, "Payment in Full", "Void after 90 Days", "Void if over \$500", or the like, may be deposited without regard for the restrictions contained thereon. In no event will Bank be liable for any person's acceptance or refusal to accept such restrictions.
- i. **Amounts Missing.** Items missing either script or numeric amounts may be deposited.
- j. **Payment Methods.** The Lockbox Service will not be promoted for the deposit of currency or coin. Any currency or coin retrieved from the Lockbox will be exchanged for a cashier's check and deposited to your Account; there may be a delay in

processing such deposits and additional Bank processing fees. The Bank will have no liability to you or the sender for claimed discrepancies between the amount sent and the amount deposited. The Customer assumes all risk of loss resulting from receipt of cash in the Lockbox. Credit Card payments received will be scanned and securely emailed to Customer's company User(s) for processing. Bank cannot process credit card payments on behalf of Customer.

- k. **Returned Checks.** In the event that an Item deposited into Customer's Account is returned unpaid for any reason, Bank may charge the Lockbox Account (or any account you have with us) for the amount of the Item.
- l. **Bank's Right of Rejection.** Notwithstanding any of the foregoing, Bank reserves the right to reject for deposit any Item at any time with or without cause and either with or without notice to you. Credit for Items received in accordance with the Terms and Conditions herein will be provisional, subject to our right of rejection and to final payment under the UCC.
- 4. **Provisions Applicable for Property Management Account(s).** If Customer acts as a property manager in the ordinary course of its business ("Property Manager Customer") and will use the Lockbox Services for receipt of payments on behalf of their customer/clients, Property Manager Customer agrees to the Terms and Conditions of this Agreement on behalf of themselves and their customers/clients. The Lockbox Account title must reflect the customer's/client's ownership and the Property Manager Customer's agency relationship with the customer/client. Property Manager Customer represents and warrants that it has the authority to represent the customer/client and act as agent on their behalf in connection with the use of the Lockbox Service and to bind their customer/client to the Terms and Conditions of this Agreement. Property Manager Customer also represents and warrants that Property Manager Customer has the authority to direct lessees, tenants or other debtors of their customer/client to send payments to the Lockbox as the location to be used in remitting payments to their customer/client. Property Manager Customer agrees to provide Bank with evidence of Property Manager Customer's authority with respect to any such customer/client pursuant to this Agreement as Bank may, in its sole discretion and without obligation, request from time to time. Property Manager Customer further agrees that Bank may, in its sole discretion and without obligation, contact the customer/client directly at any time without prior notice to or consent from Property Manager Customer.
- 5. **Account Agreement Applicability.** All Lockbox contents, including but not limited to cash, Items, invoices, coupons and anything else retrieved from the P.O. Box, processed and credited are subject to the Terms and Conditions of the Bank's Deposit Account Agreement which are subject to change, from time to time. Every provision of the Deposit Account Agreement between Customer and Bank, with respect to Customer's account, will remain in full force and effect unless contradicted herein.
- 6. **Service Acknowledgement and Service Issues.** All parties acknowledge that (a) mail availability for lockbox processing is subject to delay or non-delivery due to postal service delays, weather conditions, road closures and other events beyond the reasonable control of the Bank; (b) Customer will notify Bank thirty (30) days in advance of any change in Customer's invoices and/or mailing schedules.
- 7. **Limitation of Liability.** Bank will not be responsible for any loss, delay, cost or liability which arises, directly or indirectly, in whole

or in part, from (a) Customer's actions or omissions, or those of third parties which are not within Bank's immediate and reasonable control; (b) Customer's negligence or breach of any agreement with Bank; (c) any ambiguity, inaccuracy or omission in any instruction or information provided to Bank; (d) any error, failure or delay in the transmission, transportation of, or delivery of data, records, documents or items due to a breakdown in any computer or communications facility; (e) accidents, strikes or labor disputes, civil unrest, fire, flood, water damage (e.g., from fire suppression systems), or acts of God; (f) causes beyond Bank's reasonable control, except for losses caused by the Bank's gross negligence or willful misconduct. **BANK'S LIABILITY FOR ANY LOSS, COST OR LIABILITY ARISING FROM THE BANK'S ACTS OR OMISSIONS SHALL NOT EXCEED THE SERVICE FEES FOR THE MONTH IMMEDIATELY PRECEDING THE DATE OF THE LOSS. IN NO EVENT SHALL BANK BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES WHICH YOU MAY INCUR OR EXPERIENCE AS A RESULT OF ENTERING INTO OR RELYING ON THIS AGREEMENT, REGARDLESS OF WHETHER THE BANK KNEW OR SHOULD HAVE KNOWN OF THE LIKELIHOOD OF THESE DAMAGES.** Bank shall have no obligation with respect to any Item lost, damaged or stolen unless Bank has been grossly negligent or has engaged in willful misconduct. It is Customer's responsibility to obtain a replacement Item for any Item lost, damaged or stolen at Customer's sole cost. Customer acknowledges that Bank's fees have been established in contemplation of the above limitations, and on Customer's agreement to review statements and notices promptly and to notify Bank immediately of any discrepancies or problems. Any claim, action or proceeding to enforce the terms of this Agreement or to recover for any Service-related loss must be commenced within one (1) year from the date that the event giving rise to the claim, action or proceeding first occurs.

- 8. **Information Processing and Reporting.** Bank will not be responsible for determining the accuracy or completeness of information provided to Bank. Customer shall always keep correct and accurate records regarding Clientele Account(s), including their financial and payment records, and such records shall be provided to Bank upon demand. Bank's officers, authorized employees and providers shall have the right to verify the validity, amount, or other matter relating to Clientele Account(s) directly with Clientele or otherwise. Customer acknowledges that it is not possible for Lockbox Services to be entirely free from operator, programming or Equipment error, and that errors in processing and compiling data may occasionally occur. Customer agrees to review and verify all results and to maintain adequate controls for insuring both the accuracy of information and the detection of errors. Bank's sole responsibility for such errors will be to reprocess the information for the period in question and to submit corrected reports at Bank's expense. Customer agrees to maintain adequate backup files of all submitted data for a reasonable period of time in order to facilitate any needed reconstruction of transactions.
- 9. **Notification of Error.** Transactions posted to the Lockbox Account will be reflected on Customer's periodic statement issued by Bank. Customer agrees to notify Bank promptly of any erroneous or unauthorized transactions shown on any such statement or report, but in no case later than fourteen (14) days following delivery thereof. If Customer fails to give such notice, Bank shall not be liable for losses which Bank could have avoided had Customer provided prompt notice. If Customer fails to notify Bank in writing of any error or discrepancy within thirty (30)

calendar days following the day the notice, statement, or report is mailed, delivered or otherwise made available, Customer shall be precluded from asserting such discrepancy or claim against Bank.

10. **Indemnification.** Customer shall be liable to Bank as the general endorser on all Items processed and credited to Customer's Account pursuant to this Agreement. Customer agrees to defend, indemnify and hold Bank harmless along with its officers, directors, employees and Third-Party Providers, from and against any and all actions, costs, claims, losses, damages or expenses, including attorneys' fees and expenses, resulting from or arising out of any action or inaction taken by us consistent with the provisions of this Agreement.
11. **Amendment, Integration and Severability.** This Agreement represents the final agreement between the parties as of the date of execution and may not be contradicted by oral agreements nor modified except as provided in Notice below. If any provision of this Agreement is unenforceable, then the unenforceable provision will be severed, and the remaining provisions will be enforceable. This Agreement is in addition to and not in substitution for any lien or security interest held by Bank with respect to any loan and shall not operate as a merger or any contract or debt or suspect the fulfillment of, or affect the rights, remedies or powers of Bank in respect to any obligation or security interest held by Bank.
12. **Changes and Notices.** Bank will provide Customer with Notice of any change in terms of this Agreement, as required by this Agreement or by applicable law. Customer may request a change in terms by making a written request to Bank; no change will be effective unless Bank, at its sole option, accepts such change in writing. Customer will provide Bank with Notice of any change in Customer's name, address or other application information, in accordance with Bank's established procedures in effect at that time. If a written Notice is required by the terms of this Agreement or by applicable law, it shall be provided through first class mail to the address listed on record for the Lockbox Account (as to Customer) or to the address provided on the most recent Lockbox Account statement (as to Bank).
13. **Termination.** The Lockbox Service may be terminated at any time without cause by either Party upon thirty (30) days written notice to the other Party. Bank may, at its sole option, terminate the Agreement immediately upon notice to Customer if (a) Customer breaches any Agreement with Bank; (b) Customer becomes insolvent or the subject of a bankruptcy or dissolution proceeding; (c) Customer at any time fails to maintain sufficient collected funds in the Lockbox Account to adequately cover the amount of deposit adjustments, returned Items, or Bank fees, or (d) the Bank is precluded from offering Lockbox Services by applicable law or regulatory action. Termination of the Services herein shall not relieve either party of their obligations arising prior to such termination, including but not limited to payment of fees, and any indemnification obligation that relates to action or inaction taken prior to termination. Upon termination Customer shall immediately notify its clientele to discontinue use of the P.O. Box mailing address. All hold harmless and indemnification provisions contained in this Agreement shall not be affected by and shall survive termination of the Agreement.
14. **Tax Liability.** This Agreement does not affect Customer's responsibility to pay any tax liability.
15. **Applicable Law.** The provision of Lockbox Services and this Agreement shall be governed by the laws of the State of Florida including its adopted version of the Uniform Commercial Code.

16. **Interpretation.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Agreement.

17. **Assignment, Transfer and Successors.** Bank may assign or delegate any of its duties under this Agreement to a third-party provider at any time at its sole discretion and may disclose Customer information as necessary for the party to perform those duties. Customer shall not assign or transfer any of its rights or obligations under this Agreement without prior written consent of Bank. If Bank consents to such transfer or assignment, this Lockbox Agreement shall bind the successor/assignee as Customer.

18. **Authority.** Each party hereto warrants and represents to the other that it has the full power and authority to enter into this Agreement in accordance with all the terms, conditions, covenants and provisions hereof, and that the execution and delivery of this Agreement has been duly authorized by proper corporate action. Customer represents and warrants that it has the legal power and authority to enter into the terms of this Agreement and has obtained all third party consents with respect to the performance of its terms.

G. REMOTE DEPOSIT CAPTURE

The Remote Deposit Capture Service provides Customer with the option of making Electronic Deposits using one or more products offered by Bank.

1. **Process.** Customer must always maintain an Account with Bank. Customer will capture paper Checks received from its customers into Check Images and transmit Check Images to Bank for processing and collection.
2. **Scanner and Software.** Bank will provide Customer with the scanner and Software necessary for Customer to make deposits through the Remote Deposit Capture Service. The scanner must be returned upon termination of this Agreement in good condition, ordinary wear and tear excepted. It is Customer's sole responsibility to operate and maintain the scanner in accordance with the instructions of the manufacturer. Bank recommends regular scanner maintenance as provided in the user guide. Bank will provide the scanner to Customer on an "as is," "as available" basis and BANK MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE REMOTE DEPOSIT CAPTURE SERVICE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
3. **Determination of Items Eligible for Remote Deposit Capture Services.**
 - a. Only a Check/draft, payable on demand, and drawn off or payable through or at an office of a bank, is eligible for deposit as a Check Image. Without limiting the generality of the preceding sentence, the following Items are not eligible for deposit under the Remote Deposit Capture Service(s) and Customer must deposit these original paper Checks with Bank for collection:
 - Checks, including travelers checks, that are drawn on banks located outside of the United States;
 - Checks payable in a medium other than U.S. Dollars;
 - Non-cash Items (as defined under Section 229.2(u) of Federal Reserve's Regulation CC);
 - Promissory notes and similar obligations, such as savings bonds;
 - Third Party Checks; and

- Checks issued by and drawn on Customer or an affiliate of Customer.

In addition, prohibited Checks include any Check that:

- Customer knows or suspects, or should know or suspect, is fraudulent or otherwise not authorized by the owner of the account on which the Check is drawn;
- A charge-back Item;
- An Item that has not been previously endorsed by a Bank and is either a "substitute Check" (as defined in Regulation CC) or "image replacement document" that purports to be a Substitute Check;
- A "remotely created check"; or
- An Item that is not acceptable by Bank for deposit in the Account as provided in the Account agreement.

- b. Customer represents and warrants to Bank that Customer shall not use the Service to transmit electronically created Checks (which are Check Images or other Items that were not originally captured from the original paper Checks), unless permitted by applicable law.
- c. **Endorsement is applied by machine endorsement spray as "BOFD 075917937".** If machine endorsement does not work properly or is missing, Customer shall endorse each paper Check, "For Remote Deposit Only, NNB" either manually or via stamp and ensure that other necessary endorsements are obtained prior to capturing Check Images for transmission to Bank. If Customer does not properly endorse the Check, the deposit may fail. Bank reserves the right to reject all Items that are not endorsed as specified.

4. Security Procedures.

- a. You shall be solely responsible for preventing and safeguarding against unauthorized transmissions and unauthorized access to the following, all of which is referred to collectively as "Information and Systems": (i) original Checks; (ii) Electronic Items; (iii) Files; and (iv) your information, systems, connections and Approved Equipment that interface with, connect to or allow access to Financial Institution, its information, systems and Approved Equipment, and Security Devices used in transmitting the Electronic Items or related information. You shall establish, maintain and enforce physical and logical commercially reasonable security practices, techniques and procedures with respect to access, storage and maintenance to safeguard against unauthorized transmissions and unauthorized access to the Information and Systems. Such practices, techniques and procedures shall be no less than the security-related requirements set forth in any applicable laws, regulations, regulatory guidelines, and rules.
- b. You shall disclose security-related information and information concerning Financial Institution and the Information and Systems only to persons to whom disclosure is necessary for the conduct of your business affairs and you agree to take commercially reasonable steps to maintain the confidentiality of all such security-related information and information concerning Financial Institution and the Information and Systems.
- c. You warrant that no individual will be allowed to create Electronic Items and/or transmit them to Financial Institution in the absence of proper supervision and safeguards and that persons only authorized by you shall authorize transactions pursuant to this Service and transmit the Electronic Items and instructions related thereto to Financial Institution.

- d. You shall notify Financial Institution immediately, followed by written confirmation, if you have reason to believe or suspect there has been any unauthorized access to the Information and Systems or unauthorized transmissions.

- e. You understand the risks of using the Internet and that, while Financial Institution and its service providers have established certain Security Procedures, such as firewalls, codes and data encryption designed to prevent unauthorized access to your Designated Account(s), there can be no assurance that inquiries or transaction activity will be completely secure. You also understand that access to the Service will not be free from delays, malfunctions or other inconveniences generally associated with electronic media such as the Internet and Business Online Services. You agree that Financial Institution is not responsible for any such unauthorized access, delays or malfunctions, or the acts of third parties.

5. Capture of Check and Check Information.

- a. Customer shall be responsible for accurately capturing an image of each paper Check, the MICR Data and the correct dollar amount of the Check into the System. In the event the condition of a paper Check precludes a complete automated read by scanner, Customer shall be responsible for visually inspecting the Check and repairing the MICR Data, if necessary. Customer shall be responsible for the inspection of all Check Images to ensure the legibility of the Check Image (including without limitation the dollar amount and signature of the drawer), for the repair of any MICR Data, and for ensuring that any and all information on a paper Check is accurately captured and legible in the resulting Check Image and otherwise complies with any Check Image quality standards and guidelines that may be established by the American National Standards Institute ("ANSI"), ECCCHO Rules, the Federal Reserve, other applicable regulatory agency or clearinghouse, or that Bank may provide to Customer from time to time. Customer acknowledges that current image technology may not capture all security features (e.g. watermarks) contained in the original paper Checks and agrees to assume any and all losses resulting from claims based on security features that do not survive the image process.
- b. Customer further acknowledges that Bank does not verify the accuracy, legibility or quality of the Check Image or MICR Data prior to processing an Electronic Deposit. Bank may, in its sole discretion, reject, repair, alter, amend, re-format or convert the Check Image Metadata or MICR Data submitted in an Electronic Deposit in accordance with general check collection practices and industry presentment standards, but Bank shall have no obligation to reject, repair, alter, amend, re-format or convert the Check Image Metadata or MICR Data. If Bank requires that Customer comply with certain formatting standards or other guidelines when submitting Electronic Deposits and Customer declines to implement, or comply with such standards or guidelines, Customer acknowledges that Bank shall not be liable for any error or loss that results from Bank processing such Electronic Deposit or from Banks re-formatting or conversion of the Electronic Deposit prior to processing.
- c. Bank shall not be liable to Customer for failure to process an Electronic Deposit, or any error that results in processing or collecting an Electronic Deposit: (i) for which Customer has not provided Bank with full or correct MICR Data and dollar amount from the original paper Check; (ii) for which Customer has not provided an accurate and legible image of the original paper Check; (iii) for which Customer has failed to comply with formatting standards or other guidelines required by Bank; or (iv)

which would violate this Agreement, the Implementation Documents. Customer agrees not to use or access the Service in a location outside the continental United States.

6. **Upload of Electronic Deposit to Bank.**

- a. Customer shall upload the Electronic Deposit transmission (containing one or more Electronic Deposits) to Bank prior to the daily Deadline established by Bank from time to time for the receipt of Electronic Deposits. Any Electronic Deposit transmission received by Bank after its Deadline shall be deemed to have been received by Bank at the opening of its next Business Day. Performance of the Service may be affected by external factors such as communication networks latency. Customer is responsible for the transmission of the Electronic Deposit until Remote Deposit Capture reports a successful acknowledgment of receipt of the transmission.
- b. An Electronic Deposit is received when the entire Electronic Deposit transmission in which that Electronic Deposit is contained is received by Bank. If only a portion of that Electronic Deposit transmission is received by Bank for any reason, including without limitation a failure during the transmission to Bank, the Electronic Deposit transmission is deemed to have been not received by Bank with respect to any Electronic Deposit contained in that Electronic Deposit transmission (including any Check Image contained in the portion of that Electronic Deposit transmission that was received).

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

8. **Storage of Check Images by Bank.** Bank shall store Check Images and other Check information on the Remote Deposit Capture System in accordance with Bank's record retention schedule and shall make such information available to Customer according to the applicable system information and fee schedule. If the Service is terminated, Customer may obtain Check Images of Check information at that time and at the price outlined in the fee schedule.

9. **Retention, and Destruction of Original Paper Checks.** Customer shall employ commercially reasonable methods to securely store the original paper Check for a minimum of ninety (90) days and then shall destroy the original Checks based on guidelines identified in the applicable Implementation Documents. At Bank's request, Customer shall provide any original paper Check to Bank if the original paper Check has not been destroyed by Customer and Bank needs the original paper Check to process a payment or resolve a dispute arising from an Electronic Deposit.

10. **Representations and Warranties.** With respect to each Check Image or Electronic Deposit that Customer transmits to Bank, Customer is deemed to make any representation or warranty that would have been applied had Customer deposited the original paper Check. In addition, Customer is deemed to make to Bank any representation or warranty that Bank makes, under applicable law, clearinghouse rule, Federal Reserve Operating Circular, bi-lateral agreement or otherwise, to any person (including without limitation a collecting bank, a Federal Reserve Bank, a paying bank, a returning bank, the drawee, the drawer, any endorser, or any other transferee) when Bank transfers, presents, or originates the Electronic

Deposits or Check Image, or a Substitute Check created from that Check Image. These representations and warranties include but are not limited to, that: (a) the transmissions contain accurate images of the front and back of the original Checks; (b) the transmissions contain all necessary endorsements up until the Checks are imaged; and (c) no depository bank, drawee, drawer, or endorser will be asked to make payment based on an Item that is has already paid.

11. **Customer Responsibility.** With respect to each Check Image or Electronic Deposit that Customer transmits to Bank, Customer shall indemnify and hold Bank harmless from and against any and all claims, demands, damages, losses, liabilities, penalties and expenses (including without limitation, reasonable attorney fees and court costs at trial or on appeal) arising directly or indirectly: (a) from Customer's breach or a representation or warranty set forth in Section 10 above; (b) as a result of any act or omission of Customer in the capturing, creation or transmission of the Check Image or Electronic Deposit, including without limitation the encoding of the MICR Data from the original paper Check; (c) from any duplicate, fraudulent or unauthorized Check, Check Image or Substitute Check; (d) for any loss caused by Bank's acceptance or creation of a Check Image or Substitute Check instead of presentment of the original paper Check; or (e) from any other act or omission arising out of Bank's action or inaction taken pursuant to any request by Customer or pursuant to this Agreement. This Section 11 shall survive termination of the Agreement.

12. **Training Information and Documents.** Bank will provide Customer with training information in paper or electronic format that will set forth the guidelines and procedures for the Service with which Customer agrees to comply. Bank may require that certain employees of Customer attend periodic training as a condition to using the Service.

13. **Limitations.** Bank reserves the right to place limitations on the use of the Service based on certain risk parameters it establishes, including, but not limited to, a limitation on the number of Accounts accessed via the Service, limitations on the number of Checks, the maximum permissible dollar amount of any individual Check or the total dollar amount of Checks processed on any given day or other time period. Bank will notify Customer of the limitations and may provide initial limits in the Implementation Documents. Bank has the right to change the limitations in its sole discretion on notice to Customer from time to time. If any such limit is established, Bank shall have no obligation to process Items or files in excess of the limit.

14. **Network Connectivity and Security.** Customer is solely responsible for connectivity to the Internet and for the implementation of all commercially reasonable Security Procedures to control access to its computer systems and to protect any data files stored thereon. Such procedures include but are not limited to anti-virus, physical, logical, and network security control systems and devices. Customer should use a firewall product especially if it has a broadband Internet connection such as DSL or cable modem. Customer's computer operating system and browser should be fully patched for critical security issues. It is recommended that Customer use the most current fully patched versions of Internet browsers for accessing the Service. Bank is not responsible for any damage to Customer's computer, modem, or other property resulting from the use of the Remote Deposit Capture Service, including damage from any electronic virus or viruses that Customer may encounter.

15. **Infrastructure Audit and Site Visits.** Bank reserves the right to require Customer to implement policies and procedures related to this Service, including but not limited to internal controls that mitigate risks associated with this Service.

- a. Customer is required to submit financial information to Bank upon request and is required to notify Bank of any change in locations, transaction volumes, or the financial condition of Customer. New Implementation Documents and approvals may be required for changes.

- b. Bank's right to audit Customer includes the right to audit Customer's information technology infrastructure to assure compliance with this Section.
- c. Bank will conduct a site visit of Customer's location(s) from time to time to assure that the equipment is properly used and the Equipment and original Checks are properly secured. A Business Site Visit Checklist will be completed at that time and Customer will cooperate with Bank to cure any deficiencies noted by Bank.

16. **Contingency Procedures.** If Customer experiences technical difficulties in connection with the Service, Customer should implement the following procedures:

- **Scanner issues.** Contact Bank at the number provided in Part II if Bank provided the equipment; if not, contact the manufacturer.
- **Account issues.** Contact Bank as provided in Part II.
- **Computer, printer or Internet connectivity Issues.** Contact the computer vendor or Internet provider as appropriate.
- In the event that Check Images may not be transmitted through the Service for deposit into the Account, Customer should present the original Check(s) in person, night deposit, or via mail to any one of the branch offices of Bank for deposit.

H. SWEEP SERVICES

1. **Target Balance Sweep.** This Sweep Service will transfer on each Business Day to one or more Designated Account(s) the amount of Excess Funds in a Target Balance Account and, as needed, will transfer on each Business Day from one or more Designated Accounts to the Target Balance Account amounts necessary to cover any Target Balance Shortfall.

2. **Zero Balance Sweep.** This Sweep Service transfers on each Business Day to the Destination Account any Excess Funds from any Target Balance Account (for this purpose, referred to as a "Zero Balance Account") designated by Customer, and to transfer, on each Business Day, from the Destination Account to the Zero Balance Account amounts necessary to cover any Target Balance Shortfall in any Zero Balance Account so that at the beginning of each Business Day, each Zero Balance Account designated by Customer, will have a balance of zero ("0").

- a. **Funds on Deposit.** Customer shall make arrangements for there to be sufficient Transfer/Sweep Funds in the Destination Account to cover all Items drawn on the Zero Balance Account ("Items") presented for payment on the Business Day on which presentments are made. Items drawn on the Zero Balance Account shall conform to check Implementation Documents provided by Bank to Customer. Issuance of Items, which have not received Bank's prior approval as to compliance with Bank's check Implementation Documents, may result in charges for extra processing.
- b. **Transfers, Credits and Returns.** Bank will automatically transfer funds from the Destination Account to the Zero Balance Account to cover Items that are presented for payment. To the extent that such Transfer/Sweep Funds, in the Destination Account, are insufficient to cover such Items, Bank is authorized to transfer Transfer/Sweep Funds by provisional credit to the Zero Balance Account in an amount equal to the total of all amounts payable on all Items, which are presented to Bank. If the Transfer/Sweep Funds on deposit in the Destination Account are insufficient for such purpose, Bank may in its sole discretion revoke the provisional credit to the Zero Balance Account and return the Items which created such provisional credit unpaid, or Bank may in its sole discretion provisionally advance the necessary additional funds to Customer and transfer such provisional credit in the amount thereof to the Zero Balance

Account (any such transfer or provisional credit shall remain revocable, at all times, by Bank in its sole discretion prior to midnight of the day following presentment of the Items). If Bank should provisionally advance any funds to Customer, such action shall not establish a course of dealing between the parties that shall require Bank to provisionally advance any additional funds. If Customer fails to repay any such provisional advance on the Business Day on which Bank notifies Customer of such advance, Bank shall, without any requirement of prior notice to Customer, automatically reverse such provisional credit, initiate a debit in the amount of the original advance to the Zero Balance Account, and return any or all affected Items unpaid. Bank also may return any Items, which Bank determines, are not properly payable.

3. **Line of Credit Sweep.** This Sweep Service provides Customer with an automated process to draw on Customer's Line of Credit when Customer's Target Balance Account Shortfalls the Target Balance and alternatively, to pay down Customer's Line of Credit using Excess Funds above the Target Balance.

- a. **Repayment Transaction.** As of the close of business on each Business Day, Bank will determine the amount of Excess Funds, if any. If Bank determines that there are Excess Funds, Bank will debit the Target Balance Account and credit the Line of Credit in an amount equal to the lesser of (i) the amount of Excess Funds or (ii) the outstanding principal balance of the Line of Credit plus all interest, fees and charges then outstanding under the Line of Credit (a "Repayment Transaction"); provided, however, that Bank will not be required to initiate any Repayment Transaction in an amount less than a minimum sum mutually agreeable to Bank and Customer as defined in the Implementation Documents. Customer grants Bank a security interest in, and right of set-off with respect to, the Account for purposes of effecting Repayment Transactions.
- b. **Loan Transaction.** As of the close of business on each Business Day, Bank will determine the Shortfall, if any. If Bank determines that there is a Shortfall, Bank will charge the Line of Credit in an amount equal to the lesser of (i) the amount by which such Transfer/Sweep Funds are less than the Target Balance or (ii) the amount which is available to be borrowed under the Line of Credit (the lesser of such amounts being referred to as the "Loan Amount"), plus the amount of any fees and charges under the Line of Credit and credit the Account in an amount equal to the Loan Amount (a "Loan Transaction"); provided, however, that Bank will not be required to initiate any Loan Transaction in an amount less than a minimum sum mutually agreeable to Bank and Customer as defined in the Implementation Documents. Bank will not be required to initiate any Loan Transaction if any default exists under any Credit Agreement or these Service Terms and Conditions or Bank is otherwise excused or prohibited under any Credit Agreement or applicable laws from making an advance to Customer. In addition, Bank will not be required to initiate any Loan Transaction, and the Service hereunder shall immediately and automatically terminate without notice, if (A) the Line of Credit has matured or been terminated; (B) Customer has cancelled the Line of Credit; (C) an Event of Insolvency has occurred; or (D) Bank has demanded payment under the Line of Credit.
- c. **Overdrafts.** Bank may debit the Target Balance Account even though, subsequent to such debit, and as a result of additional transfers or withdrawals from the Target Balance Account, the return of Checks unpaid, or any other cause, the Target Balance Account becomes overdrawn. In such event, Customer will be assessed Bank's then prevailing charges for overdrafts.

4. **Investment Account Sweep.** Under this Sweep Service, Bank will sweep any Target Balance Excess on any Business Day in increments

selected on the Implementation Document to one or more Investment Account. Funds will automatically sweep back to the Destination Account, subject to maximum limitations established by law.

5. **Dual Sweep.** Under this Sweep Service, Customer may select both the Commercial Credit Sweep and the Investment Sweep so that when no advances are outstanding under the Line of Credit, Excess Funds will be swept into the Investment Account until Customer draws on the Line of Credit.
6. **Appointment as Agent.** Customer hereby appoints Bank, and such of Bank's officers or employees as Bank may designate, as Customer's agent for purposes of conducting all banking administrative functions in connection with Account reviews, sweeps and other actions authorized under this Sweep Service.