



# TREASURY MANAGEMENT SERVICES TERMS & CONDITIONS

This Treasury Management Services Terms & Conditions (this "Agreement") is entered into by and between Peoples Security Bank & Trust (the "Bank" or "PSBT"), a Pennsylvania state chartered bank with its main office located at 150 North Washington Avenue, Scranton, PA 18503, and each company as identified on the Implementation Documentation, and governs the treasury management services described in Sections III through VII below (each a "Service"; collectively, the "Services") to be provided by us. The terms "Customer", "Company", "you" and "your" refer to each company identified on the Implementation Documentation.

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You may be required to sign or accept additional agreements for your Eligible Accounts (more fully defined below as the "Account Documentation") before certain Services will be made available to you. The Account Documentation is hereby incorporated by reference into this Agreement. Unless otherwise expressly provided, to the extent any terms or provisions of this Agreement directly conflict with the terms or provisions of any Account Documentation, the terms and provisions of this Agreement shall control with respect to the Services they cover. Unless otherwise expressly provided, to the extent any provisions of the general terms and conditions set forth in Section I directly conflict with any other Section, the provisions of such other Section shall control with respect to the Services described in that Section. You must maintain and designate a Deposit Account with us which we will use for debiting or crediting with respect to all payments, debits, and deposits and related adjustments, and fees and charges. Except as otherwise provided, you must have Collected Funds on deposit in your Deposit Account(s) sufficient to cover your obligations under this Agreement. Business Online Banking is required for the following services; ACH & Wires.

Your use of any of the Services described herein constitutes your agreement to this Agreement, specifically the terms and conditions in Section I as well as those set forth in the Section applicable to the Services used by you. Capitalized terms used in this Agreement that are not defined in the text of a Section hereof are defined in the Definitions in Section I.

## Section I: Terms & Conditions

### Agreement Components



Peoples Security Bank & Trust Company's Treasury Management Services Terms & Conditions contains general provisions that apply to all treasury management Services offered by Bank. Specific provisions, associated with each treasury management Service, are addressed in the appropriate Section for the Service.

All Customers for treasury management must sign Bank's Treasury Services Master Authorization Form (the "**Master Authorization Form**"). All of the Services for which Customer has applied will be designated on the Master Authorization form.

### **Definitions**

Except as otherwise expressly provided in this Agreement, the following capitalized terms shall have the following meanings for the entire Agreement.

"**ACH**" means Automated Clearing House, the funds transfer system that Bank uses to clear electronic entries for Company and other banks.

"**Account**" means each of Company's deposit accounts at Bank that is used to access a Service.

"**Account Documentation**" means the terms and conditions for Bank deposit accounts as provided at account opening by Bank and as it may be modified by Bank from time to time, including, but not limited to those certain terms and conditions known as the "PSBT Online Banking Access Agreement and Disclosure," as may be in effect from time to time relative to online banking products.

"**Agent**" means the person(s) appointed by resolution to execute or authorize this Agreement, who will have the authority provided in this Agreement.

"**Agreement**" means, collectively, this Treasury Management Services Terms & Conditions and any supplements or amendments included, as well as other documents incorporated herein by reference, including, but not limited to the Master Authorization Form and the Implementation Documents and any other conditions communicated to Company by Bank.

"**ANSI**" means the American National Standards Institute.

"**Applicable Law**" means any federal and state law (to the extent not considered to have been preempted by federal law) that applies to a party or a Service and the applicable rules and regulations promulgated by the FDIC, Federal Reserve and any money transfer system, network or clearing house used by Bank in providing Services. This includes, but is not limited to, as applicable, the sanctions, laws, regulations and orders administered by OFAC; laws, regulations, and orders administered by the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("**FinCEN**"), including the Bank Secrecy Act, the U.S.A. PATRIOT Act and the requirements for Company identification required thereby, including the implementing regulations related to Know-Your-Customer ("**KYC**"), Customer Identification Programs ("**CIP**") and Customer Due Diligence ("**CDD**"); to the extent applicable to business accounts, the Electronic Funds Transfer Act and implementing regulations under Regulation E; Articles 3, 4, and 4A of the



Uniform Commercial Code as currently in effect and as thereafter amended by the Commonwealth of Pennsylvania; the federal Check 21 Act and implementing regulations under Regulation CC; the Federal Trade Commission Act and all state acts governing fair business and trade practices applicable to Company's business; and restrictions imposed under the unlawful Internet Gambling Enforcement Act of 2006.

**"Authorized Person" or "Authorized Representative"** means each Agent, officer or employee of Company who is authorized, or has represented to Bank as being authorized, to request and obtain Services on Company's and/or Owners' behalf.

**"Authorized Signer"** means the Authorized Representative or other person(s) designated by Company on the Signature Card for the Account who may execute online banking services and/or the current Resolution, as may be required from time to time

**"Beneficiary"** means the person or entity designated by Company to receive the proceeds of a Wire Transfer or transfer of funds.

**"Business Day"** means any day during which Bank is open to the public for conducting all banking functions. None of Saturdays, Sundays, federal or state holidays or any day recognized by a Federal Reserve Bank as a holiday are considered Business Days, even if Bank's offices are open.

**"Business Online Banking"** refers to any of the business online banking products a client may use for their banking needs.

**"Check"** includes all "items" as defined in Section 4104(a)(9) of the UCC, and all "substitute checks" as defined in the Check Clearing for the 21<sup>st</sup> Century Act (sometimes referred to as the Check 21 Act) and Regulation CC of the Board of Governors of the United States Federal Reserve Board.

**"Company Administrator", "Administrator" or "Company Representative"** means each Authorized Representative named by Company to be responsible for coordinating and monitoring Services accessed through Bank's Business Online Banking system and any other Bank Internet based system used by Company for treasury management Services.

**"Implementation Documents"** means the enrollment and setup materials and any supplements or disclosures provided to Company and required by Bank to implement a specific service.

**"Internal Transfer"** means a transfer of funds from a Company designated Account to another Customer and/or Owners Account at Bank.

**"Internet Service"** means any Service that is or may be offered by Bank that is accessed on the Internet, including via Business Online Banking.

**"Item"** means a Check, money order, travelers' check and cashier's check and, unless otherwise noted in a Service Terms, excludes any item drawn on foreign institutions outside of the United States of the America or Territories of the United States of America.



**“Login Credentials”** means Company and User identifications, personal identification numbers (“PINs”), passwords, digital certificates/signatures, private keys or other security devices required by Bank to log into Business Online Banking and execute transactions in Accounts. These include Bank-assigned unique codes which may include a Company identification number (“**Company ID**”), a User identification number (“**User ID**”) and password (“**User Password**”).

**“MICR Data”** means Magnetic Ink Character Recognition, the line of numbers and letters on the bottom of the front of a Check that facilitates processing.

**“Mobile Device”** means a smart phone or tablet enrolled in Business Online Banking for access to Mobile Services.

**“Mobile Service”** means a Service that accesses Accounts via a Mobile Device.

**“NACHA”** means the National Automated Clearing House Association – the Electronic Payments Association, which operates the ACH system.

**“NACHA Rules”** means the operating rules and operating guides of the applicable regional clearing house association and the National Automated Clearing House Association, as amended from time to time (“**NACHA**”).

**“OFAC”** means the United States Department of Treasury’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 [treasury.gov](http://treasury.gov).

**“Order”** means any instruction issued by a User in connection with a Service.

**“Out-of-Band Authentication”** means two-factor authentication that requires a secondary verification method through a separate communication channel along with the typical identification and password.

**“Payment Order”** means an instruction by a User to Bank directly or through a funds transfer system for an electronic funds transfer of funds to a specific account or Beneficiary.

**“Remote Deposit Capture”** is a Service that provides Company with the option of making electronic deposits of Check Images.

**“Security Device”** means any of the devices Bank requires in connection with the Security Protocol.

**“Security Protocol”** means the use of Login Credentials and additional procedures as may be required by Bank, including, but not limited to, challenge questions, Out-of-Band Authentication, Tokens, call-back confirmations, dual control, encryption and other systems and software Bank



utilizes from time to time to protect Company's and/or Owners' information and mitigate against fraud.

**"Service Provider"** means a third party that provides Services, including, without limitation, subcontractors, couriers, vendors, processors and all other agents. With respect to Peoples Security Bank & Trust, its Service Providers are incorporated into this Agreement.

**"Service Terms"** means those additional terms and conditions applicable to a particular Service included in this Agreement.

**"Services"** means the services for treasury management provided pursuant to this Agreement and the specific terms and conditions set forth in this Agreement.

**"Stop Payment"** means an Order for Bank to stop payment on a Check Company issued.

**"System"** means the software, systems and other applications that comprise the "Treasury Management" suite of Services.

**"Token"** means an electronic device that will permit Users to generate a onetime numeric code to provide authentication to effect transactions in connection with certain Services. Tokens may be "hard" (tangible) or "Soft" (electronic on a User's device).

**"UCC"** means the Uniform Commercial Code, as adopted in the state in which Peoples Security Bank & Trust Company maintains the Company Account.

**"User"** means Authorized Representative designated to access one or more Accounts through one or more Services. Any individual, if set up in the Implementation Document or online, may be a User. This Agreement acts as Company's and/or Owners' authorization to allow the Users to access and process transactions, which may directly affect the Accounts and Company's liability to Bank.

**"Vendor"** means a third party that Company appoints to execute an Order with respect to a Service on its behalf. Company and/or Owner shall ensure that each Vendor will have distinct Login Credentials from Company and/or Owner and other Vendors in order to access a Company and/or Owner Account.

**"Wire Transfer"** means the process of electronically transferring funds to a Beneficiary.

Unless otherwise defined in this Agreement, any supplements and amendments hereto, or in a disclosure or Service Term provided by Bank to Company, a capitalized term shall have the meaning provided in the Applicable Law or NACHA Rules.

### **Financial Review**

Bank's willingness to provide Services to Company is dependent on the financial condition of Company. Financial condition(s) is subject to review by Bank from time to time, and such reviews



must be satisfactory to Bank in its sole discretion and opinion. Bank may from time to time request adjustment of any limits. Company agrees that Company shall promptly furnish to Bank such information respecting Company's business and financial condition, in such form and manner, as Bank may reasonably request from time to time, which information shall be true, complete, and correct in all material respects at the time it is provided to Bank. Company understands and agrees that time is of the essence regarding any such request made by Bank. Company's failure to meet such standards in a timely fashion or provide such information or assistance when requested shall constitute a breach of this Agreement and shall permit Bank to cease providing Services whether or not Bank has provided written notice of the same to Company.

### **Services**

By accepting and using any Service, Company agrees that the Service will be governed by the Agreement. Certain Services included in this Agreement may not be available or may not be provided in certain market areas. **THE SERVICES ARE ONLY AVAILABLE FOR COMMERCIAL TREASURY MANAGEMENT BANKING PURPOSES INITIATED IN THE UNITED STATES OF AMERICA.**

### **Changes in Services**

Bank may from time to time add to, discontinue or modify any Service and may update or make changes to the Service Terms relating to any Service. Bank will give Company, notice of any material change, and such change will be effective as of the date specified in the notice sent to Company. Bank may notify Company of changes and updates by electronic transmission or other means permitted by the Agreement and/or Applicable Law. Company, and/or Owners, may request additional Services by contacting Bank. Bank, at its discretion, may deliver updated or revised disclosures, privacy notices, and related documentation concerning the Agreement or the Account to Company by electronic transmission. Company and Owners consent to accept such disclosures and documentation in electronic format, all of which shall have the same legal effect, validity and enforceability as a manually executed original of such document and any electronic copies of such signature page shall be deemed an original and further agree to maintain the necessary equipment to access such disclosures and documentation by electronic transmission.

### **Fees and Charges**

Company agrees to pay, in immediate available funds when due, the fees for access to and use of Services at the rates specified in Bank's most current Treasury Management Fee Schedule of charges and assessments chargeable to Company in connection with each Service provided. However, Bank may change the amount of such fees and charges, or add new fees and charges, after providing Company, and/or Owners, with at least 10 days' notice prior to the effective date of the change or addition. Additionally, Company will pay and reimburse Bank for all governmental and third-party fees or taxes arising out of, or related to, Bank's provision of Services to Company. For each Service provided to Company under this Agreement, Company authorizes and directs Bank to debit Company, and/or other designated Account (as that term is defined in this Agreement) between the 1<sup>st</sup> and 15<sup>th</sup> of each month for the amount of all such fees then due, and at other times as necessary to pay all other amounts owing from time to time under



and as provided for in this Agreement. Company shall contact its relationship manager with Bank for further information regarding fees.

### **Representations & Warranties of Bank**

Bank represents and warrants to Company that:

- (i) the execution, delivery and performance by Bank of this Agreement has been authorized by all necessary corporate and governmental actions;
- (ii) the person(s) signing this Agreement on Bank's behalf is(are) duly authorized to do so;
- (iii) this Agreement represents Bank's legal, valid and binding obligation; and
- (iv) Bank's execution and performance of this Agreement and its provision of the Services pursuant to the Service Terms, do not violate any corporate governance policy or any material agreement by which Bank is bound.

Bank has entered into certain agreements with third party vendors in connection with the delivery of Services. BANK MAKE NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THIRD PARTY VENDOR SOFTWARE, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FURTHERMORE, EXCEPT AS EXPLICITLY EXPRESSED IN THIS AGREEMENT OR ANY SUPPLEMENTS AND AMENDMENTS HERETO, NO DESCRIPTIONS OR SPECIFICATIONS CONSTITUTE REPRESENTATIONS OR WARRANTIES OF BANK OF ANY KIND.

### **Representations & Warranties of Company**

Company represents and warrants to Bank as follows, which shall be true as of the date of this Agreement and continue to be true through the duration of the term of the Agreement:

- (i) Company is solvent, duly organized, validly-existing, and in good standing in the jurisdiction in which Company is organized, and is validly-qualified in any other jurisdictions where Company does business and is required to be qualified, except where the failure to be qualified would not have a material adverse effect on Company or the enforceability or validity of the Agreement;
- (ii) Company has and will maintain, all permits, licenses, franchises, authorizations, orders and approvals of any federal, state, or local governmental authority that are required under Applicable Law in order to permit it to carry on its business as presently conducted;
- (iii) Company is in compliance with all Applicable Law and is(are) not currently under investigation, nor has any litigation been threatened or commenced, by any federal, state, or local governmental authority with respect to violation of any Applicable Law;

- (iv) the execution, delivery and performance by Company of this Agreement does not and will not: (1) violate, conflict with, or result in a breach of any provision of any contract to which Company is a party; (2) constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) thereunder; (3) require consent or approval from any third person; or (4) constitute a violation of Company's governing documents, Applicable Law, or violate any judgment, order, decree, or directive of any court or federal, state, or local governmental authority;
- (v) the execution, delivery, and performance by Company of this Agreement has been authorized by all necessary corporate and governmental actions, and this Agreement represents Company's and/or Owners' legal, valid and binding obligation;
- (vi) the person(s) signing this Agreement on behalf of Company is an Authorized Representative, duly authorized to do so and have received all necessary corporate and governmental approval(s); and
- (vii) Company will use the Services for business or commercial purposes only, and will not use the Services for any unlawful purpose in violation of any Applicable Laws.

Company agrees to promptly notify Bank in writing if any of the representations and warranties set forth in this section are no longer true and accurate in all respects. Company further agrees to provide Bank with such documentation as Bank may reasonably request as evidence of the truth and veracity of the above representations and warranties.

### **Company Accounts**

Company, and/or Owners, will at all times maintain with Bank one or more Accounts in the name of Company and/or in the name(s) of designated Owners. Company should maintain with Bank, in Company and/or other designated Accounts, collected balances sufficient to reimburse Bank for all items, orders for payment, and other amounts which Bank pays on Company behalf or are chargeable to Company and/or Designated Owners in connection with any Service. ACH entries and other items deposited into such Accounts are provisionally credited and taken subject to later verification by Bank and Bank's receipt of final settlement. Deposited items that are deposited and later returned unpaid will be charged against Company and/or other designated Accounts without prior notice. Company agrees to pay Bank for any overdraft in any of Company and/or designated Accounts. Bank will endeavor to first attempt to recover such amounts from the Accounts associated with the debt. If the available balance of such Account is insufficient to compensate Bank, Company hereby authorizes Bank to charge any Account for any amount remaining due under this Section. Each Company, and/or Owners, designated Account and all other deposits and other Accounts of Company, and/or Owners located at Bank shall each be subject to the terms and conditions of all deposit agreements and contracts relating to those Accounts, as they may be amended and modified from time to time.

### **Transactions on Non-Business Days/Cut-Off Times**





Transactions, deposits, payment orders, entries or other requests by Company, and/or Owners, received by Bank on a non-Business Day or after established cut-off may be treated by Bank as received on the next Business Day unless otherwise required by Applicable Law. Bank may change any cut-off time or other deadline at any time.

### **Security Interest**

Company grants to Bank a consensual possessory, first-priority security interest in all Accounts now or in the future maintained by Company with Bank and the funds held therein to secure payment of all of Company obligations under this Agreement. In accordance with the terms of the Account Agreement, in addition to Bank's rights under the Agreement, Bank may exercise the right of set-off against any or all of Company Accounts and deposits. Bank reserves the right to exercise its right of set-off without advance notification to Company and, if advance notice is not provided, Bank will provide reasonable notice to Company following the set-off action. Bank's set-off rights as described herein are limited only by restrictions imposed by Applicable Law.

### **Company Administrator**

Company shall designate in writing one or more representatives who will serve as the Company Administrator and be responsible for adding, deleting and modifying employee access to the Business Online Banking and any other Bank Internet Services used by Company for Services. Capabilities assigned to Company employees for access to and use of Bank's system(s) will be based on security structures set up by the Company Administrator. Monitoring and maintaining Company User capabilities in a current status will be the responsibility of the Company Administrator. It is agreed and understood that, generally, the Company will have one Company Administrator per Bank Internet Service but Company may have a different Company Administrator for each Bank Internet Service.

### **Data Review**

Company has the sole responsibility for confirming the accuracy and validity of all information, data, entries, and processing services prepared and performed by Bank. Company shall carefully review all reports prepared by Bank and shall carefully reject in writing incorrect daily reports within five (5) Business Days after receipt and all other reports provided by Bank within ten (10) Business Days after receipt. Company failure to so reject any report constitutes:

- a) Company acceptance of the report; and
- b) the release of Bank from any liability arising under or in connection with the report.

### **Data Security**

Company acknowledges that certain Services may involve the handling of confidential consumer information that may be subject to privacy laws and regulations under Applicable Laws, including unauthorized access or breach notification regulations.

Company warrants and agrees that (a) Company’s security framework includes security policies, procedures and systems related to the initiation, processing and storage of transaction data arising from Services, which includes protected confidential information and (b) these policies, procedures, and systems are designed to protect the confidentiality and integrity of protected confidential information against anticipated threats or hazards and any unauthorized use that could result in substantial harm to a natural person. When stored electronically, Company warrants and agrees to secure protected confidential information by rendering the data unreadable when stored electronically. When transmitted, Company warrants and agrees to secure protected confidential information using commercially reasonable encryption processes. Company is advised to (a) educate its employees to properly identify and react to “phishing” activity (i.e., fraudulent attempts to obtain sensitive information or encourage behavior by disguising oneself as a trustworthy entity or person through email), and (b) obtain insurance against cyberattacks, data loss, malware-related matters, and privacy-related breaches, as such incidents can occur even under a “best practice” scenario.

### **Proprietary Information**

Company acknowledges that this Agreement, all related documentation and computer programs and systems used in providing Services, and all information related thereto constitute proprietary property of Bank or its Service Providers that is of great commercial value. Company agrees that no proprietary interest or rights can be acquired therein as a result of its use of the Services and shall keep all such proprietary information strictly confidential. Company shall not duplicate, sell, or use in any manner such programs or documentation without prior written consent of Bank.

### **Confidential Service Information**

Company agrees that it is Company’s and/or Owners responsibility to maintain the security and strict confidentiality of all information and data related to the Agreement, Security Protocols, Login Credentials, Tokens, fees, Bank guides and disclosures, including “Quick Start Guides” and User guides, software and any other piece of proprietary information provide to Company in connection with the Services (“**Confidential Service Information**”). Company may disclose the Confidential Service Information only to authorized individuals who need to know such information in order to carry out their responsibilities with respect to the Services who have been apprised of this restriction, and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this paragraph.

### **Use of Confidential Service Information**

All Users of the Services in accordance with Security Protocols will be deemed to be authorized by and binding on Company. Company acknowledges and agrees that their failure to protect Login Credentials and Confidential Service Information may allow an unauthorized party to



- (i) use the Service(s);
- (ii) access Company electronic communications and financial data;
- (iii) send Orders and transfer funds from Accounts; or
- (iv) receive confidential information from Bank.

### **Security Protocol**

Company and/or Owner shall abide by the Security Protocols established by Bank for use in connection with authorized Services(s). Company acknowledges and agree that all Authorized Representatives have been informed of and understand Bank's Security Protocol and that such Security Protocol is commercially reasonable. Company agrees to be bound by any Payment Order, transaction, or service change Order that is acted upon by Bank in accordance with such Security Protocol.

Bank reserves the right to issue new Security Protocol requirements and/or to cancel or change any Security Protocol from time to time by giving verbal (followed up by written) or written notice to Company.

Separate from the Security Protocol, Bank may, in its discretion, use additional procedures to help identify, analyze, and/or address suspicious behavior. However, Bank's failure to do so shall not be evidence of any failure to exercise reasonable care or good faith, or evidence of any failure of Bank to implement commercially reasonable Security Protocol. Bank is not responsible for its refusal to act upon any instruction received by Bank or its agents that does not comply with this Agreement, including, without limitation, where its reasonable efforts to verify instructions in accordance with the Security Protocol have failed or where action is delayed until such verification can be obtained. Additionally, and separate from the Security Protocol, we may provide Company with instructions and guidance with respect to the Services, including, but not limited to, Bank's "Security Protocols/Best Practice Procedures" set forth on Section II hereto. Company acknowledges that Bank reserves the right to amend, from time to time, the Security Protocol as it deems necessary, including the "Security Protocols/Best Practice Procedures."

Bank also reserves the right to periodically audit Company information technology processes, and to mandate controls or suspend Services until Company complies with such Security Protocol as determined by Bank in its sole discretion. Company and/or the Owners will cooperate and provide reasonable assistance and information to conduct such audit, including, without limitation, reasonable access to computer and operating systems, policies, records, and other materials.

### **Acceptance of Security Protocol**

Company should carefully review the Security Protocol in light of the size, amount and frequency of Company's transactions. Company use of the Service indicates Company agreement that Bank's Security Protocol is commercially reasonable. If Company selects a security procedure to use in connection with a Service and the selected procedure provides less protection against unauthorized



transactions or activity than the Security Protocol established by Bank, the security procedures selected by Company are used at the sole risk and liability of Company.

Company represents and warrants to Bank that Company has in place and will maintain and enforce effective policies and procedures to prevent unauthorized access to Company Accounts and the Services, including unauthorized and erroneous transmission of Orders and other communications to Bank. Company agrees to take all steps necessary to ensure the security, accuracy, authenticity, confidentiality and legitimacy of all communications to Bank and all access to the Services.

### **Security Protocol Limitations**

Company acknowledges that the Security Protocol is designed to attempt to verify the authenticity of, but not to detect errors in any order Company transmits. From time to time Bank may at Bank's option use additional procedures to verify or authenticate Orders. The Security Protocol does not verify the actual identity of the Users of the Services and does not monitor the actions of the Users to determine whether their Orders exceed the scope of the User's authority.

### **Data Security Breach Notice**

If Company has reason to believe that a Security Protocol or Login Credentials have been or may become known by unauthorized persons (whether or not employed by Company) or if Company believes its network or computer systems have been compromised or its computers infected, Company shall immediately notify Bank and confirm such verbal notification in writing to Bank within 24 hours. If Company believes there has been a security breach or that someone has transferred or may transfer money from Company Accounts without Company permission, Bank will replace the Login Credentials in accordance with Bank's procedure. Bank may also deny Company access to the System in its sole discretion in order to protect Accounts. Company shall be solely responsible for fund transfers or instructions and other communications or transactions initiated before Bank received Company notice in accordance with this Agreement and had a reasonable time to act on such notice. Company agrees to defend and indemnify Bank against any claims, losses, damages, costs, expenses, fines and other liabilities arising out of Company's failure to maintain the security and confidentiality of the Login Credentials and any subsequent unlawful access to and use of the Login Credentials. If Company designated Company Administrator or a User discloses Company's login credentials or the Security Protocol to anyone, and/or if Company allows someone else to use security devices to gain access to accounts, Company will be deemed to have authorized them to act on Company and/or Owner's behalf and will be responsible for any use of the Service by them.

### **Compliance**

Bank and Company will each comply with all Applicable Law, including the NACHA Rules, in connection with Services. Without limiting the foregoing, Company acknowledges and agrees that transactions conducted pursuant to this Agreement will comply with FinCEN's rules and regulations and with sanctions enforced by OFAC. Company acknowledges its responsibility to



obtain information regarding OFAC-enforced sanctions and agrees that Bank shall not be required to perform any action to debit or credit an Account or transfer funds if Bank determines such action is inconsistent with Applicable Law. Bank **WILL NOT** send or receive debits or credits or facilitate funds transfers to or from foreign countries against which the United States of America has trade sanctions, or countries or individuals which Bank, in its reasonable determination, believes is specifically identified and restricted by OFAC as of the date of the proposed transaction. Company must utilize the most recent list of OFAC restrictions in determining whether to initiate or request debits or credits to an Account or funds transfers. Company may obtain information regarding OFAC-enforced sanctions on-line at [www.treasury.gov](http://www.treasury.gov) or via the OFAC Compliance Hotline (800)-504-OFAC.

Company has, and will maintain, a compliance management system designed to effectively monitor compliance with Applicable Law related to the Services and Company's business activities. Company's compliance management system includes, but is not limited to, policies and procedures designed to comply with Applicable Law, employee training, and monitoring and oversight. Company will take all necessary actions to maintain such policies and procedures and oversee compliance within its organization. Company agrees that it shall be responsible for any fines or penalties imposed on Bank as a result of Company's non-compliance with Applicable Law, including the NACHA Rules. Company will reimburse, hold harmless, and indemnify Bank for all such fines and penalties pursuant to this Agreement.

Unlawful Internet Gambling Notice: Restricted transactions as defined in Federal Reserve Regulation GG are prohibited from being processed through the Accounts. Restricted transactions generally include, but are not limited to, those in which credit, electronic funds transfers, checks, and/or overdrafts are knowingly accepted by gambling businesses in connection with the participation by others in unlawful internet gambling.

### **Computer Hardware and Software**

Many Services require the use of computer hardware, software and/or other equipment. Company is responsible for maintaining its computer and equipment, including those provided by or through Bank for use with Services, in good working order. Company shall ensure that computers and other equipment have the necessary compatibility and format to interface with Bank's systems, including, without limitation, the ability to support Bank's Security Protocol. Company agrees to immediately install upgrades including software patches and other system enhancements no later than ten (10) Business Days of being requested to do so by Bank. License agreements for necessary software shall either be embedded in the software or separately documented in the Service documentation. Company agrees to comply with all applicable software license agreements. Company 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 part, any such software. Company shall return all software and User Guides associated with any software upon request. Bank makes no representations or warranties with respect to any equipment or software provided by Bank.

### **Instructions and Communications**



For some Services, Company may authorize Bank to honor Company's and/or Owners' 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 an Authorized Signer or User without independent verification by Bank.

Company may elect to send or receive instructions or reports from Bank related Services via electronic transmission. Company 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 Company and/or Owner'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 Company. Should Company elect to send or receive electronic transmissions to or from Bank, Company 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.

Company may have Accounts that require multiple signers to execute transactions. However, Company agrees that Bank is authorized to complete each transaction initiated electronically by one User using the Security Protocol, including but not limited to, transfer of funds, credit payments and issuances of checks or electronic payments.

Bank may, at their sole discretion, provide Company the option of entering into this Agreement, any supplements and amendments hereto, or any Implementation Documents with a digital signature. Company hereby agrees that Company and/or Owner's use of such digital signature shall bind Company to the terms and conditions of the applicable agreement, or form.

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

### **Company Initiated Transactions and Instructions**

Bank will honor Company and/or Owner's transactions and instructions (including adjustments and cancellations) only when Company has complied with this Agreement and related policies and procedures. Bank will be under no obligation to honor, either in whole or part, any transaction or instruction that:

- (i) exceeds Company's collected or available funds on deposit with Bank;
- (ii) Bank has reason to believe the transaction may not be authorized by Company;
- (iii) involves funds subject to a hold, dispute or legal process preventing their withdrawal;
- or
- (iv) violates any provision of any applicable regulation of the Federal Reserve Bank or any other federal, state or local regulatory authority; or Bank has reasonable cause to honor, for the protection of either Bank or Company.

Bank shall have no responsibility or liability to Company for complying with instructions concerning the Account originated by an Authorized Representative, and shall have no responsibility to investigate the appropriateness of any such instruction or due authorization of such Authorized Representative providing such instructions. Bank may rely, and Bank shall be protected in acting, or refraining from acting, upon any notice (including but not limited to electronic facsimile of such notice) reasonably believed by Bank to be genuine and to have been given by the proper party or parties.

### **Monitoring and Recording Communications**

Company acknowledges and agrees that Bank, and anyone acting on Bank's behalf, may monitor and/or record any communications between Company, or its User, and Bank or anyone acting on Bank's behalf, for quality control and other purposes. Company also acknowledges and agrees that this monitoring or recording may be done without any further notice to its User. 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 communications in any form. Company assumes the responsibility for obtaining any necessary consents of, and giving notice to, its personnel, including any User.

### **Inconsistent Name and Account Number**

If Company or third party acting on Company's instruction initiates a fund transfer instruction or Payment Order to Bank that describes the Beneficiary to receive the proceeds of such transfer instruction or Payment Order, the Beneficiary's bank, or an intermediary bank by name and an account or other identifying number, Bank and subsequent parties to the fund transfer instruction or Payment Order may rely on and act solely on the basis of such number, even though the name and number do not agree and even though Bank and subsequent parties know or have reason to know of the inconsistency. Company's obligation to pay the amount of the fund transfer instruction or Payment Order to Bank is not excused in such circumstances.

### **Interbank Authority to Transfer or Commingle Funds**

If Company requests Bank to provide Services to a parent Company, subsidiary, affiliate, or other commonly owned Company, Company agrees that it shall be jointly liable for such Company's/Owners' obligations under this Agreement. Company hereby represents and warrants to Bank that any and all transfers and commingling of funds required or permitted by any Service or requested by Company, and all other aspects of the performance hereby by Bank and Company, have been duly authorized by all necessary parties, including, without limitation, the account holder of each Account, and that Company has obtained and shall maintain in its regular business records and make available to Bank upon reasonable demand, for a period of not less than two years after termination of the Service (or longer if specifically instructed by Bank), adequate documentary evidence of such authorization from the Account holder of each Account, executed by the duly Authorized Representative of each such Account holder in accordance with that Account holder's organizational/governance documents (e.g., bylaws, operating agreement, partnership agreement, etc.)and/or board resolutions. Company further represents and warrants

that each transfer or commingling of funds authorized hereunder is not in violation of any agreement, organizational/governance documents or board resolution of Company, or any of its affiliates or subsidiaries, nor is it in violation of any Applicable Law, of any decree, judgement, order of any judicial or administrative authority. Each representation and warranty contained herein shall be continuing and shall be deemed to be repeated upon Bank's effecting each transfer and comingling of funds authorized hereunder.

### **Account Communications and Review Period**

Company agrees to regularly and promptly review and verify all periodic statements, reports, check payment records, wire transfer instructions, confirmations, adjustments, charges, and other transactions. Company may receive or access these communications electronically, including without limitation, delivery by posting to a password protected website or database. At Company's election, Bank will either provide to Company electronically through Business Online Banking or by mail at Company's current address in Bank's files, periodic statements, notices and other information regarding designated Account and Account activity, including any activity resulting from Services (as provided in connection with the Service option Company selects). In either case, Bank may assess charges for such Service as determined by Bank from time to time. Company acknowledges that Account communications provided by Bank through electronic transmission constitutes good and effective delivery when posted by Bank, regardless of whether Company actually or timely receives or accesses the Account communications.

Company acknowledges that it is in the best position to discover erroneous charges, payments, missing or incorrect deposits, credits or debits or other entries to Company's Account or other Account problems. Company agrees to promptly examine each periodic statement, record, notice, cancelled check and other items provided or made available to Company (whether originals, images, copies or in other formats) and to promptly notify Bank of any error or account problem. Company's failure to provide reasonably prompt notice to Bank may affect any rights Company may have against Bank with respect to the error and account problem.

Unless a different review period is specified elsewhere in this Agreement, Company and/or Owners shall, within a reasonable time, which in no event shall be greater than thirty (30) calendar days following the day Bank first mails, electronically transmits or otherwise makes data available to Company and/or Owners, notify Bank of any error or discrepancy between Company and/or Owners' records and any Bank notice or periodic statement, or any transaction or transfer Company and/or Owners believe was not authorized. Such notifications are to be made by calling Bank or writing to Bank at the telephone number or address listed on Company and/or Owners' periodic statement.

Company and/or Owners agree that the failure to report any such errors or unauthorized transactions within Thirty (30) calendar days following the day Bank first mails, electronically transmits or otherwise makes data available to Company and/or Owners, shall relieve Bank of any liability for the unreported erroneous or unauthorized transaction and Bank will not be obligated to re-credit or refund the amount of the error or account problem.



### **Disclaimer of Warranties**

**THE SERVICES ARE PROVIDED ON AN “AS IS,” “AS AVAILABLE” BASIS. EXCEPT AS EXPLICITLY SET FORTH HEREIN, BANK MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, WITH RESPECT TO THE SERVICES OR THE DOCUMENTATION, EQUIPMENT, APPLICATIONS, OR SYSTEMS MADE AVAILABLE TO COMPANY, INCLUDING, WITHOUT LIMITATION, THAT THE OPERATION OF ANY SERVICE WILL BE ERROR-FREE OR THAT ITS OPERATION WILL BE UNINTERRUPTED AND BANK HEREBY DISCLAIMS ALL LIABILITY THERETO. BANK FURTHER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE, INFRINGEMENT OR OTHER IMPLIED CONTRACTUAL WARRANTY, AND COMPANY HEREBY AGREES AND ACKNOWLEDGES THAT NEITHER BANK NOR ANY THIRD PARTY PROVIDER OF THE SERVICES OR ANY SYSTEM OR APPLICATION SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY OF THE MATTERS SET FORTH IN THIS SECTION.**

### **Standard of Care**

Bank will use commercially reasonable care and will exercise good faith in providing Services to Company. Bank’s care is based on reasonable commercial banking standards prevailing in banking industry and location for similarly situated commercial banks and applicable law. Occasional unintentional deviation 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 judgement 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 Company will in no event constitute a failure to exercise reasonable care.

### **Limitation of Liability for Services**

Company acknowledges that Bank’s fees for Services are minimal in relation to the amount of transfers initiated through the Services and consequently Bank’s willingness to provide such Services is based on the liability limitation contained in this Agreement.

In addition to greater limitations on Bank’s liability that may be provided elsewhere in this Agreement or any supplements and amendments hereto, Bank’s liability related to any Service shall be limited exclusively to actual proven damages arising directly from its own gross negligence or willful misconduct. Bank will not, under any circumstances, be liable for any special, incidental, indirect, consequential, punitive or similar losses or damages, whether or not the likelihood of such losses or damages was known by either party at the time Company first obtained Services 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.

Bank’s cumulative liability to Company for all loss or damage arising from or relating to this Agreement and any Service, regardless of the form of action, is limited to direct losses attributable

to Bank's gross negligence or willful misconduct and is limited to an amount not to exceed twelve (12) times the fees paid by Company during the month immediately preceding the month in which the loss or damage was incurred.

Except as otherwise expressly required by Article 4A of the Uniform Commercial Code of Pennsylvania, Bank's sole and exclusive liability for Bank's loss, destruction, or erroneous transmission of ACH entries or entry data shall be to assist Company in recreating or regenerating such entry data or retransmitting the transactions based on that entry data. Bank has no responsibility and will incur no liability for any act or failure to act by any other bank, intermediary or any other third-party including any failure, delay or error by any Federal Reserve Bank or other intermediary bank in timely, presentment of data or checks to Bank.

If in any case Bank is liable to Company for lost interest, Bank will calculate interest based on Bank's then current interest rate.

Bank will not be responsible for any loss, delay, damage, cost or liability which arises, directly or indirectly, in whole or in part, from: (i) Company's and/or Owners' actions or omissions (including, without limitation and for the avoidance of doubt, those of the Company Representative and User(s)), or those of third parties that are not within Bank's immediate and reasonable control; (ii) Company's and/or Owners' negligence or breach of any agreement with Bank, including, without limitation, with respect to the amount, accuracy, timeliness of transmittal or due authorization of any funds transfer requests received from Company, or those of any other person; (iii) any ambiguity, inaccuracy or omission in any request, instruction or information provided to Bank; (iv) any error, failure or delay in the transmission or delivery of data, records or items due to a breakdown in any computer or communications facility; (v) the application of any government or funds-transfer system rule, guideline, policy or regulation; (vi) the lack of available funds in the Account to complete a transaction; (vii) Bank's inability to confirm to its satisfaction the authority of any person to act on the behalf of Company; (viii) Company's and/or Owners' failure to follow any applicable software manufacturer's recommendations or our Service instructions; or (ix) any incorrect, unauthorized or fraudulent use or other fraud by any person other than Bank's employees.

Further, Bank shall be excused from failing to act and from delay in acting, and shall not otherwise be liable to Company, if such failure or delay is caused in whole or significant part by legal prohibition, constraint, injunction or order; interruption, failure, or malfunction of communications or transmission lines, facilities, equipment, the internet, internet service providers, websites, computers, scanners, information technology systems, or related software from any cause whatsoever; war, riot, civil disobedience, or insurrection; civil or military emergency; weather conditions; transportation interruption or stoppage either generally or with respect to any method or mode of transport; any crash, accident, breakdown, inoperability, or unavailability of shipping/transport, media or methods of communication involving the delivery or transmission of data, information, documents, or communication to Bank; fire, flood, tornado, hurricane, earthquake, earth movement or slide, or other natural disaster; soil, drainage or groundwater conditions; famine, pandemic, disease, or public health conditions; strike, labor unrest or absence of workers; inoperable, unavailable or delayed repair services; malfunctions, delays, errors, or lack of usual services or accommodations within the Federal Reserve System, NACHA, the policies,

practices or procedures of other banks, and any other condition of any kind or nature which is not reasonably within the total control of Bank. Bank shall not be liable for failure to perform any of its obligations in connection with any Service if such performance would result in it being in breach of Applicable Law or the NACHA Rules.

### **Company Indemnification of Bank**

In addition to the other indemnification obligations of Company contained in this Agreement and any supplements and amendments hereto, Company releases and agrees to indemnify, defend, and hold harmless Bank, its parent company, affiliates, and subsidiaries, and their respective directors, officers, employees and agents (collectively, the “**Bank Indemnified Parties**”), promptly after receipt of a request from a Bank Indemnified Party, from and against any and all claims, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, proceedings, costs (including, without limitation, the fees and expenses of legal counsel to the Bank Indemnified Parties and internal expenses of Bank), expenses, or disbursements of any kind or nature whatsoever and by whomsoever brought or caused (collectively, the “**Indemnified Liabilities**”) that may be imposed upon, incurred by, or asserted against the Bank Indemnified Parties and that in any way relate to or arise out of: (a) Company’s and/or Owners’ (including, without limitation and for the avoidance of doubt, the Company Representative’s or User’s) breach of this Agreement; (b) Company’s and/or Owners’ (including, without limitation and for the avoidance of doubt, the Company Representative’s or User’s) negligence, fraud, or intentional misconduct; (c) any action taken or omitted by Bank in accordance with instructions or other communications actually authorized by or on behalf of Company, Owners, the Company Representative, or a User that Bank reasonably believes to have been so authorized; (d) a representation, warranty, or covenant of Company; (e) any use of the Services by Company that is not in compliance with this Agreement or Applicable Law; (f) any investigation or proceeding brought against Bank by any federal, state or local governmental authority related to Company and/or the Owners; (g) any subpoena, order, levy, garnishment, or request related to Company and/or the Owners; (h) any loss or claim arising from Company’s and/or Owners’ (including, without limitation and for the avoidance of doubt, the Company Representative’s or User’s) failure to use or adhere to the Security Protocol in accordance with this Agreement; (i) any Indemnified Liabilities caused by customers or clients of Company; (j) any action taken or omitted by Company (including, without limitation and for the avoidance of doubt, the Company Representative’s or User’s) in connection with this Agreement or the Services and any transaction related thereto; or (k) any virus (or similar malicious device), data, or code transmitted from systems under the control of Company to Bank’s systems. .

### **Dispute Resolution**

Governing Law. Except as otherwise provided herein; this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to conflicts of law principles, including the Uniform Commercial Code, as currently in effect and as thereafter amended by the Commonwealth of Pennsylvania . The parties acknowledge that certain provisions of the UCC contain provisions which by the express terms of the UCC may not be varied by agreement of the parties (a “**Non-variable Obligation**”). To the extent that any provision of this Agreement purports to vary such Non-variable Obligation, the parties acknowledge that their respective rights and obligations under this Agreement are subject to the Non-variable Obligation.

**Jury Trial Wavier; Waiver of Sovereign Immunity: TO THE FULLEST EXTENT PERMITTED BY LAW, BANK AND COMPANY HEREBY AGREES TO WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO OR CONNECTED WITH THESE SERVICES OR THIS AGREEMENT. BANK AND COMPANY REPRESENT AND WARRANT TO EACH OTHER THAT THIS JURY TRIAL WAVIER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN. COMPANY FURTHER VOLUNTARILY WAIVES ALL SOVEREIGN IMMUNITY RIGHTS OR DEFENSES THEY MAY HAVE WITH RESPECT TO THIS AGREEMENT OR THE SERVICES.**

**Arbitration:** Any dispute, controversy or claim arising out of or relating to this Agreement, including a breach of this Agreement, shall be decided by arbitration conducted in the United States of America (except as Company and Bank expressly agree otherwise) in accordance with the United States Arbitration Act (Title 9, U.S. Code) under the Commercial Arbitration Rules of the American Arbitration Association. Under these procedures, the dispute, controversy or claim shall be submitted to a neutral person for determination in place of a trial before a judge or jury. Judgement upon decision rendered by the arbitrator may be entered in any court having jurisdiction. The parties to this Agreement acknowledge, agree and covenant that any such arbitration proceeding shall be conducted at a mutually agreeable and convenient place located within Lackawanna County, Pennsylvania.

**Effect of Provision:** This provision shall not limit the right of either party to this Agreement to exercise self-help remedies or obtain provisional or ancillary remedies from a court of competent jurisdiction before, after or during the pendency of any proceeding. The exercise of such a remedy does not waive the right of either party to resort to arbitration or trial by a judge. Company, or Bank may exercise or obtain these remedies at any time, even while the arbitration or trial by a judge is pending.

**Jurisdiction and Venue:** Company consents to the jurisdiction of the courts of the Commonwealth of Pennsylvania and the federal courts of the United States of America located in the Commonwealth of Pennsylvania, waives any argument that such venue is inconvenient or any objection to the jurisdiction of such courts, and agrees to bring litigation commenced in connection with this Agreement in any state or federal court located in the Commonwealth of Pennsylvania.

**Collection Costs:** Should Bank have to undertake any action, including an arbitration proceeding, to recover any amount due under this Agreement for the Services, including without limitation, fees, overdrafts or overpayment, Company will be liable to Bank for the cost of such effort, plus reasonable attorney fees in any arbitration proceeding, court action or appeal therefrom.

**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, Company agrees that Bank may place a hold on affected Account. Any such hold will remain in place only so long as reasonably necessary to resolve the claim or employ legal remedies to allow a court to decide such claim.



Company agrees to reimburse Bank all costs, including Attorney fees, incurred due to such adverse claim.

Legal process:

If Bank is served with a subpoena, warrant, order, or other request from a federal, state, or local governmental authority, court, or tribunal for information or records concerning this Agreement, the Services, or Company, or with a levy or garnishment of the Account(s), Bank will follow (and may rely on absolutely) the advice of its legal counsel as to the appropriate response to such subpoena, warrant, request, levy, order, or garnishment, and shall have no liability or responsibility whatsoever to Company for doing so even if such advice shall turn out to have been mistaken. Company acknowledges that Bank's current policy (which is subject to change based on advice of legal counsel) is to comply with any such subpoena, warrant, request, levy, order, or garnishment, as concerns information, records, or funds.

If Company or any Owner is served with a subpoena, warrant, order, or other request from a federal, state, or local governmental authority, court, or tribunal for information or records concerning this Agreement, the Services, or Bank, Company or Owner will provide Bank with prompt written notice so that Bank may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or other remedy or Bank's waiver, Company or Owner is nonetheless legally compelled to disclose such requested information, Company or Owner may, without liability hereunder, disclose only that portion of such information that Company's or Owner's counsel advises it is legally required to disclose, *provided that* Company or Owner shall use its best efforts to preserve the confidentiality of any information protected by this Agreement, including, without limitation, by cooperating with Bank to obtain an appropriate protective order or other reliable assurance of confidential treatment by the federal, state, or local governmental authority, court, or tribunal.

### **Third-Party Service Providers**

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

Third-Party Equipment and Software Vendors: Certain Services require computer equipment and software that are provided to Company by a third-party vendor selected by Company who are unaffiliated with Bank. Bank does not warrant and shall not be responsible for equipment, software, or Services provided by unaffiliated third-party vendors and/or Service Providers.

Company Vendors: If Company engages any Vendor to execute orders, the Vendor is Company's agent and Company are bound by all information, orders, entries or other instructions provided on Company's behalf by Vendors through the Services in compliance with the procedures required by Bank (including the Security Protocol). Company confirm that Company grants authority to



Vendors to legally bind Company with respect to their use of the Services. Company is liable for (i) the Vendor's actual failure to comply with any of Company's obligations under the Agreement and the Services Documentation relating to the Service, (ii) all fees, costs and expenses owed to each Vendor for its services on Company's behalf, and (iii) any claims, damages, costs and expenses incurred by Company or Bank as a result of any Vendor's failure to perform, or delay or error in performing its services in Company's behalf. Company will indemnify Bank and hold Bank harmless from and against any and all liabilities, losses, claims, costs, expenses and damages of any nature (including, but not limited to, reasonable attorney's fees and any fees and expenses incurred in enforcing the Agreement) in any way relating to any actions or inaction of a Vendor, unless such loss is attributable to Bank's gross negligence or willful misconduct. In the event Company terminates its relationship with a Vendor, it is Company's sole responsibility to terminate such Vendor's access to the Services. Company authorizes Bank to disclose to any third-party Vendor information concerning Company to the extent required to deliver the requested Service.

### **Notices**

All notices under this Agreement to Bank shall be delivered or mailed to the Business Services Department at:

Peoples Security Bank and Trust Company  
Business Services Department  
82 Franklin Avenue  
Hallstead, PA 18822

or at such other address as Bank may specify in writing or they may be emailed to CashMgmtDocGroup@psbt.com, unless otherwise specified by Bank.

Notices sent to Company shall be delivered or mailed to Company's current lead Account address or other known address if deemed more appropriate by Bank under the circumstances. Notices may be delivered by Bank in electronic format, including posting to Bank's website, if requested or appropriate. Any notice or communication to Company or Bank will be effective when it is actually received and there has been a reasonable time to act on it, except that written notice or communication to Company will be effective no later than five (5) Business Days after it was mailed by first class, certified or registered mail, return receipt requested, whichever is earlier.

Bank is entitled to rely upon any notice or other communication (including electronic) that Bank believes in good faith to be genuine. Bank is permitted at Bank's sole discretion, to act on email notices from Company sent to Bank's web address or otherwise, although Bank shall be under no obligation to do so. Bank will accept any such communications unless Bank notifies Company to the contrary.

***Company shall not submit any personally identifiable information (such as account numbers, tax identification numbers, etc.) to Bank via unsecured email or unsecured file sharing services.***

### **Termination**

Any Services may be terminated by either party upon thirty (30) Business Day's prior written notice to the other party.

Either party may terminate the Agreement or any or all Services immediately upon written notice to the other due to:

- (i) the other party's breach of a material obligation, representation, warranty or agreement made by such party under the Agreement; or
- (ii) the other party's insolvency, receivership or voluntary bankruptcy, or the institution of any proceeding therefore, or any assignment for the benefit of the other party's creditors, or if in the good faith opinion of one party the financial condition of the other party has become impaired.

Bank may also terminate or suspend any Service without notice to Company if any of the following occurs:

- (i) a material adverse change occurs in Company's business or financial condition;
- (ii) Bank has reason to believe that Company has engaged in fraudulent or illegal activity;
- (iii) Company fails to maintain balances in Accounts sufficient to cover overdrafts;
- (iv) Company violates the terms of this Agreement or any financing arrangement with Bank;
- (v) Company fails to comply with Bank's Security Protocol or fails to provide financial information reasonably requested by Bank;
- (vi) Bank determines it is impractical or illegal to provide any Services because of changes in laws, regulations or rules or Bank is directed to terminate or suspend this Agreement by a federal or state governmental authority with supervisory jurisdiction over Bank or its holding company;
- (vii) Bank, in good faith, is unable to satisfy itself that any Services have been properly authorized by Company;
- (viii) Bank, in good faith, deems itself insecure, believes such Services may create a risk of financial loss for Bank or result in an unacceptable credit exposure to Bank; or
- (ix) Company has not used the Service for twelve (12) consecutive months.

Notwithstanding any termination, the terms of this Agreement shall apply to all transactions which have been initiated prior to termination. Termination of a Service does not affect Company's payment obligations for Services Bank provides to Company before the Service is terminated, and any such termination is in addition to Bank's other rights under Applicable Law and under the terms of this Agreement.

Upon Termination, all amounts owed by Company and outstanding will become immediately due and payable and Company will immediately return to Bank or destroy the originals and all copies (in all formats and media) of software programs, if any, that were licensed to it as part of the Services, all Quick Start Guides and User Guides, and security and access devices. Any licenses granted to Company with respect to those terminated Services under the applicable Service documentation will automatically terminate. Even if the Agreement or any or all Services are

terminated, the Agreement shall continue in full force and effect as to all transactions that Bank began processing before such termination.

### **Money Laundering and Funding of Terrorism**

Company acknowledges that transactions made on Company's behalf may be subject to Applicable Laws governing transactions in currency and other monetary instruments relating to money laundering activities and the funding of terrorism and that such laws and regulations may impose severe criminal penalties on those who participate or assist in such activities or in structuring of such activities to avoid reporting requirements. Company acknowledges that Bank may monitor transactions for compliance with such laws and regulations. Company agree that Company will not initiate any Order which would violate, or result in a payment in violation of the federal and state laws or regulations, including, without limitation, the federal laws and regulations administered by bank regulatory agencies and OFAC relating to money laundering and the funding of terrorism.

### **Audit**

Upon request by Bank, Company hereby authorizes Bank to enter Company's business premises for the purpose of ensuring that Company is in compliance with the Agreement and Company specifically authorizes Bank to perform an audit of Company's operational controls, risk management practices, staffing and the need for training and ongoing support, and information technology infrastructure. Company thereby agrees that Bank shall have the right to mandate specific internal controls at Company's location(s) and Company shall comply with any such mandate. In addition, Company hereby agrees to allow Bank to review available reports of independent audits performed at Company location related to information technology, the Agreement and any associated operational processes. Company agrees that if requested by Bank, Company will complete a self-assessment of Company's operations, management, staff, systems, internal controls, training and risk management practices that would otherwise be reviewed by Bank in an audit of Company. If Company refuses to provide the requested financial information, or if Bank concludes, in its sole discretion, that the risk of Company is unacceptable, if Company refuses to give access to Company's premises, Bank may immediately terminate the Agreement.

### **Amendments to Agreement**

From time to time Bank may amend any of the terms and conditions contained in this Agreement, including any part of Sections I through VI attached hereto. Such amendments shall become effective upon receipt of notice by Company or such later date as may be stated in Bank's notice to Company. Any such amendment will apply to transactions that are initiated, and claims that arise, on or after the effective date of the amendment. If Company uses any Services provided for by this Agreement after receipt of such notice of amendment, such use shall be deemed to constitute acceptance of and agreement to the terms of the amendment. Other amendments may be made only by means of an instrument signed by Bank and Company. Notwithstanding the foregoing, Bank may amend the Security Protocol without prior notice if immediate changes are required for security reasons or the changes do not have a material effect on use of the Services. Company agrees to be bound by such amendments.





### **Entire Agreement**

This Agreement, together with the Account Documentation and any supplements, or amendments, is the complete and exclusive statement of the agreement between Bank and Company with respect to the subject matter hereof and supersedes all prior understandings, agreements, writings, proposals, representations, or communications (whether oral, written, or otherwise produced) between the parties with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement and any other agreement, including the Account Agreement, the terms of this Agreement shall govern.

### **Non Assignment**

Bank may assign its rights and delegate its duties under this Agreement to a company affiliated with it or to a third party, including any successor by merger. Neither Company nor any Owner may assign any right or delegate any obligation under this Agreement without Bank's prior written consent.

### **Binding Agreement; No Third Party Beneficiaries; No Third Party Use**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, and permitted assigns. This Agreement is made for the exclusive benefit of Bank and Company (and, only with respect to the provisions of the section of the Agreement titled "Indemnification", the Bank Indemnified Parties). Other than the Bank Indemnified Parties, no third party has any rights under this Agreement. Unless Bank gives its prior written consent, neither Company nor any Owners may use the Services to process transactions for third parties or permit others to initiate transactions using the Services on their behalf.

### **Severability**

If any provision or part thereof in this Agreement is held to be invalid, illegal, void or unenforceable, then this Agreement shall be deemed automatically modified to the extent necessary to (i) make such provision or part thereof valid, legal, and enforceable and (ii) as closely as possible maintain and accomplish the original intent of the provision or part thereof in question; and the remaining provisions, or other parts or applications of such provision, in this Agreement shall not be affected and shall remain in full force and effect.

### **Waivers**

Any waiver of a provision under this Agreement must be in writing to be effective. Waiver of any right hereunder will not be deemed a waiver of other rights or of the same right at another time.

### **Survival**

Company acknowledges and agrees that certain covenants set forth in this Agreement survive by their nature or in accordance with the terms thereof, notwithstanding the termination of this Agreement for any reason by Bank or Company, including, without limitation, the indemnification obligations hereunder and the provisions contained in the sections of this Agreement titled, (a) “Fees and Charges,” (b) “Security Interest,” (c) “Confidential Service Information,” (d) “Limitation of Liability for Services,” (e) “Company Indemnification of Bank,” and (f) each of the subsections under “Dispute Resolution.”

### **Relationship of Parties**

The parties acknowledge and agree that their relationship is that of an independent contractor and that this Agreement does not establish or create a general agency, joint venture, partnership, or employment relationship between Bank, on the one hand, and either of Company or any Owner, on the other hand. Nothing contained in this Agreement shall be deemed to create fiduciary status on the part of Bank in connection with Bank’s provision of the Services.

### **Headings**

Headings are used for reference purposes only and shall not be deemed a part of this Agreement.

### **Use of Name**

Neither Company or any Owner, on the one hand, nor Bank, on the other hand, shall display any name, trademark, or service mark of the other without the prior written consent of the other. Neither Company nor any Owner shall advertise or promote any Service without Bank’s prior written consent.

### **Counterparts; Electronic Signatures**

Notwithstanding anything in this Agreement to the contrary, this Agreement may, at the sole discretion of the Bank, be executed in as many counterparts as necessary or convenient, including both counterparts that are executed in writing and counterparts that are electronic records and executed electronically. Each executed counterpart shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement may also be executed by facsimile or scanned signatures, which shall have the same legal validity, force, enforceability, and effect as original signatures. Company and Bank further agree that both this Agreement and any further documentation to be executed by the parties in connection with their banking relationship, may be executed using electronic signatures. Any electronic signatures shall have the same legal validity, force, enforceability, and effect as manual signatures. The words “signed” and “signature” (and similar words) include, but are not limited to, electronic signatures. Bank may prepare or maintain an electronic record that contains an image or other copy of the original Agreement and other documentation signed by Company using actual, facsimile, scanned, or electronic signatures. All true and correct copies of such electronic records will be deemed “originals” for all purposes under Applicable Law, whether or not Bank retains the original Agreement. No party hereto shall raise the use of facsimile, scanned, or electronic signatures as a defense to the formation of a contract, and each party hereto forever waives any such defense.

## **Section II: Security Protocol/Best Practice Procedures – Including Dual Control Opt In/Out**

Bank is committed to helping to ensure the safety of Company financial identity, their financial assets and related personal information. The information that follows is a collection of practices that if followed will help to ensure Company's and/or Owners' safety and mitigate the risk of Internet based threats such as Corporate Account Takeover ("CATO") and internal fraud.

Please refer to the For Your Security and Protection document to implement the security features provided to you. This is an important first step in the overall plan to keeping customer information safe.

Review and reconcile Accounts on a daily basis and report any suspicious activity to Bank immediately.

***Bank strongly recommends dual control of ACH and Wire Transfer payments. Each transaction should be drafted by one employee and approved by another (dual control). Bank strongly recommends the use of one dedicated workstation just for accessing Business Online Banking. This can mitigate risk from other threats that can come from visiting various websites and unwittingly becoming a target for hackers which could lead to CATO.***

Be suspicious of e-mails purporting to be from a financial institution, government department or other agency requesting account information, account verification or banking access credentials such as usernames, passwords, PIN codes and similar information.

A dedicated, actively managed firewall should be installed to protect Company's network from Internet based attacks that attempt to achieve unauthorized access to Company's network, computers, administrative passwords and customer information.

Company should require strong personal computer passwords. A strong password should include capital and lower case letters, numbers, and special characters.

Passwords should be changed periodically throughout the year.

Usernames, passwords, token serial numbers, token codes, or token should never be shared with anyone, including third-party providers.

To avoid phishing attacks, token codes should not be entered into links received in e-mails. The URL of the reputable site to which the employee wants to authenticate should be accessed.

Commercial anti-virus, anti-spam and desktop firewall software should be installed on all computer workstations and updated regularly. Free software may not provide the level of protection against the latest threats that a licensed industry standard product can.

Installation of a spyware detection program or software should be considered.



Computers should never be left unattended while using online banking.

Browsers should be closed regularly, and caches of data cleared.

Company should never use an unsecured Internet Service Provider.

Company should only use encrypted email services.

Familiarize yourself with Account Documentation, including Bank's "Online Business Banking Agreements" and Company's and/or Owners' liability for fraud under the agreement. **Immediately escalate any suspicious activity or transactions to a Bank representative by calling its Commercial Online Services team at 866-728-3601.** *There is a limited recovery window for fraudulent transactions and immediate escalation may prevent further loss.*

### **Section III: Business Online Banking Service**

Business Online Banking provides direct access to Services via the Internet for a Company which are enrolled and approved for such Services. Access to Services may include, but are not limited to, ACH origination, ACH "Positive Pay," Wire Transfers, Internal Transfers, Stop Payments, "Check Positive Pay," remote deposit capture, image access, online periodic statements and system administration.

Company may use Business Online Banking to access, view and receive information about Company's Account(s), including balances and transactions and other information relating to Company's relationship with Bank (including, but not limited to information on any loans, transactions or other Services Company uses) as Bank may provide or make available to Company.

Company may affect an Internal Transfer of funds using Business Online Banking. Each internal Transfer shall be deemed to be a Payment Order and Bank's liability for processing such Payment Order shall be subject to the limitations on liability as set forth in this Agreement, and as incorporated herein from the Agreement. Company must communicate instructions to initiate an Internal Transfer through Business Online Banking by using the Security Protocol. Internal Transfers shall be subject to the cut-off times Bank establishes and any of Bank's information or formatting requirements, and Company may schedule Internal Transfers for future dates. Bank may reject any Internal Transfer Order for any reason in Bank's sole discretion including, but not limited to, an overdraft in Company Account. Uncollected funds may be accessed for transfers and Check clearing, subject to applicable fees. Company agrees to be liable for any Internal Transfer communicated to and executed by Bank in compliance with the Security Protocol, whether or not they are authorized. Company shall have no right to cancel an Internal Transfer Order once Company submits it to Bank for processing.

Company may use Business Online Banking to transmit an Order for Bank to Stop Payment on a Check Company issued on Company Account, and Bank agrees to provide such Service relating to Stop Payments subject to the terms herein. Bank is authorized to rely on Stop Payments received through Business Online Banking and Company agrees that a Stop Payment placed under this Service constitutes a writing pursuant to Section 4-403 of the UCC. Prior to Company submitting



a stop Payment Order to Bank through Business Online Banking, Company agrees to access the appropriate Account and database information through Business Online Banking, review the applicable periodic statement for the Account, and determine whether the Check to which the Stop Payment Order relates has or has not already been paid. Company acknowledges that a transaction search through Business Online Banking will not necessarily reveal whether a Check has been paid until the banking day after the banking day on which the stop payment order is received by Bank. To place a stop payment, Company must provide all information Bank requires (the “**Required Information**”) and the Required Information must precisely identify a Check Company has issued on Company Account or the Stop Payment shall be void and not processed.

This Service is available only for Checks drawn on a Company Account and will not apply to cashier’s checks, certified checks, drafts or other similar cash equivalent items. Bank will not be obligated to honor any Stop Payment and such Stop Payment will be void if the Item to which it relates has been paid or Bank has become otherwise obligated to pay such item. Unless otherwise set forth on the request for a stop payment, each stop payment hereunder will automatically expire six (6) months after the date submitted unless Company renews it for a similar period. Bank has no obligation to comply with any expired stop payment and shall have no liability for payment of a check on which the stop order has expired. No notice will be provided to Company that an order is expiring.

Subject to, and consistent with, the provisions of the Agreement, Company may elect to receive electronic periodic statements to be posted on the System each month.

Company may elect to receive informational alerts for selected Services delivered to the Mobile Device or email address Company designates. The types of alerts are described in the Account Documentation for a specific Service to which the alert applies. Company is solely responsible for the selection, security, accuracy and accessibility of the email addresses and phone numbers provided for the alerts. Alerts are provided for Company convenience and are based on Company Account information, which may be updated throughout the day. Bank shall not be liable for any failure or delay or in accuracy in any alerts. Company is solely responsible for User use and reliance on such alerts.

Company is not permitted to reply to any alerts by means of the mobile or online address to which such Alerts are delivered or otherwise received. Company acknowledges and agrees that alerts are sent without encryption or any security codes and that Bank shall not be responsible or have any liability for unauthorized access to an alert or the information therein.

Company acknowledges and agrees that alerts are provided as a courtesy and do not have any effect on the validity of transactions initiated using any other Service or information provided to Company as part of a Service or in connection with an Account, including periodic statements or information provided by other means and Company obligation to monitor activity on Company Accounts are not modified by Bank’s providing, or failure to provide, alerts. Company further acknowledges and agrees that Company are responsible for accessing each Service as applicable to administer Company transactions and information, notwithstanding whether an alert is provided, and alerts do not relieve Company of Company’s responsibilities under the terms of any Service.



### **Administration**

Company agrees to designate one Company Administrator for Business Online Banking. The Company Administrator is responsible for setting up Services available through the System and for establishing internal security procedures related to such Services, including without limitation, system-wide configuration of Accounts, assigning Users, establishing authorization requirements, distributing and re-setting login credentials for other internal security devices related to Services.

Company represents to Bank that the Company Administrator has full authority on Company's behalf to designate individuals who will have authority to access Business Online Banking, establish their permission rights and otherwise act on Company's behalf in connection with Business Online Banking.

Company acknowledges that the Company Administrator may receive email notifications from Bank from time to time and that the Company Administrator is responsible for sharing pertinent information regarding updates to Business Online Banking and notices regarding the availability of services with other users at Company.

Bank will have no control over the establishment of Users or the identity of such Users, the personal information of such Users, or such Users' Login Credentials.

### **Multifactor Authentication**

Access to Business Online Banking Services will be controlled using Login Credentials (including Company ID, User ID, and User Password). Login Credentials that are assigned to individual Users shall not be shared with any other person, including other Users, and Company shall not disclose any information regarding the Services that an unauthorized User would find helpful to obtain access to all or part of any Service.

Access to Business Online Banking requires the use of a Token or Out-of-Band Authentication for ACH Entries, Payment Orders, Positive Pay, and other electronic funds transfers. Each enhanced security device delivers a security access code to be entered before completing the transaction.

Each tangible Token always remains Bank's exclusive property. Company may not export, directly or indirectly, the Tokens or any technology inherent in the Tokens.

### **Inclearings/Controlled Disbursement**

Company may use reporting tools in Business Online Banking to view the total amount of checks that have been presented for payment to the designated Account ("**Inclearings**") on an intraday basis for each Business Day. Bank relies on clearing information received from the applicable Federal Reserve Bank or other clearing entity, the accuracy and timeliness of which Bank does not control and for which Bank assumes no responsibility or liability. If for any reason Bank is not provided with such information, Company shall estimate its Inclearings for that Business Day.



Prior to the physical delivery of the actual Inclearings to Bank, Bank will facilitate a preliminary posting of Inclearings (“**Memo Post**”) to Company’s Account intraday based in an electronic file of the estimated Inclearings provided by the Federal Reserve Bank, each Business Day. During end-of-day processing, Bank will reverse each Memo Post entry and post each physical item received from the Federal Reserve Bank against the Controlled Disbursement Account. The total of the checks posted against the Account may or may not equal the Memo Post total from earlier that Business Day.

Prior to the close of business each Business Day, Company will ensure that the Account or an Account that is linked to the designated Account for Controlled Disbursement via a sweep mechanism contains Available Funds in an amount at least equal to the aggregate Inclearings for that Business Day. If the Available Funds in the controlled Disbursement Account or Sweep Account are less than the aggregate Inclearings presented against the Controlled Disbursement Account, Bank will have the right to dishonor one or more of the Checks for which there are not adequate Available Funds.

## **Section IV: ACH Origination Service**

### **ACH Transfers**

Company acknowledges that the ACH feature of the Service is an alternate entry system for issuing funds transfer requests to the Automated Clearing House Network. Company understands that Bank will process only ACH transaction types: prearranged payment and deposit or PPD, corporate credit or debit or CCD and corporate trade exchange or CTX. Company understands that this Agreement for ACH access is treated as a loan request and credit will be verified by Bank at the inception of this Agreement and at least annually thereafter. Company authorizes Bank to check its credit and to inquire into other records related to it. Company understand and acknowledge that information gathered by Bank will be used in evaluating participation in the Services and/or other relationships with Bank and its affiliates.

### **Certain Definitions**

Unless otherwise defined herein, capitalized terms utilized in this Section shall have the meaning provided in the NACHA Rules, as amended from time to time during the Term. Bank agrees to offer Company the option to purchase a copy of the NACHA Rules at Bank’s cost upon request.

### **Compliance with Rules**

Company agrees that all ACH Entries ("**Entries**") and all ACH Notices ("**Notices**") initiated under this Agreement are to be governed in all respects by the NACHA Rules and agree to be bound by and to comply with the NACHA Rules currently in effect.

Company’s failure to comply with the NACHA Rules may, in the sole discretion of Bank, be grounds for Bank to terminate or suspend Company use of the Services. Company further agree that Bank has the right to audit Company books and records to ensure compliance with this Agreement and the NACHA Rules.

### **Transmittal of Entries**

Pursuant to the terms of this Agreement and the NACHA Rules, Bank is willing to act as an Originating Depository Financial Institution ("ODFI") with respect to Entries initiated by Company using the Services. Company shall transmit to Bank those ACH Debits ("**Debits**") and ACH Credits ("**Credits**") as required in the NACHA Rules and the terms of this Agreement in accordance with the procedures outlined in the Services. Company will provide all information specified by Bank from time to time, which information will include, without limitation, the account number of the account to be debited or credited (as the case may be), the amount of each such Credit or Debit, and the Receiving Depository Financial Institution (the "**RDFI**"). Bank will deliver the Entries to the ACH and Credit and Debit any accounts as required by the Entries and the NACHA Rules. Written notification of cancellation received by Company from any Recipient will be accepted as revocation of the Authorization Agreement for preauthorized disbursements. This Agreement shall only govern those ACH Transfer Requests initiated under this Agreement for Services. A separate ACH Agreement between Bank and Company shall govern any non-Services initiated request.

Company provides authorization for Bank, as the ODFI, to originate entries on behalf of the Originator to the Receiver's accounts.

### **United States Laws and Regulations**

Company acknowledge that it will not generate transactions that violate the Applicable Laws, including, but not limited to, the laws or regulations of the United States of America. This also includes but is not limited to sanction laws administered by the Office of Foreign Assets Control (OFAC). It shall be the responsibility of Company to obtain information regarding such OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at 800-540-OFAC or from the OFAC's home page website at [www.ustreas.gov/ofac](http://www.ustreas.gov/ofac)).

### **Types of Entries**

Bank will transmit debit and/or credit Entries initiated by Company to the ACH Network as provided in the NACHA Rules and this Agreement. ACH Standard Entry Class Codes ("**SEC**") currently originated by Company authorized for ACH Origination Services include the following:

***CCD – Corporate Credit or Debit***

Either a credit or debit where funds are either distributed or consolidated between corporate entities.

***PPD – Prearranged Payment and Deposit***

**Direct Deposit** - The transfer of funds into a consumer's account. Funds being deposited can represent a variety of products, such as payroll, interest, pension, dividends, etc.

**Direct Payment** - Preauthorized payment is a debit application. This includes recurring bills that do not vary in amount such as insurance premiums, mortgage payments,





charitable contributions, and installment loan payments; or standing authorizations where the amount does vary, such as utility payments.

### ***CTX – Corporate Trade Exchange***

Corporate Trade Exchange is a NACHA format that incorporates multiple addenda records that are structured in variable length fields. The addenda records are the remittance detail for the ACH payment. The CTX Format is the suggested format as it is completely electronic and therefore the most efficient.

Origination using other types of SEC Codes require the prior approval of Bank.

**Provisional Credit.** Company acknowledges that the NACHA Rules make provisional any credit given for an Entry until Bank, crediting the account specified in the Entry, receives final settlement. If Bank does not receive final settlement, it is entitled to a refund from the credited party and the originator of the Entry shall not be deemed to have paid the party.

**Form and Format.** Bank shall notify Company whether Entries shall be in the form of balanced or unbalanced files. If Bank requires that Entries shall be in the form of an unbalanced file, then this means an Entry contains only the originating items for that Entry without any corresponding offset or settlement transaction.

### **Credit Entries**

Bank reserves the right to require that Company pay Bank in immediately available funds at the time of transmittal or at any time prior to settlement the amount of each credit Entry submitted by Company.

### **Debit Entries**

Bank shall on the applicable Settlement Date credit the Account with the amount of each debit Entry transmitted by Bank. In the event any Entry is returned in accordance with the Rules by a Receiving Depository after Bank has provided credit, Company shall, upon demand, repay Bank the amount of the Return Entry. Bank may require Company to maintain reserves in order to adequately cover return items.

### **Cut-off Times**

Cut-off times are posted within the Business Online Banking programs and can also be located at [www.PSBT.com](http://www.PSBT.com). Any ACH transmission received by Bank after its daily Cut-off time shall be deemed to have been received by Bank at the opening of its next Business Day.

### **Entry Settlement**

Company shall provide Bank with immediately available funds not later than close of business local time on each Settlement Date sufficient to pay all Entries initiated by Company which are to be settled on that date. Company hereby authorize and instruct Bank to make deposits,



withdrawals and transfers to and from Company Accounts as appropriate or necessary in connection with any of the ACH services provided by Bank under this Agreement. Notwithstanding anything in this Agreement to the contrary, Bank reserves the right to require that sufficient collected funds be in Company Accounts prior to the time any Entry is processed by Bank under this Agreement.

### **Pre-Funding**

Bank reserves the right to require Company to pre-fund an Account maintained at Bank prior to the Settlement Date of the ACH file. PSBT shall determine whether pre-funding is required based on criteria established from time to time by Bank. Bank will communicate directly to Company if prefunding is required and, if requested by Company, will provide Company with an explanation of its prefunding criteria. If it is determined that pre-funding is required, Company will provide immediately available and collected funds sufficient to pay all Entries initiated by Company prior to initiating any Entries for which pre-funding is required.

### **Settlement**

Company will maintain an Account with Bank at all times during the term of this Agreement and until the period for Return Entries has elapsed. Company will maintain in the Account immediately available funds sufficient to cover all credit Entries originated and returns of debit Entries originated. Company authorizes Bank to debit its Account in the amount of each file.

### **Settlement Discrepancies**

The periodic statement issued by Bank for Company's Account will reflect Entries credited and debited to Company's and/or Owners' Account. Company agrees to notify Bank within a reasonable time not to exceed thirty (30) calendar days (except where applicable law provides a sixty (60) calendar day review period) after Company receives a periodic statement of any discrepancy between Company's records and the information in the periodic statement with respect to Entries credited and debited to Company's and/or Owners' Account. Company and Bank agree to cooperate with the other party in performing loss recovery efforts in the event either party may be liable to the other for damages.

### **Cancellation or Amendment of Entries**

Company shall have no right to cancel or amend any Entry/File after receipt of Entry/File by Bank. However, Bank shall use reasonable efforts to act on a request by Company to cancel an Entry/File before transmitting it to the ACH Network or processing it as an on-us Entry. Bank shall have no liability if it fails to affect the cancellation.

### **Rejection of Entries**

Bank may reject any Entry/File, including an on-us Entry, and may reject any Entry if Company is not otherwise in compliance with the terms of the Agreement. Bank shall notify Company of such rejection no later than the Business Day such Entry would otherwise have been transmitted



by Bank to the ACH Network or, in the case of an on-us Entry, its effective Entry date. It shall be the responsibility of Company to remake any Entries or files rejected by Bank or the ACH Operator.

### **Return Entries**

Bank shall notify Company of the receipt of a Return Entry from the ACH no later than one (1) banking day after the banking day of such receipt. Bank shall have no obligation to re-transmit a Return Entry if Bank complied with the terms of this Agreement with respect to the original Entry. Company authorizes Bank to charge back returns to Company's designated Account the amount of any Return Entry as soon as information is made available to Bank. Company will promptly provide immediately available funds to indemnify Bank if any debit Entry is returned after Bank has permitted Company to withdraw funds in the amount thereof or if any adjustment memorandum that relates to such Entry is received by Bank.

### **Reversals**

Company may initiate a reversing Entry or file of Entries for erroneous or duplicate transactions, as permitted by the NACHA Rules. In doing so Company warrants that Entries or files were initiated within five (5) banking days of the original Entry or Entries and within twenty-four hours of discovery of the error. Company 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, Company indemnify all parties of the transaction(s) from and against any claim, demand, loss, liability, or expense.

### **Reserves**

From time to time, Bank shall evaluate Company's and/or Owners transaction activity for the purpose of establishing averages for transaction frequency, amount, and returns and adjustments. These evaluations may occur annually or may occur more frequently at Bank's discretion. In connection with these evaluations, Bank reserves the right to require Company to establish a reserve account with Bank to be funded as calculated by Bank to cover Company's and/or Owners obligations to Bank arising from ACH activities under this Agreement. The funds required to be held in the reserves account may be expressed as a fixed dollar amount or as a "rolling reserve" calculated based on "rolling" averages determined by Bank's periodic evaluations. The amount of funds in the reserve account required by Bank, if any, will be communicated directly to Company from time to time. Company agrees to establish and fund the reserve account as required by Bank within seven (7) banking days after receipt of a communication from Bank setting forth the amount of funds required and the basis of calculation used to determine such amount. Bank may suspend ACH processing activity for Company if Company fails to establish the required amount of funds in reserve account within the time period specified by Bank in its communication to Company. The obligation of Company to maintain the reserve account shall survive the termination of this Agreement and the Agreement for a period of 180 calendar days. Bank shall have the right to set-off any post-termination liabilities of Company arising under this Agreement against the funds in the reserve account during such 180-day period. At the conclusion of the 180-day period, funds remaining in the reserve account (if any) shall be



transferred to Company. The obligation of Company to establish, maintain, and fund amounts in the reserve account are a supplement to, and not a replacement of, the obligations of Company under this Agreement and the Agreement, including the indemnification obligations of Company therein.

### **Name and Account Number Inconsistency**

Company acknowledges that, if an Entry describes the receiver inconsistently by name and account number, payment of the Entry may be made as provided in the NACHA Rules on the basis of the account number even if it identifies a party different from the named receiver.

### **Fees**

Company authorizes Bank to debit its designated Account for services provided under the Agreement in accordance with Bank's Treasury Management Fee Schedule. Bank may change its fees from time to time upon written notice to Company.

### **Liability**

For the avoidance of doubt, in addition to any further limitations on Bank's liability that are provided in this Agreement or exceptions thereto, and except as otherwise expressly required by the NACHA Rules, Bank's liability shall be limited as set forth in the Agreement and all disclaimers set forth therein shall apply to the Services provided under this Agreement. For the avoidance of doubt, in addition to the indemnification obligations contained in this Agreement, Company shall indemnify and hold harmless Bank to the extent provided for in the Agreement.

### **Exposure Limits**

The total dollar amount of Entries transmitted, frequency of origination and payment application (debits or credits) originated by Company to the Financial Institution shall comply with approved dollar amount limits.

### **Security Interest**

Bank shall have the same rights to secure the prompt payment and performance of Company's and/or Owners' obligations to Bank with respect to this Agreement as set forth in the Agreement. In the event Company initiates insolvency or bankruptcy proceedings, Bank shall be deemed a secured party for all purposes with respect to the Accounts and all amounts held in the Accounts.

### **Contingency Plan**

Client is required to have a contingency plan in place in case of any unforeseen disaster; i.e., failure or delay in performance caused by any natural disaster, fire, flood, storm, power failure, equipment failure, interruption of communications, errors in transmission, acts by any third party, emergency conditions, insurrection, acts of God or nature, or any similar disaster. If the Service is unavailable or unable to accept files due to system error and/or failure during a time period in



which the Client must utilize the service, it is the Client's responsibility to utilize their contingency plan. Plan should be successfully tested periodically.

### **Inspection**

Bank shall have the same rights of audit and inspection with respect to this Agreement as set forth in the Agreement.

### **Termination of Agreement**

The termination provisions of the Agreement shall apply to this Agreement. Any termination of this Agreement shall not affect any of Bank's rights or Company obligations with respect to any Entries initiated by Company prior to such termination, or the payment obligations of Company with respect to services performed by Bank prior to termination, or any other obligations that survive termination of this Agreement. Company obligation with respect to any Entry shall survive termination of this Agreement until any applicable statute of limitation has elapsed.

### **NACHA Rulebook Offer**

Company agrees to comply with and be bound by the operating rules of the National Automated Clearing House Association (NACHA) (the "Rules") as amended from time to time. It is ultimately the responsibility of the Company to comply with the Rules as amended from time to time regardless of instruction/notification from the Bank. Company will comply with, cooperate and assist the Bank and its Vendors in complying in a complete and timely manner with the Rules. You agree to execute and deliver to the Bank all such instruments, as the Bank may from time to time reasonably deem necessary. You acknowledge the availability of a copy of the operating NACHA Rules corporate edition as published annually and is available for purchase by contacting Bank, visiting NACHA's website <https://www.nacha.org>, or obtaining an online order code by contacting Bank Digital Operations at 888-868-3858 or email [OnlineServices@psbt.com](mailto:OnlineServices@psbt.com). Bank agrees to inform you of revisions to the Rules which pertain to you and of which the Bank has knowledge.

## **Section V: Remote Deposit Capture Service**

Remote Deposit Capture Services provide Company with the option of making electronic deposits of Check Images.

Company shall submit the Remote Deposit Capture transmission (containing one or more Check Images) to Bank prior to the daily Cut-off time established by Bank from time to time for the receipt of Remote Deposit Capture. Cut-off times are posted within the Remote Deposit Capture software program and can also be located at [www.PSBT.com](http://www.PSBT.com). Any Remote Deposit Capture transmission received by Bank after its daily Cut-off time shall be deemed to have been received by Bank at the opening of its next Business Day.

A Remote Deposit Capture file is received when the entire Remote Deposit Capture transmission is received by Bank. If only a portion of a Remote Deposit Capture transmission is received by Bank for any reason, including without limitation a failure during the transmission to Bank, the



Remote Deposit Capture transmission is deemed to have not been received by Bank with respect to any Remote Deposit Capture Item contained within that Remote Deposit Capture transmission (including any Check Image contained in the portion of that Remote Deposit Capture transmission that was received).

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

Prohibited checks may not be deposited through the Service, and Company must have processes in place to prevent processing of any Check that:

- (i) Is payable to any person or entity other than Company;
- (ii) Company 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;
- (iii) 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, without Bank’s prior written consent;
- (iv) Is drawn on financial institutions that are located outside the United States or its territories;
- (v) Is a “remotely created check” (as defined in Regulation CC); or
- (vi) Is not acceptable by Bank for deposit in the Account as provided in the Account Agreement.

Each File transmitted by Company to Bank shall contain Check Images of the front and the back of the Checks scanned and remotely deposited by Company.

Each Check must be endorsed to be accepted for deposit under the Service. Checks should be endorsed with electronic endorsement or a valid signature and the words “FOR REMOTE DEPOSIT ONLY PSBT”. An incorrect endorsement may result in delayed processing.

Each Image of each Check shall be of such quality that the following information can clearly be read and understood by sight review of such Image;

- (i) the amount of the Check;
- (ii) the payee of the Check;
- (iii) the signature of the drawer of the Check;
- (iv) the date of the Check;
- (v) the Check number;
- (vi) the information identifying the drawer and the paying financial institution that is preprinted on the Check, including the MICR line; and
- (vii) all other information placed on Check prior to the time an image of the Check is captured, such as any required identification written on the front of the Check and any endorsements applied to the back of the Check.

Each image shall also meet all standards for image quality established by ANSI and the Federal Reserve.

**Representations and Warranties of Company.** With respect to each and every Check for which an Image is generated in connection with the Service, Company represents and warrants to Bank that:

- (a) Company will only transmit eligible Checks and Items, and all Checks and Items will include all signatures required for their negotiation;
- (b) Company is bound by and has complied with all procedures and operating guidelines established by Bank, whether contained herein, set forth in the Agreement, or subsequently provided by Bank;
- (c) Company assumes responsibility for any paper Check that is transmitted and which for any reason is not paid;
- (d) Company will not (i) transmit an Image or Images of the same Check or Item to Bank more than once; (ii) deposit or negotiate, or seek to deposit or negotiate, such Check or Item with any other party; and (iii) present a paper Check for payment after its Image has been presented;
- (e) Company will use the Service only for their own deposits and will not allow the use of the Service by way of a service bureau business, timesharing, or otherwise disclose or allow use of the Service by or for the benefit of any third party;
- (g) Each Image presented by Company is an accurate representation of the front and back of the paper Check; and
- (h) In the event Company enters MICR information manually in connection with submission of Checks, they will not knowingly enter erroneous MICR information, including the amount of any Check, and shall assume full responsibility and liability for the accuracy of manually entered Check information.

### **Equipment**

If the scanner(s) is provided by Bank as part of this Service, Bank hereby grants to Company a nontransferable non-exclusive (“License”) to use the Scanner(s) only in connection with the Service provided by Bank. Company accepts the License subject to the terms and conditions set forth by Bank. Company acknowledges the Scanner(s) is and shall at all times remain the sole and exclusive property of Bank and agrees that Company will do nothing inconsistent with such ownership. Company agrees that nothing in this License shall give Company any right, title or interest in the Scanner(s) other than the right to use the Scanner(s) in accordance with this License, and Company agrees that it will not attack the validity of this License. Company shall use the Scanner(s) in a careful and proper manner and shall comply with and conform to all federal, state, municipal, and other laws, ordinances and regulations in any way relating to the possession, use or maintenance of the Scanner(s). If at any time during the term hereof, Bank supplies Company with labels, plates or other markings, stating that the Scanner(s) is owned by Bank, Company shall affix and keep them upon a prominent place on the Scanner(s). Company shall limit the use of the Scanner(s) to the processing of transactions with Bank pursuant to this Agreement. Company may



not use the Scanner(s) to facilitate processing transactions with any other person without the prior express written authorization of Bank. Company agrees that Bank will deliver or ship the Scanner(s) to Company at the address on file with Bank. Company acknowledges that delivery or shipment to Company shall be considered receipt of the Scanner(s) by Company. Company shall inspect the Scanner(s) within 24 hours after receipt thereof. Unless Company, within this period of time, give written notice to Bank specifying any defect in or other proper objection to the Scanner(s), Company agrees that it shall be conclusively presumed, as between Bank and

Company, that Company have fully inspected and acknowledged that the Scanner(s) is in good condition and repair, and that Company is satisfied with and have accepted the Scanner(s) in such good condition and repair. Bank shall at all times during business hours have the right to enter into and upon the premises where the Scanner(s) may be located for the purpose of the inspecting the same or observing its use. Company shall give Bank immediate notice of any attachment or other judicial process affecting Scanner(s) and shall, whenever requested by Bank, advise Bank of the exact location of the Scanner(s).

### **Funds Availability**

Upon acceptance of the Remote Deposit Capture file, Bank shall grant Company's Account provisional credit for the total amount of the accepted file, as applicable. The transmission of Check Images, MICR Data, or any other legally permissible Check collection method using the Remote Deposit Capture service is not subject to the funds availability requirements of Regulation CC. Bank may, at any time, and in its sole discretion, provide a one-time notification to Company if Bank intends to delay funds availability beyond ordinary Regulation CC funds availability time frames for Items submitted by Company using Remote Deposit Capture Services.

Bank may in its sole discretion determine the manner in which Bank will seek to collect a Check Image and/or MICR Data deposited by Company. Bank may, at its option: (i) present or transfer the Check Image or MICR data to the Paying bank, a Federal Reserve Bank, Check Clearinghouse, image share/exchange network, or other bank; (ii) create a Substitute Check, and/or MICR Data and collect such item, or (iii) request that Company provides to Bank the original paper Check from which the Check Image and/or MICR Data was created and then collect the original paper Check. Depending on the collection method, the Check Image, MICR Data, Substitute Check, is subject to the rules of that clearinghouse, Federal Reserve Bank, or image share/exchange network or Bank agreement.

### **Liability**

For the avoidance of doubt, in addition to any further limitations on Bank's liability that are provided in this Agreement or exceptions thereto, Bank's liability shall be limited as set forth in the Agreement and all disclaimers set forth therein shall apply to the Services provided under this Agreement. For the avoidance of doubt, in addition to any indemnification obligations contained in this Agreement, Company shall indemnify and hold harmless Bank to the extent provided for in the Agreement.

### **Regulatory Compliance**





The Remote Capture Service Program will (i) capture images of Checks that meet the requirements of the Check 21 Act; (ii) support certified Check scanners connected via an Internet connection; (iii) process captured Check Images and may enable review, key of MICR and other data; (iv) permit Company to approve or reject Check Images presented for deposit; (v) provide access to archived Check Images and (vi) provide Company with access to then standard reports.

Company agrees to (i) comply with applicable Check 21 Act and NACHA Rules, as well as all other Applicable Laws; (ii) acknowledge that use of the remote Deposit Capture Service is dependent upon broadband Internet connectivity; (iii) be solely responsible for resolving any Internet connectivity-issues; (iv) not use Remote Deposit Capture Service for any purpose other than the capture of Check Images and associated data; and (v) implement disaster recovery procedures that permit the deposit of Checks in the event of equipment, telecommunication, electrical, Remote Deposit Capture Service or other outage.

Company acknowledges that the Remote Deposit Capture Service does not detect fraudulent Checks nor does Bank indemnify Company against any claims including those filed under Check 21 Act rules and regulations. Company acknowledges and agrees that use of Remote Deposit Capture Service will not eliminate the risk or exposure that is inherent in Company's Check processing Services. Company agrees to accept full responsibility for the payment of all Checks processed using Remote Deposit Capture Service.

### **Records Retention/Destruction**

Bank shall store Check Images and other Check information on the Remote Deposit Capture System in accordance with Bank's record retention schedule. If the Remote Deposit Capture Services are terminated, Company may obtain Check images or Check information at the price outlined in the fee schedule.

Company shall securely store all original Checks for a period of sixty (60) days after Company have received notice from Bank that the File containing the images of such Checks has been accepted. Company shall take appropriate security measures to ensure that:

- (i) only authorized personnel shall have access to original Checks;
- (ii) the information contained on such Checks shall not be disclosed;
- (iii) such Checks will not be duplicated or scanned more than one time; and
- (iv) such Checks will not be deposited or negotiated in any form.

Company shall also implement proper security and internal controls to ensure the confidentiality of any information that is considered to be confidential personal information that is retained by Company. Company will use commercially reasonable methods of destruction. At Bank's request, Company shall provide the original paper Check to Bank within five (5) Business Days, if the original paper Check has not been destroyed by Company and Bank needs the original paper Check to process a payment to resolve a dispute.

### **Section VI: Wire Transfer Service**

Wire Transfer Payment Orders will be initiated by Company from within Business Online Banking



(“**Business Online Banking Wire Transfers**”). Bank shall transfer funds from a Company’s Account to any other account, whether such other account is with Bank or another bank, in accordance with instructions received from Users subject to the authority granted to such individuals online. All funds transfers are governed by this Agreement, the Federal Reserve Board Regulation J (the “**Fedwire Regulation**”), OFAC regulations, and all other Applicable Law.

### **Limitation on Service**

Bank will place limitations on all Wire Transfer requests, including setting dollar limits on each transfer or on daily/monthly transfers. Such limitation will be established in Bank’s sole judgement based on Bank’s risk management procedures, and Bank may consider Company’s creditworthiness and Bank’s experience and transactions with Company for that purpose. Bank will notify Company of any limitation prior to implementing it.

### **Cut-off Times**

Bank will establish a specific Cut-off time after which Bank will not accept an incoming Wire Transfer Payment Order to be processed on the day of receipt. All Wire Transfer Payment Orders received after Bank’s established Cut-off or on any non-Business Day, including any Saturday, Sunday, holiday or any day that Bank’s wire department is not open, will be considered received on the next Business Day. Bank will act upon transfer requests on the Business day designated as the Value Date of the wire.

### **Business Online Banking Wire Transfers**

Online Wire Transfers require enhanced security measures and Bank requires a separate confirmation before transmission.

### **Enhanced Security**

Requests transmitted via Bank’s Business Online Banking Service must comply with the Security Protocol described, and agreed to, in the Agreement and the Business Online Banking Service Terms with respect to Entries transmitted by Company to Bank, including the use of Tokens. Company acknowledge that the purpose of such Security protocol is for verification of authenticity and not to detect an error in the transmission or content of a request. No Security Protocol for the detection of any such error has been agreed upon by Bank and Company. Company is solely responsible for the security of login credentials and tokens. Bank will have no duty to further verify the identity of any electronic user with login credentials and tokens.

Confirmation of Outgoing Wire Transfers shall be verified and approved by Company prior to their transmission to Bank. Bank recommends a minimum of two Users to confirm Wire Transfer Payment Orders and that Users serve as an initiator or confirmer, but not both. Notwithstanding Bank’s recommendations, if Company permit a User to act as both initiator and confirmer, Company hereby authorize Bank to process a wire initiated and confirmed by such User and accepts the risk of an unauthorized Wire Transfer Payment Order.



If a Request (or a Request for cancellation or amendment of a Wire Transfer) received by Bank purports to have been transmitted or authorized by Company, it will be deemed effective as Company' request and Company shall be obligated to pay Bank the amount of such Wire Transfer even though the Request was not authorized by Company, provided Bank accepted the request in good faith and acted in compliance with the Security protocol with respect to such request.

If a request (or request for cancellation or amendment of a Wire Transfer) received by Bank was transmitted by Company or a designated User, Company shall pay Bank the amount of the Wire Transfer, whether or not that request was erroneous in any respect or that error would have been detected if Bank had complied with such procedures.

### **Wire Transfer Payment Orders**

Company will supply to Bank any information Bank may reasonably request regarding any Wire Transfer Payment Order initiated by Company, including, without limitation, money amounts, affected accounts, dates of transfer, the Beneficiary's name and account number, the name and routing number or bank identifier code of the Beneficiary's Bank, such additional information as Bank may reasonably request and, if necessary, further evidence of any User's or Authorized Signer's authority to transfer funds or to do any other act contemplated by the Service.

Company authorizes Bank to execute and charge Company's Account(s) with Bank for Wire Transfer Payment Orders delivered to Bank in accordance with this Agreement. Bank has no obligation to execute a Wire Transfer Payment Order, if Company's Account to be charged has insufficient collected funds to cover the Order. If Bank elects to make any transfer that exceeds the amount of collected funds, Company shall be liable for any amount transferred in excess thereof, including fees where applicable.

Company does not have the right to reverse, adjust or revoke any Wire Transfer Payment Order after it has been received by Bank, provided however, that Bank will make a reasonable effort to act on such a request by Company. With respect to a Wire Transfer Payment Order already transmitted to the Beneficiary's bank, Bank shall, at Company's request, request the receiving bank to return funds previously transferred. Company understands that the receiving institution is under no legal obligation to comply with this request. Bank may use means and routes that Bank thinks in its own discretion are suitable for each outgoing Wire Transfer. Bank sends outgoing Wire Transfers through Fedwire (the funds transfer system owned and operated by the Federal Reserve Banks or other provider).

Bank may reject a Wire Transfer Payment Order from Company if such Wire Transfer Payment Order is not initiated in accordance with the applicable security procedure, if there is any inconsistency between a Wire Transfer Payment Order and information previously supplied to Bank, if Bank is unable to obtain confirmation of such Wire Transfer Payment Order satisfactory to Bank, if there are insufficient collected funds in Company's specified account to fund the Wire Transfer Payment Order, or if Bank has other reasonable grounds not to honor the Wire Transfer Payment Order. Bank will make a reasonable effort to notify Company by telephone in such instances; provided, however, that Bank shall not be liable for any failure to provide such notice.

Company agrees not to initiate a Wire Transfer Payment Order in violation of applicable federal,



state or local law. If the Beneficiary of any Wire Transfer is a person or entity on the list of Specifically Designated Nationals and Blocked Persons or an OFAC sanctions program, Bank shall not be obligated to complete the transfer and may “block” the funds until such time that OFAC issues a written release to Bank.

### **International Wire Transfers**

Wire Transfers across country borders are performed by Bank using a correspondent bank. Payment to a foreign country is subject to the laws of the foreign country involved. Bank assumes no liability for delays, non-delivery or other events resulting from causes beyond Bank’s control. In refunding unexecuted Wire Transfer Payment Orders, Bank shall be liable to Company only to the extent it receives payment from the correspondent bank processing the transfer.

From time to time, Bank experiences difficulties in transferring funds to certain countries. Those difficulties include (but are not limited to):

- (i) excessive delay in applying funds;
- (ii) incorrect application of funds;
- (iii) disappearance of funds;
- (iv) excessively slow response to inquiries; or
- (v) government restriction on the transfer of such funds.

In addition, countries and their subdivisions where the recipient is wired funds charge transfer taxes and other transfer fees that reduce the amount received. Company hereby acknowledges and assumes any expense in connection with such transfers which may be incurred by Bank in addition to normal and customary charges. Company is obligated to comply with all laws relating to the transfer of funds for foreign countries, individuals, or agencies, Noncompliance may result in the delay of Requests, fines equivalent to a percentage of the principal or confiscation of the entire principal amount of the transfer if an attempt is made to transfer funds to a sanctioned individual, agency and/or country.

### **Liability**

For the avoidance of doubt, in addition to any further limitations on Bank’s liability that are provided in this Agreement or exceptions thereto, Bank’s liability shall be limited as set forth in the Agreement and all disclaimers set forth therein shall apply to the Services provided under this Agreement. For the avoidance of doubt, in addition to any indemnification obligations contained in this Agreement, Company shall indemnify and hold harmless Bank to the extent provided for in the Agreement.

## **Section VII: Positive Pay Service**

Positive Pay Services are offered by Bank as the most effective way to minimize loss from fraudulent Check issuance or payment. Nothing in this Section is intended to limit Bank’s right to return an item unpaid if there are insufficient available funds in the designated Account.



### **Format Specifications**

Company shall comply, at all times, with Bank's format standards for the Positive Pay Service. Company agrees to send the Check Issue File in accordance with Bank specifications. Company may supply Bank with a sample Check Issue File for testing.

### **Company Responsibilities**

Company shall designate to Bank all accounts that are to be used with the Positive Pay Service. On each day that an Item is written against the Account, Company shall supply Bank, through Business Online Banking, with all required Item issue information. Such information shall include, without limitation, the account number, the issue date, the Check number, payee name(s) and the face amount. Company shall be responsible for the accuracy and completeness of all information provided to Bank. In the event of system failure such that the Check Issue File cannot be received by Bank or Bank cannot process the file, the file shall be considered as not received, even if Bank has possession of the file.

### **Bank Responsibilities**

In reliance on the information provided by Company, excluding valid stop Payment Orders and issue records voided by Company request, all Items, excluding those that have been electronically converted, that match by Check number, amount and payee to the Check Issue File will be deemed properly payable and Bank is authorized to pay all such items. Company acknowledges that Bank will not be able to compare payee information for handwritten or electronically converted Items presented to Bank's for payment.

### **Exception Items**

Each Business Day Bank shall make reasonable efforts to report to Company any Items that do not match the Check Issue File 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. Company agrees to review and make payment decisions on the Exception items prior to Bank's established Cut-off's which are detailed within the Business Online Banking programs.

If Company requests a default setup for Bank to pay all Exception Items, then Bank is authorized to finally pay any Exception Item unless Company have instructed Bank to return the Exception Item prior to the established Cut-off.

Bank may rely on any instruction received from Company 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 any Paid No Issue Item that is altered or unsigned or which bears the forged or unauthorized signature of Company;
- (ii) the return of any Paid No Issue Item to the depository bank in accordance with this section; or
- (iii) Company's failure to meet Bank's established Cut-offs.



Company may be required to place a Stop Payment Order on any returned Paid No Issue Item, which shall be subject to Bank's customary stop payment fee. Bank's failure to report a discrepancy will not discharge Company's obligation with regard to any Item and shall not obligate Bank to return any Item if it is otherwise properly payable.

### **Performance of Bank**

Bank shall be responsible only for performing the Service it expressly agrees to perform in this Section and shall be liable only for direct damages, not to exceed the value of any Checks negligently handled, caused by its negligence in performing those Services. Bank shall not be responsible for any acts or omissions of Company, including without limitation the amount, accuracy, timeliness of delivery or Company authorization of any item or instruction received from Company, or any act or omission of any other person, including without limitation any transmission or communications facility, and Vendor of Company, and no such person shall be deemed Bank's agent.

### **Wrongful Honor**

It shall constitute wrongful honor by Bank if Bank pays an Exception Item marked as "return" listed in an Exception Decision delivered prior to Bank's designated Cut-off. In the event there is wrongful honor, Bank shall be liable to Company for the lesser of the amount of the wrongfully paid Exception Item or Company's actual damages resulting from Bank's payment of the Exception Item. Bank retains the right to assert the defense that Company have sustained no actual damages because Bank's honor of the Exception Item discharged for value an indebtedness of Company.

Bank retains the right to assert Company's failure to exercise reasonable care under UCC section 3-406(a) and 4-406 and other Applicable Law in relation to the payment or handling of any Item.

### **Wrongful Dishonor**

Except as provided below, it shall constitute wrongful dishonor by Bank if Bank dishonors a Check for which Company have not issued a Return Request on an Exception Item.

Bank's liability for wrongful dishonor of an Exception Item shall be limited to the damages for wrongful dishonor recoverable under UCC Articles 3 and 4.

Bank shall have no liability to Company for wrongful dishonor when Bank, acting in good faith, returns an Exception:

- (i) that it reasonably believes was not properly payable;
- (ii) by reason of insufficient funds (available for withdrawal pursuant to Bank's applicable funds availability schedule and policies) on deposit in a Designated Account necessary to satisfy Items presented for payment;
- (iii) if required to do so by the service of legal process of Bank or the instructions of regulatory or government authorities or courts; or
- (iv) if Company fails to provide proper and timely notice to pay said item.



### **ACH Positive Pay**

ACH Positive Pay Service can assist Company in detecting fraud by electronically matching incoming ACH transactions to authorizations that Company can create and manage.

If ACH Positive Pay Service is selected by Company, Company shall designate the Account(s) maintained at Bank that are to be used with the ACH Positive Pay Service. Company shall create authorizations for incoming ACH Credit and/or Debit Entries or request all ACH Items become an Exception that Company decision and approve for future posting to the Account. Company shall be responsible for the accuracy and completeness of all information provided to Bank through Business Online Banking. Bank will allow incoming ACH Entries that match Company's authorizations to post to Company' Account.

### **Liability**

For the avoidance of doubt, in addition to any further limitations on Bank's liability that are provided in this Agreement or exceptions thereto, Bank's liability shall be limited as set forth in the Agreement and all disclaimers set forth therein shall apply to the Services provided under this Agreement. For the avoidance of doubt, in addition to any indemnification obligations contained in this Agreement, Company shall indemnify and hold harmless Bank to the extent provided for in the Agreement.