

# Master Treasury Management Services Agreement



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## INTRODUCTION

Client identified in the Business Online Banking Request or Business Online Banking Additional Online Service Request, each as applicable (one or both, as applicable, referred to herein as "Acceptance") has engaged Mechanics Bank ("Bank") to perform the services (collectively, the "Services") selected by Client in the Acceptance and approved by Bank, signed by one or more Executing Representatives (as defined below) and delivered to Bank. The Services are more specifically described in the following, as updated from time to time: (i) the Acceptance; (ii) the service descriptions detailed in this Master Treasury Management Services Agreement ("Master Agreement"), including any schedules, and exhibits to the same ("Service Description(s)"); and (iii) user guides, user manuals, set-up forms and other user materials, including online terms and information (collectively, "Supporting Documents"). The Master Agreement may include exhibits, appendices, schedules or similar materials, which form a part of the Master Agreement. Any reference to the Master Agreement shall be deemed to include the Master Treasury Management Services Agreement, the Acceptance, the respective Service Descriptions, and the Supporting Documents, unless otherwise stated. Unless otherwise agreed in writing, the Master Agreement including the Service Descriptions and Supporting Documents will be deemed accepted by Client upon provision by Bank of a Service to Client.

The terms and conditions of the Master Agreement apply to the Services, and Client's deposit accounts held at Bank which Client uses for transactions associated with the Services, in addition to the account deposit terms and conditions otherwise applicable to Client's accounts with Bank. Unless otherwise provided, to the extent any provision of the Master Agreement conflicts with a Service Description, the provision of the Service Description will control. To the extent any term or provision of the Master Agreement conflicts directly with any term or provision of the applicable deposit account terms and conditions or the Supporting Documents, the provision of the Master Agreement (including any Service Description) will control. All transfers to and from an account will be subject to the terms and conditions applicable to the account as set forth in the deposit account terms and conditions governing the account, including but not limited to transfer limitations, as amended by the Master Agreement. The term "may," when used in reference to action by Bank, is permissive and means that Bank reserves the right or is allowed, but not required, to take any action or inaction. Unless expressly provided otherwise, all references to time will be Pacific Time.

## SECURITY PROCEDURES; COMMUNICATIONS

- (a) Client and Bank may agree to certain procedures and security devices, which may include without limitation, codes, encryption, passwords, security tokens, and other security devices, systems and Software (referred to individually and collectively, "Security Device(s)") designed to verify the authenticity of information (including without limitation transaction information), instructions, orders (including without limitation payment orders) and other communications relating to a Service (each a "Communication"). The term "payment order(s)" includes payment orders, as defined in Division 11 of the California Commercial Code. In this regard, application of the procedures and Security Devices to authenticate a Communication will be collectively referred to as the "Security Procedures" in the Master Agreement. If Bank takes any action not provided in the Security Procedures in connection with any Communication, such additional action shall not be deemed to become a mandatory part of the continuing Security Procedures. Client understands and agrees that Bank will use the Security Procedures to verify the authenticity of Communications and that the Security Procedures are not designed to, and are not used for the purpose of, detecting errors in transmission or content of Communications, including discrepancies between account names and numbers.
- (b) Before using a Service and before sending a Communication to Bank, Client will review the Security Procedures and determine whether the Security Procedures will provide a commercially reasonable method for verifying whether a Communication is that of Client. As part of the review, Client will consider the size, type, and frequency of Communications Client normally makes or anticipates making, along with such other factors as Client may deem relevant or appropriate.
  - i) *Commercially Reasonable Procedures.* If the size, type or frequency of Communications made by Client changes such that the Security Procedures in use by Client no longer provide a commercially reasonable method of providing security against unauthorized Communications, Client shall immediately notify Bank.
  - ii) *Supplemental Security Devices.* Bank may offer to Client or require Client to use additional authentication tools or methods from time to time (for example, challenge

questions and phrases for employees). If Client chooses not to implement supplemental authentication tools, Client's access to some or all of the Services may be limited. The term "Security Devices" will include any supplemental authentication tools that are offered by Bank and used by Client. Client's continued use of any modified Security Procedures will evidence Client's agreement that the modified Security Procedures are commercially reasonable for Client.

- iii) *Client Responsible for Verified Communications, Even if Unauthorized.* If Bank acts on a Communication in compliance with the Security Procedures, then Client will be obligated on the Communication, and it will be treated as Client's Communication, whether or not authorized by Client.
- iv) *Client Responsible for Communications Actually Authorized.* Regardless of whether or not Bank complied with the Security Procedures, any Communication received by Bank will be treated as Client's and will bind Client if the Communication is delivered to Bank directly or indirectly by any Authorized Representative (as defined below), or if Client would otherwise be legally bound by the Communication, regardless of whether the Communication was erroneous in any respect or that any loss would have been prevented if Bank had complied with the Security Procedures.
- (c) Client will use and safeguard the Services, Security Devices, Security Procedures, Supporting Documents, and the Software (if applicable) in accordance with the Master Agreement. In connection with such safeguarding obligations, Client will implement and maintain physical, technical, and administrative controls and procedures sufficient to prevent impermissible or unauthorized access to or use of any Service, Supporting Document, Security Device or Security Procedures. Without limiting the foregoing and to the extent any of the Services utilize an electronic interface, Client agrees to use and maintain at all times up-to-date anti-viral software, properly configured firewalls and otherwise to use commercial "best practices" to prevent Client's computers or other electronic interfaces from being compromised, including by virus, trojan horse or other malware. Client expressly acknowledges that any wireless access to the Services initiated by Client may not be secure and, in such cases, Client assumes the risk associated with unauthorized access to the Services and any information contained therein, resulting from such wireless connectivity.
- (d) Client agrees to immediately notify Bank if Client knows or suspects that a Security Device or other information pertaining to the Security Procedures is stolen, compromised, or misused. Client acknowledges that Bank's ability to reverse fraudulent electronic transfers is extremely limited, and in many cases impossible. Client acknowledges that Bank is not an insurer of Client against losses associated with unauthorized activity associated with the Services and that Client has an independent responsibility to ensure the integrity and security of Client's systems and to determine whether Client should obtain appropriate insurance coverage to protect against unrecoverable losses.
- (e) Client assumes all risks associated with disclosure of any part of the Security Procedures, including a Security Device, to its employees. Client agrees to limit disclosures of Security Devices to those employees or agents it will authorize to access the Services on Client's behalf, or who have a specific need to know. Client agrees to follow all requirements and guidance that may be outlined in the Service Descriptions or Supporting Documents provided or made available to Client, including but not limited to password change policies and practices. Without limiting the foregoing, Client further agrees to require authorized persons to create new passwords at reasonably frequent periods, based on Client's assessment of the security requirements appropriate for the Services utilized by Client. Client agrees to promptly change security codes and level of authority, as applicable, in the event of any change in personnel or when reasonably prudent to do so.
- (f) If applicable, Client may be required to select in the Acceptance, or Supporting Documents, a means of communicating with Bank in connection with a particular Service (each, a "Communication Link"). Multiple Communication Links may be selected for certain Services, as more specifically described in the Service Description and/or Supporting Documents. Information and instructions may be sent and received by Client through those Communication Links.
- (g) Bank may act on a Communication by reference to the account number only, even if the name on the account is also provided and even if the account number does not actually correspond to the name. If an intermediary bank or a beneficiary's bank is identified on a Communication by both name and identifying number, Bank and other financial institutions may rely on the number even if the name and the number are not consistent or identify different parties.

- (h) Bank is not obliged to act on a Communication that is not transmitted in accordance with the Security Procedures. Bank may act on an incomplete Communication at its sole discretion, including but not limited to if in Bank's reasonable opinion, it contains sufficient information. Bank has no duty to discover, and shall not be liable for, errors or omissions made by Client or the duplication of any Communication by Client.
- (i) Bank may delay or refuse to execute any Communication or process any requested Service. Bank may do so for any reason or for no reason. Bank may provide notice to Client of such delay or refusal, but is not obligated to do so. Bank may delay or refuse processing of a Communication, for example, if: (A) processing would or may exceed the available funds in Client's affected account; (B) the Communication is not authenticated to Bank's satisfaction or Bank believes the Communication may not have been authorized by Client; (C) the Communication contains incorrect, inconsistent, ambiguous, or missing information; (D) processing would or may involve funds which are subject to lien, security interest, claim, hold, dispute, or legal process prohibiting withdrawal; (E) processing would or may cause a violation of any laws or rules applicable to Client or to Bank; (F) for any reason determined by Bank in its sole discretion; or (G) for any other reason under the Master Agreement. In addition, Bank shall be excused from failing to transmit or delay a transmittal of a transaction or Communication if such transmittal would result in Bank's having exceeded any limitation upon Bank's intra-day net funds position established pursuant to present or future Federal Reserve Board ("FRB") guidelines or in Bank's reasonable judgment otherwise violating any provision of any present or future risk control program of the FRB or any rule or regulation of any other U.S. governmental regulatory authority. Client agrees that Bank will have no liability to Client or to any other person for any loss, damage or other harm caused by or arising out of any such delay or refusal.
- (j) If Client informs Bank that it wishes to recall, cancel or amend a Communication after it has been received by Bank, Bank may, but will not be required to, use its reasonable efforts to assist Client to do so; however, Bank shall not be liable for any loss, cost or expense suffered by Client if Bank does not, or is unable to, amend, cancel or recall a Communication. Client hereby agrees to indemnify Bank against any loss, liability, claim or expenses (including legal fees) it may incur in connection with assisting Client to recall, cancel or amend a Communication, and Client agrees to immediately reimburse Bank for any monies paid by Bank associated with such losses, liability, claims or expenses incurred by Bank.
- (k) Client assumes the sole responsibility for providing Bank with accurate Communications in the form and format that Bank requires. Bank is not responsible for confirming Communications or for failing to detect and reject duplicate Communications. If Client provides Bank with a Communication that is incorrect in any way, Client agrees that Bank may charge Client's accounts for any transactions related to the Communication whether or not the error could have been detected by Bank. Bank is not obligated to detect errors in Client's transfer or payment instructions or other Communications.
- (l) Any person identified by Client in the Acceptance, Supporting Documents or any subsequent written, electronic or verbal notice delivered to Bank as authorized by Client to receive from Bank information, communications and notices regarding the Services, and authorized by Client to submit to Bank any Communications, or otherwise transact business via the Services is Client's "Authorized Representative." Additionally, the person referenced to or identified by Client in the Acceptance, Supporting Documents, resolutions, or any subsequent written notice delivered to Bank, as authorized by Client to make all agreements and sign and deliver all documents in connection with the Services is Client's "Executing Representative." If the identity of such an Authorized Representative or Executing Representative changes, Client will promptly notify Bank in writing. Bank will have a reasonable time after receipt of a notice or other communication to act on it.
- (m) Bank's internal compliance, fraud control and other Bank procedures are for the benefit of Bank and create no duty to Client. Bank has no duty or obligation under this Master Agreement to inform Client if Bank is suspicious of activity, including possible breach of security by Client's Authorized Representative(s) or Executing Representative(s) or unauthorized disclosure or use of Security Devices.

## SOFTWARE AND EQUIPMENT

The Service Description and/or Supporting Documents for each Service shall describe the various means by which Client may communicate with Bank in connection with such Service. Those means may include, without limitation, the use of computer software ("Software") licensed

or sublicensed by Bank to Client ("License") or the use of an Internet connection. To the extent any of the Services involve Bank having granted Client Software License usage rights, such grant shall be a non-exclusive, non-transferable right to access and use the Service in connection with Client's own business operations in accordance with the Supporting Documents. Client agrees to comply with the terms of any Software License(s) provided to Client in connection with the Services. Client may not transfer, distribute copy, reverse engineer, decompile, modify or alter such Software. Unless otherwise agreed by Bank in writing, the computer programs, Service guides, Security Procedures, equipment, Software, and systems provided by Bank to Client in connection with the Services represent Bank's proprietary property, including intellectual property, and must be returned to Bank upon request. Client acknowledges and agrees that the Software and content used by Bank in the operation and provision of the Services, and the copyright patent, trademark, trade secret and all other rights in and to the technology, Software, content, designs, graphics, and trademarks included as part of the Services and Bank's name and product names and the website's URL (collectively, by the "Intellectual Property"), are owned by Bank and Bank's licensors. As such, Client will not gain any ownership or other right, title or interest in or to such Intellectual Property by reason of the Agreement or otherwise.

Unless otherwise provided in the Master Agreement, Client is responsible for providing and maintaining any equipment that is necessary for the Services, such as telephones, terminals, modems, computers, and software (collectively "Equipment"). Client agrees to use Equipment that is compatible with Bank's programs, systems, and equipment, which Bank may change from time to time. Bank assumes no responsibility for the defects or incompatibility of any Equipment that Client uses in connection with the Services, even if Bank has previously approved their use. **BANK MAKES NO WARRANTY, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY, WITH RESPECT TO THE SERVICES, OR ANY COMPUTER PROGRAMS, EQUIPMENT OR SOFTWARE MADE AVAILABLE BY BANK TO CLIENT OR OTHERWISE USED BY CLIENT. ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED AND CLIENT HEREBY WAIVES AND RELEASES BANK FROM ALL SUCH WARRANTIES.** Client agrees to notify Bank promptly if any Software or equipment Bank provides to Client becomes defective. Bank's sole responsibility (if any) in such instances will be to use best efforts to repair or replace the defective Software or equipment that Bank provided to Client.

To the extent Bank provides equipment in conjunction with any of the Services, Bank may require Client to identify the location(s) where such equipment will be maintained and Client agrees not to relocate the equipment without Bank's prior written approval. Any equipment provided by Bank to Client will be on a licensee bases and Client will obtain no ownership interest in the equipment, absent written agreement between Bank and Client otherwise. Such license will be revocable by Bank at any time, in the Bank's discretion. If the license is revoked for any reason, Client agrees to return all Bank provided equipment, as directed by Bank, at Client's sole cost and expense.

## CLIENT CONDUCT

Client agrees not to use the Services or the content or information in any way that would: (i) infringe any copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (ii) be fraudulent including, but not limited to, use of the Service to impersonate another person or entity; (iii) violate any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination, false advertising or illegal Internet gambling); (iv) be false, misleading or inaccurate; (v) create liability for Bank or its affiliates or service providers, or cause Bank to lose (in whole or in part) the services of any of its service providers; (vi) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (vii) potentially be perceived as illegal, offensive or objectionable; (viii) interfere with or disrupt computer networks connected to the Service; or (ix) use the Service in such a manner as to gain unauthorized entry or access to the computer systems of others. Without limiting the generality of the foregoing, Client agrees not to: (a) make the Service available, or allow use of the Service, in a computer bureau service business, or on a timesharing basis; or (b) otherwise disclose or allow use of the Service by or for the benefit of any third party.

## CLIENT REPRESENTATIONS

Client represents and warrants to Bank that:

- (a) It is duly organized and validly existing, and is in good standing in every jurisdiction where required;



- (b) Client's execution, delivery, and performance of this Master Agreement and the transactions contemplated herein have been duly authorized by all necessary action and do not: (A) violate any provision of any applicable law, rule or regulation (including but not limited to any licensing requirement(s) or of Client's charter or bylaws or other governing documents, as applicable), or (B) result in the breach of, constitute a default under, or require any consent under any agreement or instrument to which Client is a party or by which Client is bound;
- (c) The Executing Representatives executing and delivering the Master Agreement and the Acceptance for and on behalf of Client, are duly authorized to do so;
- (d) Any Communication or authorization required in connection with the Master Agreement and each Service Description has been provided by an Authorized Representative. Bank may rely upon the authority of each Authorized Representative for purposes of the Master Agreement and Service Descriptions until Bank has received written notice acceptable to Bank of any change of persons designated by Client as an Authorized Representative, and Bank has had a reasonable time to act thereon (after which time Bank shall rely upon the change);
- (e) Any act required by any relevant governmental or other authority in connection with the Master Agreement has been or will be done (and will be renewed if necessary);
- (f) Client's performance under the Master Agreement and use of the Services will not violate any applicable law, regulation or other requirement;
- (g) The Master Agreement is a legal, valid, and binding obligation;
- (h) Client is not, and agrees not to take any action that would result in Client being deemed or treated as, a money service business under any applicable state or federal law, except to the extent that Client has specifically and in writing previously informed Bank that Client is a money service business;
- (i) Unless otherwise agreed to in writing by Bank, the accounts established by Client with Bank and the Services Client establishes or uses in connection with the accounts will only be used for business purposes and not for personal, family or household purposes; and
- (j) Client agrees that it shall be deemed to make and renew each representation and warranty made in this Section on and as of each day on which it uses the Services. Client will inform Bank in writing immediately upon Client's becoming aware of facts or circumstances that cause (or with the passage of time would result in) any representation or warranty given by Client to cease to be true and correct. Client will provide such information or documentation as Bank may request from time to time to demonstrate compliance by Client with Client's representations and warranties, or other obligations of Client under this Master Agreement.

## SERVICE LIMITATIONS

Client acknowledges that the Services may be subject to system and other limitations, including Bank imposed limitations. Client agrees not to exceed or otherwise violate any Service limitations, including dollar, frequency, activity or other limits.

## COMPLIANCE

Client agrees to comply with all state and federal laws, rules, and regulations, as may be amended from time to time, applicable to Client and to its use of the Services (collectively, "Laws"), including the operating rules of all systems and networks, as may be amended from time to time, used to provide Services to Client (collectively, "Rules"), and to promptly provide evidence reasonably satisfactory to Bank of the same if requested by Bank. Without limitation, Client agrees and acknowledges that the Services may not be used by Client in violation of, and must comply with, the Laws and Rules, including sanctions laws administered by the Office of Foreign Asset Controls. Client agrees that the Services will not be used to facilitate any illegal activity, including but not limited to illegal Internet gambling. Client acknowledges and agrees that the Software used to access the Services may be subject to restrictions and controls imposed by the Export Administration Act and the Export Administration Regulations, as may be amended from time to time (collectively, "Acts").

Nothing in the Master Agreement relieves Client of any obligation Client may have under the Laws, Rules or Acts. If the Master Agreement is in conflict with the Laws, Rules or Acts, as may be amended from time to time, then the Master Agreement is deemed modified only to the extent necessary to allow or require Client to comply with the Laws, Rules, and Acts. Client will implement and maintain procedures, including retention of legal or compliance services, to

ensure that Client is able to comply with all current and future Laws, Rules, and Acts, including any changes to them. Bank is not obligated to provide information, updates or notice of or regarding the Laws, Rules, or Acts even if Bank is aware of the same and of the potential for material impact on Client and Client's use of the Services, and Client's indemnification and other obligations to Bank are not relieved or reduced by Bank's not providing the same to Client. If Bank does provide information, updates or notices of or regarding the Laws, Rules or Acts to Client, Bank is not responsible for the accuracy of the same and may discontinue doing so at any time.

## DELAYED PROCESSING

In addition to any allowances provided to Bank in any other agreement Bank has with Client, Client agrees that Bank may delay posting of an inbound credit to Client's account(s) held at Bank, or delay the processing of an outbound transaction from Client's account(s) held at Bank, when the delay is due to a suspicion that the transaction may be in violation of applicable Law, Rule or Act, or the transaction is otherwise under review by Bank.

## ACCOUNT DESIGNATIONS

For certain Services, Client may be required to designate one or more accounts to facilitate the particular Service.

## SUFFICIENT FUNDS

Client agrees to maintain sufficient available funds (as determined under Bank's funds availability policy) in Client's accounts accessible via the Services to cover all transactions requested through the Service and applicable fees, or such higher amounts as Bank may specify from time to time. Client acknowledges that Bank does not control intermediary banks or other third parties, including intermediary banks chosen by Bank, and that Bank does not control whether intermediary banks deduct fees as part of the processing of transfer requests. Client agrees that Client's funds may be held by Bank for a period of time during the term of a Service Description and following termination of the Services, to protect Bank against any possible losses relating to the use by Client of the Services. If Bank does hold funds, Bank may treat the held funds as not available for other purposes, and reject other transactions (for example, checks or other transfer instructions) in accordance with the applicable deposit account terms and conditions. If Client does not have sufficient or available funds or credit in Client's account for which a particular transaction was requested, Bank may charge any account of Client's held at Bank to cover the cost of the transaction, as well as any corresponding fees. Client's obligation to pay Bank remains immediately due and payable whether or not the rejected, returned or adjustment entry was processed in accordance with any requirement of any applicable laws or rules applicable to any party other than Bank and notwithstanding Bank or Client may have a claim against another third party for breach of the applicable laws or rules. Nothing in the Master Agreement shall be construed as Bank's commitment or obligation to lend Client money.

## FEES AND AMOUNTS DUE

Client agrees to pay Bank the fees prescribed in Bank's current fee schedule for each of the Services, a copy of which is available upon request (each a "Fee Schedule"), as well as all amounts otherwise due under the Agreement. Unless other arrangements are made for payment of such fees and other amounts due, Client agrees that Bank may without prior notice or demand automatically debit any account maintained by Client with Bank in the amount of such fees and other amounts due. Bank does not in any way extend credit to Client under the Master Agreement. Bank may amend the Service pricing from time to time. Certain prices are subject to change without prior notice. Special or additional Services performed at Client's request will be subject to additional terms and fees. If accounts are analyzed, Client may be able to use available earnings credit to offset certain charges related to the Services. If analyzed accounts contain funds belonging to third parties, Client represents that use of any related earnings credit is not limited by law, regulation or agreement with such third parties. In addition to the fees and other amounts due for the Services, Client agrees to pay for all taxes, tariffs, and assessments levied or imposed by any government agency in connection with the Services, the Master Agreement, and any Software or equipment made available to Client (excluding any income tax payable by Bank). Client is also responsible for the costs of any communication lines and any data processing charges payable to third parties. If Client is required by the laws of any relevant

jurisdiction to make any deduction or withholding from any fees, interest or other amounts, on account of tax or other charges, Client shall withhold the same and pay it to the relevant authority, and shall pay Bank such additional amount as may be necessary to ensure Bank receives an amount equal to the amount it would have received had no such deduction been made.

## FINES OR PENALTIES

Client will reimburse Bank for any fines or penalties (and any associated costs, including reasonable attorneys' fees and costs) imposed on or assessed against Bank by any Federal Reserve Bank, any network operator, any state or federal regulatory agency or other US or foreign governmental body, or any clearinghouse or other third party having oversight or rulemaking authority over transactions facilitated using the Services, when the fine, penalty or other expense is caused by or related to Client's data or use of the Services. Such amounts shall be immediately due and payable by Client. Client's obligation to pay Bank remains immediately due and payable whether or not the fine or penalty was imposed or assessed in accordance with any requirements of the Rules or Laws or any laws applicable to any party other than Bank and notwithstanding Bank or Client may have a claim against another for breach of the same.

## NOTICES

Except as otherwise provided in the Master Agreement, all notices and other communications by Client to Bank shall be in writing and, addressed to:

Mechanics Bank  
725 Alfred Nobel Drive  
Hercules, CA 94547

or at such other address as Bank may specify in writing. Notices and communications to Client may be mailed or sent to Client electronically at the statement, email or mailing address shown for Client in Bank's records. Any notice or communication sent by Bank to Client, whether electronic or written, will be deemed given and effective when sent or otherwise made available to Client, or as otherwise stated in the notice or communication. Client further acknowledges and agrees that certain notices and communications may be provided to Client by telephone, facsimile or electronic transmission at the telephone number, facsimile number or other location or number as shown in Bank's records. Client agrees to promptly notify Bank (in a form acceptable to Bank) whenever Client's email address, physical address, mobile phone number or other contact information changes.

Any notice, instruction, Communication or other communication sent by Client to Bank will be effective when Bank has actually received and has had a reasonable time to act on the notice, instruction, Communication or other communication. Notwithstanding anything to the contrary herein, Bank may rely on all notices, instructions, Communications, and other communications sent to Bank via facsimile or electronic transmission as though they are originals. Without limiting the foregoing, Bank is entitled to rely on any notice, instruction, Communication or other communication believed by Bank in good faith to be genuine or to have been signed or authorized by an Authorized Representative of Client.

Client agrees to access the Services from time to time, in no event less than monthly, to access notices, communications, and information made available by Bank.

## CONTENT

- (a) Bank reserves the right, but shall have no obligation, to reject, move, or delete content that Bank, in Bank's sole discretion, believes violates the Master Agreement, or contains content, including viruses, that may interfere with the operation of Bank's website or other systems. Bank shall have the right, but not the obligation, to disclose content to any third party if required or permitted by law or if Bank believes reasonably necessary, including but not limited to: (a) comply with legal process; (b) enforce the Master Agreement; (c) respond to claims that any content violates rights of third parties; or (d) protect Bank's rights, properly, or personal safety, or those third parties.
- (b) The Services may allow Client to access content originally provided or operated by third parties acting on Client's behalf (collectively referred to as "third party content," unless otherwise provided herein). Unless Bank tells Client otherwise in writing, Bank does not operate or monitor any such content including any of the information, products or services provided or operated by third parties. Client acknowledges and agrees that: (i) Client

accesses and relies on such third party content at Client's own risk; (ii) Bank makes no endorsement of, and assumes no responsibility for, third party content uploaded or inputted to the Services by third parties; (iii) although Bank may have a contractual or other relationship with the providers of third party content, Bank will not be responsible for the content, accuracy, integrity, availability, timeliness or operation of their website or the data they make available. Client agrees to hold Bank harmless in connection with all of the foregoing.

Without limiting the foregoing, Bank assumes no responsibility for determining the accuracy, reliability, timeliness, ownership, legality, appropriateness or completeness of any third party content that Client or others upload to the Services or otherwise provide to Bank, nor for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity associated with the same. Bank will not have a duty to interpret or evaluate any third party content transmitted to Bank or through Bank's website or the Services, except to the limited extent, if any, set forth in the Master Agreement. Bank will not be required (by means of any security procedure or otherwise) to detect errors or illegality in the transmission or content of any third party content Bank receives from Client or third parties. Bank will not have a duty to notify Client about any inaccuracy, unreliability, ownership, incompleteness or other problem that may be associated with third party content, even if Bank has reason to know of its existence.

## LIMITATION ON LIABILITY; INDEMNIFICATION

Bank's duties and responsibilities shall be limited to those set forth in the Master Agreement. In no event shall Bank be liable for: (i) any punitive, indirect, consequential or special damages or lost profits, even if Bank has been advised of the possibility of such damages; (ii) the acts or omissions of a contractor, vendor, processor, third-party servicer or vendor used by Client or Bank, or any loss, cost, damage or expense incurred by any person or entity in connection therewith; (iii) Client negligence or breach of any agreement with Bank; (iv) any loss, cost, expense, or damage to Client in connection with any Communication Link, Software, or any technical computer service, including Software installation or de-installation performed by Bank or Client or any third party designated by Bank or Client, or Client's or Bank's use thereof; (v) any ambiguity, inaccuracy or omission in any instruction or information provided to Bank; (vi) the application of any government or funds-transfer system rule, guideline, policy or regulation; (vii) the lack of available funds in Client's account to complete a transaction; (viii) Bank's inability to confirm to its satisfaction the authority of any person to act on Client's behalf; (ix) Client's failure to follow any applicable software manufacturer's recommendations or Bank's Service instructions; or (x) any Internet sites related to the Services or maintained or operated by Bank or the use thereof or the inability to use such sites by any party, or in connection with any failure or performance, error, omission, interruption, defect, delaying in operation or transmission, computer virus or line or system failure, even if Bank, or representatives thereof, are advised of the possibility of such damages, losses or expenses. There may be other exceptions to Bank's liability, as stated in Client's account or other service agreements with Bank. Without limiting the foregoing, Bank will not be responsible for determining the compatibility of any installed Software with other system components or for any failure of any technical servicing or Software installation to provide access to the particular Service which the technical servicing or Software installation was intended to make available.

Bank's liability and Client's sole remedy for any cause not otherwise excluded herein and regardless of what form of action will be limited to actual direct damages sustained by Client, but in any event only to the extent that such damages resulted from Bank's gross negligence or willful misconduct, will not exceed the lesser of: (i) two (2) times the average monthly charge for the Service(s) in question for the three months immediately preceding the cost or loss; or (ii) \$4,000. Any claim, action or proceeding by Client to enforce the terms of the Master Agreement or to recover for any Service-related loss must be commenced within one year from the date that the event giving rise to the claim, action or proceeding first occurs. Client agrees to cooperate with Bank in any loss recovery efforts Bank undertakes to reduce any loss or liability that arises in connection with the Services. Client acknowledges that Service fees have been established in contemplation of: (A) these limitations on Bank's liability, (B) Client's agreement to review statements, confirmations, and notices promptly and to notify Bank immediately of any discrepancies or problems; and (C) Client's agreement to assist Bank in any loss recovery effort.

Subject to the foregoing limitations, Bank's liability for loss of interest, if any, resulting from Bank's error or delay shall be calculated by using a rate equal to the average Federal Funds rate at the Federal Reserve Bank of New York for the period involved. At Bank's option, payment of such interest resulting from or arising out of any claim of any person that Bank is responsible for any of

Client's or any third party's acts or omissions, may be made by crediting any of Client's accounts.

Client agrees to indemnify and hold Bank, its affiliates, licensors, processors, third-party contractors and vendors, and their respective directors, officers, shareholders, employees and agents, harmless from and against any and all claims, loss or damage of any nature whatsoever (including but not limited to attorneys' fees and court costs) arising directly or indirectly out of: (i) the wrongful acts or omissions of Client, or any person acting on Client's behalf in connection with Client's use of the Services, including without limitation (A) the breach by Client of any provision, representation or warranty of the Master Agreement, (B) the negligence or misconduct (whether by act or omission) of Client or its clients or any third party on behalf of Client, (C) any misuse of the Services by Client, or any third party within the control, or on behalf, of Client, (D) the failure by Client to comply with applicable state and federal laws and regulations, or (E) any fine, penalty or sanction imposed on Bank by any clearing house, or any governmental entity, arising out of or connected with the Services; (ii) any act or omission of Bank that is in accordance with the Master Agreement or instructions from Client; (iii) actions by third parties, such as the introduction of a virus that delay, alter or corrupt the transmission of an image or communication to Bank; (iv) any loss or corruption of data in transit from Client to Bank; (v) any claim by any third party claiming that such third party incurred loss due to the Service; or (vi) any claims, loss or damage resulting from Client's breach of, or failure to perform in accordance with, the terms of the Master Agreement. This indemnity will survive the termination of the Master Agreement. Client agrees that it will not assert any claims against Bank based on theories of negligence, gross negligence, strict liability, misrepresentation, or fraud based on or relating to any Communication Link, Software or Client's possession or use thereof or any technical computer service including, but not limited to, Software installation or de-installation performed by Bank.

## EXCLUSION OF WARRANTIES

CLIENT ACKNOWLEDGES THAT THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. BANK IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN OR TO ANY INFORMATION RESULTING FROM CLIENT'S USE OF THE SERVICES. BANK MAKES NO, AND EXPRESSLY DISCLAIMS ALL, WARRANTIES (EXPRESS OR IMPLIED) REGARDING CLIENT'S USE OF THE SERVICES AND THE EQUIPMENT, INCLUDING THE WARRANTY OF TITLE AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BANK DISCLAIMS ANY WARRANTIES REGARDING ANY SOFTWARE, ANY COMMUNICATION LINK, THE OPERATION, PERFORMANCE OR FUNCTIONALITY OF THE SERVICES AND THE EQUIPMENT, INCLUDING ANY WARRANTY THAT THE SERVICES AND THE EQUIPMENT WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. CLIENT ACKNOWLEDGES THAT THERE ARE CERTAIN SECURITY, TRANSMISSION ERROR, AND ACCESS AVAILABILITY RISKS ASSOCIATED WITH USING THE SERVICES AND ASSUMES ALL RISKS RELATING TO THE FOREGOING.

## FORCE MAJEURE

Notwithstanding any other provisions of the Master Agreement, Bank shall not have any responsibility or liability for any failure, error, malfunction or any delay in carrying out any of its obligations under the Master Agreement if such failure, error, malfunction or delay results from events due to any cause beyond its reasonable control, including, without limitation, unavailability of any communications system, sabotage, fire, flood, explosion, acts of God, civil commotion, strikes, stoppages of labor or industrial action of any kind, riots, insurrection, war or acts of government, power or equipment failure (including that of any common carrier, transmission line or software), emergency conditions, adverse weather conditions or any other factor, medium, instrumentality, condition or cause not in Bank's control. Bank will not be liable or responsible for the acts or omissions of any other financial institution or any third party or for any inaccuracy or omission in a notice or communication received by Bank from Client, another financial institution, or any other third party. In addition, Bank shall be excused from failing to transmit, or delaying the transmission of, any transaction, if such transmittal would result in Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future FRB guidelines or in Bank's otherwise violating any provision of any present or future risk control program of the FRB or any rule or regulation of any other U.S. governmental regulatory authority. Bank shall not be liable for any failure to perform any of its obligations under the Master Agreement if such performance would result in it being in breach of any law, regulation, requirement or provision of any government, government agency, banking or taxation authority in accordance with which Bank is required to act, as shall be determined in Bank's sole discretion.

## CUTOFF HOURS

A number of Bank's Services are subject to processing cutoff hours. The cutoff hours applicable to each Service are reflected in the Supporting Documents. Communications received after the cutoff hour or on a non-business day may, in Bank's discretion, be deemed received as of the next business day. Alternatively, some Services may require Client to resubmit a Communication when it is received after the cutoff hour or on a non-business day.

## RECONCILIATION

Client will inspect all information made available by Bank in connection with the Services. Client agrees to promptly, by telephone and in writing, notify Bank of any errors in such information or any discrepancies between its records and the information, statements or confirmations of transactions made available by Bank. To the extent not expressly prohibited by applicable law, if Client fails to promptly notify Bank of any such error or discrepancy, in any case no more than 30 days following the statement mailing date or the date on which such information is made available to Client, then Client agrees that Bank will not be liable for any losses resulting from Client's failure to give such notice or any resulting loss of interest relating to any transactions. Without limiting the foregoing: (i) if Client fails to notify Bank of any such error or discrepancy within one year of the date on which such information is made available to Client, then Client shall be precluded from asserting such error or discrepancy against Bank; and (ii) Bank reserves the right to, in its sole discretion, adjust transaction records for good cause after the expiration of said one year period.

## PROVISIONAL CREDIT

Client acknowledges that credit for a payment order is provisional until the receiving financial institution obtains final settlement. If final settlement does not occur, the originator of the payment order is not deemed to have made payment to the beneficiary, and the beneficiary's bank is entitled to a refund of the provisional credit. Client agrees that when Bank gives Client credit for an incoming payment order, including but not limited to, returned credited transactions or credit reversals, it is provisional until Bank receives final settlement for the payment order. Bank may delay availability of provisional funds at its discretion. If Bank does not receive final settlement, Client must return the funds previously credited to Client's account to Bank, and the person who sent the payment order will not be treated as having paid Client. Bank may refuse to permit the use of any amount credited for an incoming payment order, including but not limited to a debit entry or credit reversal if Bank believes in its sole discretion that there may not be sufficient funds in Client's account to cover chargeback or return of such transaction.

## DISPUTE RESOLUTION

- (a) *No Jury Trial.* To the extent allowed by law, if a dispute arises between Client and Bank regarding this Master Agreement or any service contemplated hereunder, Client and Bank each waive any right they may have to request a jury trial.
- (b) *Judicial Reference.* WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of Contra Costa County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Contra Costa County, California; and the parties hereby submit to the jurisdiction of such court. The referenced proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedures Section 638 through 645.1 inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Contra Costa County, California Superior Court for such relief. The proceeding before the private judge shall be conducted



in the same manner as it would be before a court under the rules of evidence applicable to judicial proceeding. The parties shall be entitled to discovery, which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceeding in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to the California Code of Civil Procedure Section 644(a). The decision of the private judge shall then be appealable as if made by the court. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph. If Client and Bank do not agree on how the payment of the private judge's fees and expenses will be shared, the court may apportion such fees and expenses between Client and Bank in a fair and reasonable manner that is consistent with the Code of Civil Procedure Section 645.1. No provision of this section shall limit the right of any party to exercise self-help remedies, to foreclose against or sell any real or personal property collateral or to obtain provisional or ancillary remedies, such as injunctive relief or appointment of a receiver, from a court of competent jurisdiction before, after or during the pendency of any reference proceeding. The exercise of a remedy does not waive the right of either party to resort to reference pursuant to the Master Agreement.

## CONFIDENTIAL INFORMATION

Unless otherwise provided in the Service Descriptions, all Supporting Documents and Software provided pursuant to the Master Agreement constitute Bank's, its contractors or vendors, or Bank's agent's confidential information ("Confidential Information"). Bank, its contractors or vendors, or Bank's agent (as applicable) will remain the sole owner of all such Confidential Information, and Client will not acquire any interest in or rights to the Confidential Information as a result of Client's use of any Service except as expressly set forth in the Service Descriptions. Client will maintain the confidentiality of the Confidential Information, and will not permit its employees or agents to, disclose, copy, transfer, sublicense or otherwise make any of it available to any person or entity, other than Client's employees who have a need to use the Confidential Information in connection with the applicable Service. Client shall notify Bank immediately if Client knows or suspects that there has been any unauthorized disclosure, possession, use or knowledge (each, an "Unauthorized Use") of any Confidential Information, and if Client is responsible for the Unauthorized Use, it will, at its expense, promptly take all actions, including without limitation initiating court proceedings to recover possession or prevent further Unauthorized Use of the Confidential Information and obtain redress for any injury caused to Bank as a result of such Unauthorized Use. In addition, Client must not decompile, reverse engineer, disassemble, modify, or create derivative works of any computer program provided pursuant to the Master Agreement.

Client authorizes the transfer of any information relating to Client to and between the branches, subsidiaries, representative offices, affiliates, contractors, vendors and agents of Bank and third parties selected by any of them, wherever situated, for confidential use in connection with the provision of products or Services to Client (including for data processing purposes), and further acknowledges that any such branch, subsidiary, representative office, affiliate, contractor, vendor or agent or shall be entitled to transfer any such information as required by any law, court, regulator or legal process.

## FINANCIAL INFORMATION; AUDIT AND INSPECTION

Bank may from time to time request information from Client in order to evaluate a continuation of the Services to be provided by Bank hereunder and/or adjustment of any limits set by this Master Agreement. Client agrees to provide the requested financial information immediately upon request by Bank, in the form required by Bank. Client authorizes Bank to investigate or reinvestigate at any time any information provided by Client in connection with this Master Agreement or the Services and to request reports from credit bureaus and reporting agencies for such purpose.

Bank reserves the right, with prior notice to Client, to enter upon Client's premises from time to time during regular business hours to verify that Client's operations and procedures are in compliance with the terms of the Master Agreement.

In connection with any such audit, Client agrees to furnish Bank with any documentation or information as is reasonably necessary to establish Client's compliance with the terms of the

Master Agreement. If it is determined by Bank that additional procedures or controls need to be implemented by Client, Client agrees to implement such procedures or controls within a reasonable period of time to be agreed upon by the parties.

In connection with Bank's entry on the premises of Client for the purpose of conducting an on-site audit or inspection, or in connection with providing support to Client, Bank shall not be liable or responsible to Client or any third party for any loss, bodily harm, property damage, claims of the introduction of a virus or other malicious code into Client's system, including any which allegedly delay, alter or corrupt the data of Client, whether related to the transmission of check images or other data to Bank or whether caused by the equipment, software, Bank Internet service providers, Internet browsers, or other parties providing communication services to or from Bank to Client.

## SECURITY INTEREST

Client grants Bank a security interest in Client's accounts to secure the repayment of any obligation that Client incurs under the Master Agreement. The security interest provided under the Master Agreement is in addition to any other security interest Bank may have in Client's accounts or other assets. This security interest will survive termination of Master Agreement.

## RESERVE ACCOUNT

Client agrees that it will, if requested by Bank at any time, establish one or more reserve accounts to be maintained with Bank in type (including time deposits) and amount satisfactory to Bank, to serve as collateral for and to secure Client's obligations to Bank under the Master Agreement. Bank may restrict or prohibit Client's access to any reserve account(s) and the funds on deposit in them, and may hold such accounts following termination of the Master Agreement for a period of time sufficient to protect Bank against loss. Bank may increase or decrease the required reserve account amount from time to time, upon notice to Client and Client agrees to provide immediately available funds to cover a reserve amount requested by Bank. In addition, Bank may transfer funds from another account of Client's, or use funds payable to Client or owed by Bank to Client under the Master Agreement or due to a Service, and credit such funds to a reserve account if a deficiency exists between the available funds in Client's reserve account(s) and the amounts specified by Bank as the required reserve amount.

## TERM AND TERMINATION

The term of the Master Agreement will commence upon full execution of the Master Agreement and will continue in full force and effect thereafter until terminated as follows:

- (1) Client may terminate some or all of the Services under the Master Agreement, with or without cause, upon 30 days prior written notice to Bank; and
- (2) Bank may terminate, suspend or restrict some or all of Client's access to the Services under the Master Agreement, with or without cause, at any time immediately upon notice to Client.

Any termination will not affect any obligations arising prior to termination. Upon termination, Bank may terminate Client's access to the Services, and Client will terminate its access to and use of the Services, except to the extent necessary to process transactions that were in process prior to the termination date. Within 30 days after termination of the Master Agreement, Client will, at its expense, promptly uninstall and remove all software provided for the Services from its computers and return to Bank any Software, hardware and equipment provided by Bank for the Services, including the Supporting Documents, procedures, documentation and any materials relating to the Services in its possession or under its control, destroy all copies of the Supporting Documents and materials relating to the Supporting Documents that cannot be returned, and upon request from Bank certify in writing to Bank that all such copies have been returned or destroyed. Client will be responsible and liable to Bank for the replacement cost of all lost, stolen or damaged equipment that was provided by Bank to Client in connection with the Services. Upon termination of the Master Agreement, all Services and any Licenses shall automatically terminate.

## CLIENT RECORDS; NOT BACKUP SERVICE

The Master Agreement and the Services are not intended to relieve Client of any obligation imposed by law or contract regarding the maintenance of records or from employing adequate



audit, accounting, and review practices as are customarily followed by similar businesses. The Services do not include, and Bank does not act as, a backup, data recovery or disaster contingency service. Client acknowledges that it is Client's sole responsibility to make and retain backups of all Client's data, including before any transmission or upload to the Services. Except as otherwise stated in the Master Agreement, Client agrees to retain and provide to Bank, upon request, all information necessary to remake or reconstruct any deposit, file, entry, transmission, transaction request or order until at least six years following receipt by Bank of the deposit, file, entry, transmission, transaction request or other order affecting an account.

#### **SERVICES NOT SUBSTITUTE FOR LEGAL, TAX, OR FINANCIAL ADVICE OR PLANNING**

Client acknowledges that the Services, Bank, its employees and service providers are not intended to provide legal, tax or financial advice or planning. The Services are merely a tool for use to assist Client's independent decision-making and have not been designed in contemplation of Client's specific business needs or risk tolerances. Prior to making any financial decisions, communicating or taking any action with respect to information made available using the Services, Client represents that it will have obtained appropriate and independent legal and tax advice regarding the same.

#### **BUSINESS DAYS**

For the purpose of the Master Agreement, Bank's business days are Monday through Friday, excluding Saturdays, Sundays, bank holidays, and any other day that Bank chooses to be closed.

#### **ASSIGNMENT**

Bank may assign its rights and delegate its duties under the Master Agreement to an affiliate or to a third party. Client may not assign any right or delegate any obligation under the Master Agreement without Bank's prior written consent.

#### **RELATIONSHIP OF PARTIES**

Nothing in the Master Agreement creates a joint venture, partnership, principal agent or mutual agency relationship between the parties. No party has any right or power under the Master Agreement to create any obligation, expressed or implied, on behalf of the other party.

#### **THIRD PARTIES**

Client acknowledges and agrees that Bank may arrange to provide Software, if required, and/or may arrange for the Services covered by the Master Agreement to be performed or provided by third parties, including its affiliates. Client further agrees that any such party is a third-party beneficiary of the Master Agreement and as such is entitled to rely on, and avail itself of, the provisions of the Master Agreement as if it was Bank, including, without limitation, the limitations on liability and the indemnities described in the Master Agreement. Bank's ability to provide certain Services may be dependent upon Bank's ability to obtain or provide access to third-party networks. In the event any third-party network is unavailable or Bank determines in its sole discretion, that Bank cannot continue providing any third-party network access, Bank may discontinue the related Service or may provide the Service through an alternate third-party network. In such situations, Bank will have no liability for the unavailability or delay of access.

Notwithstanding the limitations described above pertaining to third parties, if Client authorizes a third party to access the Services on Client's behalf, Client will be solely responsible and liable for all actions and inactions of said third party. Client expressly assumes the risks associated with providing Service access rights to its agents or third-party vendors, including but not limited to the risk of unauthorized or erroneous transactions. Bank will not be responsible, nor have any liability whatsoever for any services Client receives from Client's agents or third-party vendors. Bank reserves the right to require Client to agree to additional terms and conditions as a condition precedent to Client's use of any agent or third-party vendor in connection with Client's access to the Services.

#### **CREDIT CRITERIA**

Bank, in its sole discretion, may, and Client hereby authorizes Bank to, perform credit reviews of Client in accordance with Bank's credit criteria. Client shall, upon Bank's request, provide Bank with any credit-related information and assistance as Bank may require to perform any such review. Client agrees to provide Bank with financial statements or other information regarding Client's financial condition upon Bank's request.

#### **WAIVER**

No party's failure or delay in exercising any right or remedy under the Master Agreement will operate as a waiver of such right or remedy, and no single or partial exercise of any right or remedy under the Master Agreement will preclude any additional or further exercise of such right or remedy or the exercise of any other right. No waiver by either party of any breach of the Master Agreement will operate as a waiver of any prior, current or subsequent breach. No waiver, breach, right or remedy will be effective unless made in writing.

#### **ELECTRONIC SIGNATURES, CONTRACTS AND RECORDS**

When any payment order or other Service generates items or transactions to be charged to an account of Client, Client agrees that Bank may charge the affected account without requiring Client's signature and without prior notice to Client. Any transactions resulting from Client's instructions which Bank receives in Client's name and under Client's credentials shall be deemed to have been "a writing" and authenticated by Client "in writing" for purposes of any law in which a writing or written signature is needed or required. All records maintained by Bank of transactions under Client's credentials shall be deemed to have been "signed" and will further constitute an "original" when printed from records established and maintained by Bank or Bank's authorized agent in the normal course of business.

Client agrees that Bank may contract and communicate electronically with Client, including execution and retention of contracts, documents, and certifications electronically. Client agrees not to contest the authorization for, or validity or enforceability of, Bank's electronic records and documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or records are to be in writing or signed by the party to be bound thereby. Records and "signed" documents, if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary business records. Upon Bank's written request, Client agrees to manually sign or place Client's signature on any paper original of any record or "signed" document which Bank provides to Client containing Client's purported signature.

#### **MONITORING, RECORDING AND RETAINING**

Client authorizes Bank (but Bank is not obligated) to monitor, record electronically and retain telephone conversations and electronic communications between Client (including its purported Authorized Representatives) and Bank. Accordingly, Client agrees on behalf of itself, its employees and agents that Bank may monitor and record Client's telephone and electronic communications in connection with the Services at any time, without further notice. Bank and Client hereby agree that Bank may produce the telephonic or electronic recordings or computer records as evidence in any proceedings brought in connection with the Master Agreement, and Client hereby acknowledges the validity and enforceability of such telephonic or electronic recordings.

#### **FINAL AGREEMENT; AMENDMENTS**

The Master Agreement constitutes the final and complete agreement between Bank and Client with respect to the Services, and supersedes all other oral or written agreements, understandings, and representations pertaining to the subject matter hereto. Bank may amend, add, delete or change the terms of the Master Agreement, including but not limited to the terms of any Service Description, and the applicable fees. Bank may make such amendments, additions, changes or deletions, at any time and at Bank's sole discretion. If Bank deems it reasonably practicable to do so and if the change adversely affects Client's usage of the Service, Bank may notify Client of the change in advance. Otherwise, Bank will notify Client of the change as soon as reasonably practicable after it is implemented, which notice may be given electronically. Client's continued use of the Services will evidence Client's consent to any amendments, including additions, changes or deletions.

## AVAILABILITY

Bank may cause a Service to be temporarily unavailable to Client, either with or without prior notice, for site maintenance, security or other reasons, and Client acknowledges that factors beyond Bank's reasonable control, such as telecommunications failure or equipment failure, may also cause the Service to be unavailable to Client. In such event, Client must make alternative arrangements for scheduled and other anticipated transactions and Client will be responsible for maintaining procedures and facilities to enable Client to do so if any of the Services are unavailable to Client. Upon notice from Bank of a failure of any software, hardware or other equipment necessary for Bank to perform in accordance with a Service Description, Client will as soon as reasonably possible deliver to Bank all data in Client's possession or under its control which Bank reasonably requests in order for Bank to continue to provide the Service.

## HEADINGS

Headings are for reference only and are not part of the Master Agreement.

## SUCCESSORS AND ASSIGNS

The Master Agreement is binding upon and shall inure to the benefit of Bank and Client and their respective successors and assigns. However, in all cases the applicability of the Master Agreement to any of Client's successors and assigns must be approved in an advance writing by Bank.

## INSURANCE

If requested by Bank, Client agrees to obtain and maintain comprehensive general liability, fidelity and error and omission insurance coverage, or such other coverage as directed by Bank, in an amount reasonably satisfactory to Bank, to cover (at a minimum) losses due to action or inaction by Client, its employees and agents, or any person given access to the Services by Client (including unauthorized access by the same), and to name Bank as an additional insured on such policy. Client will provide evidence reasonably satisfactory to Bank of the existence of such insurance promptly upon request by Bank.

## APPLICABLE LAW; SEVERABILITY

The Master Agreement shall be construed and interpreted in accordance with federal law and regulations, and to the extent such law and regulations do not apply, with the laws of the state of California, without regard to its conflict of law provisions. Even if a provision of the Master Agreement is held to be invalid, illegal or unenforceable, the validity, legality, or enforceability of the other provisions of the Master Agreement will not be affected or impaired by such holding.

**Client's completion of the Acceptance constitutes Client's acceptance of the terms and conditions of the Master Agreement, together with each applicable Service Description, including any Supporting Documents, corresponding exhibits, schedules, enrollments, or attachments to the same, each as amended by Bank from time to time.**

## SERVICE DESCRIPTIONS

### Automated Clearing House (ACH) Service Description

#### ACH SERVICE

Client wishes to initiate credit and/or debit Entries by means of the Automated Clearing House Network pursuant to the terms of this Service Description and the rules of the National Automated Clearing House Association ("NACHA") (the "Rules"), and Bank is willing to act as an Originating Depository Financial Institution ("ODFI") with respect to such Entries (the "ACH Service"). Client is responsible for all Entries to the fullest extent provided by law and as set forth in this Service Description. Defined terms in this Service Description shall have the meaning provided in the Master Agreement and as defined in the Rules, unless otherwise defined in this Service Description. The term "Entry" or "Entries" shall have the meaning provided in the Rules and shall also mean the data received from Client hereunder from which Bank prepares Entries.

## RELATED SERVICE DESCRIPTIONS FOR ACH ENTRIES

Entries submitted by Client using Bank's Online Banking Services must be consistent with the separate Online Banking Service Description. Client may be required to use a Security Device to initiate Entries. Additional terms and conditions may apply to the ACH Service to the extent Client transmits Entries outside Bank's Online Banking Services. Client may not submit Entries outside Bank's Online Banking Services without Bank's prior written consent.

## THE RULES

A copy of the Corporate Edition of the Rules can be purchased from NACHA at [www.NACHA.org](http://www.NACHA.org). Client agrees to obtain a copy, to understand and be familiar with the Rules, and to be responsible for keeping up to date with changes in the Rules. Client agrees that information or advice received by Client from Bank as to the Rules or the operation of the Rules is not legal advice and is not a substitute for Client's obligation independently to understand and comply with the Rules.

## PROCESSING ENTRIES

Client shall transmit Entries to Bank to the location(s) and in compliance with the formatting and other requirements set forth in the Rules and the Supporting Documents. The ACH Service will start on a date agreeable to Client and to Bank after all set up requirements have been completed.

Client will not submit individual or total monthly Entries in excess of the maximum limits established by Bank and reflected in the Supporting Documents, as amended from time to time. The parameters and variations of the limits shall be set at Bank's discretion, including but not limited to limits based on dollar amounts and/or Standard Entry Class Code types. Client will not divide a transaction into more than one Entry in order to avoid these limitations. Bank may adjust these limitations from time to time, at Bank's discretion. Bank processing of Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision. Bank may cease processing Entries in a greater amount at any time without prior notice.

Client may not originate Entries using Standard Entry Class Codes other than CCD, CTX or PPD without prior notice to and written approval by Bank. Bank may require Client to submit an application in form and content acceptable to Bank, and Client's execution supplemental schedules, agreements and other documents as Bank may require, as a condition precedent to Client's use of other Standard Entry Class Codes. By way of example, the foregoing restrictions and requirements may apply to Client's use of ARC, RCK, BOC, POP, WEB, IAT or TEL Standard Entry Class Codes, or if Client is engaging in cross-border (International) transactions. Bank may block unapproved use of a Standard Entry Class Code or an unapproved cross-border transaction.

Except as provided below for On-Us Entries, Bank shall: (i) process Entries received from Client to conform with the file specifications set forth in Rules, (ii) transmit such Entries as an ODFI to an ACH Operator selected by Bank in its sole discretion ("ACH Operator"), and (iii) settle for such Entries as provided in the Rules. Bank shall transmit or complete the necessary authorizations for ACH Entries by the deadline of the ACH Operator, provided: (a) such Entries are received by Bank's related cutoff time on a business day, (b) the Effective Entry Date is at least two business days after such business day (for credit Entries) and at least one business day after such business day (for debit Entries), and (c) the ACH Operator is open for business on such business day. Entries shall be deemed received by Bank when the transmission and compliance with any related Security Procedures is completed. If any of the requirements of this paragraph are not met, Bank may use reasonable efforts to transmit such Entries to the ACH by the next deadline of the ACH Operator which is a business day and a day on which the ACH Operator is open for business.

## FILE DELIVERY

Bank shall notify Client whether Entries shall be in the form of balanced or unbalanced files. If balanced files are required, then Client is required to provide corresponding offset for settlement. If Bank requires that Entries shall be in the form of an unbalanced file, then this means a file contains only the originating item(s) without any corresponding offset or settlement transaction and Client will notify Bank the offset account to be used for settlement. Client is responsible for confirming with Bank that it has received each transmission.

## **SAME-DAY ENTRIES**

Subject to Bank's approval, the ACH Service permits Client to elect to have Client's ACH Entry originated on a "same-day" basis, for settlement on the same day as the Effective Entry Date. Eligible ACH Entries received on a business day by the applicable cutoff hour for same-day Entries, will be treated as a "same-day" ACH Entry. For this purpose "eligible ACH Entries" will mean ACH Entries: (i) received on a business day by the cutoff hour for same-day Entries, (ii) that are less than \$25,000, and (iii) that contain an Effective Entry Date for the same day as receipt, or a stale or invalid date. Bank does not represent, warrant or otherwise guarantee that receiving depository financial institutions will post same-day ACH Entries by applicable deadlines. Bank may utilize same-day processing for any Entry that qualifies as an "eligible" same-day Entry even if Client did not intend the Entry to be processed using same-day processing. In such cases, Client is still responsible for all fees associated with same-day processing.

## **ON-US ENTRIES**

In the case of an Entry received for credit to an account maintained with Bank (an "On-Us Entry"), Bank shall credit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in this Service Description are met. If said requirements are not met, Bank may use reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next business day following such Effective Entry Date.

## **NOTICE OF RETURNED ENTRIES**

Bank shall notify Client by phone, fax or electronic transmission, including email of the receipt of a returned Entry from the ACH no later than one business day after the business day of receipt. Except for an Entry retransmitted by Client in accordance with the requirements of this Service Description, Bank shall have no obligation to retransmit a returned Entry to the ACH if Bank complied with the terms of this Service Description with respect to the original Entry.

## **PRENOTIFICATIONS**

Bank strongly recommends Client sends a prenotification Entry for all new and modified ACH Receiver Entries. If Client chooses to originate non-dollar prenotification Entries to verify the accuracy of routing and account numbers, it agrees not to initiate live dollar Entries until at least three (3) business days following the Settlement Date of the prenotification Entry. Prenotifications must be provided to Bank in the format provided in the Rules. If Client receives notice that a prenotification has been rejected or returned, Client will research the problem and make any necessary corrections before transmitting another Entry.

## **NOTIFICATIONS OF CHANGE**

Bank shall notify Client of all Notifications Of Changes (NOC) received by Bank relating to Entries transmitted by Client, no later than two business days after the business day of receipt. Notice by Bank, in Bank's discretion may include notice by email to Client. Client must make the changes specified in an NOC or corrected NOC: (a) within six business days of receipt or prior to initiating another Entry to the Receiver's account, whichever is later.

## **PREFUNDING; PAYMENT**

Bank may designate Client as "ACH Prefunding," and Bank may change Client's designation to or from ACH Prefunding at any time, with or without cause and at Bank's sole discretion. Bank will inform Client of Client's designation as ACH Prefunding, and of any change in the designation.

Client must have available funds, in the designated Settlement Account, of an amount equal to the sum of all credit Entries or debit Reversals related to entry data delivered to Bank at such time: (a) if Client is not designated ACH prefunding, no later than the day before the Settlement Date of the Entry transmitted to Bank; and (b) if Client is designated ACH Prefunding, no later than two days prior to the Settlement Date of the Entry transmitted to the Bank.

## **INCONSISTENCIES**

If a Receiver of an Entry is identified by both name and account number, payment may be made

by Bank and by any other financial institution based on the account number even if the name and the account number are not consistent or identify different parties. If an intermediary bank or a beneficiary's bank is identified on a payment order by both name and account number, Bank and other financial institutions may rely on the account number even if the name and the account number are not consistent or identify different parties.

## **PROVISIONAL CREDIT**

Client acknowledges that credit for a payment order is provisional until the receiving financial institution obtains final settlement. If final settlement does not occur, the originator of the payment order is not deemed to have made payment to the beneficiary, and the beneficiary's bank is entitled to a refund of the provisional credit. Client agrees that any payment by Bank to Client for any debit Entry, returned credit Entry or credit Reversal is provisional until Bank has received final settlement for such Entry. Bank may delay availability of provisional funds at its discretion. If final settlement is not received, Bank is entitled to and Client agrees to pay a refund of the amount credited; and Bank may charge Client's account for the amount due. Bank may refuse to permit the use of any amount credited for a debit Entry or credit Reversal if it believes that there may not be sufficient funds in Client account to cover chargeback or return of such Entry or Reversal.

## **CUTOFF HOURS**

The cutoff hour applicable to ACH Entries is reflected in the Supporting Documents. An Entry is considered executed when Bank executes it. If Entry data is received after the cutoff hour or on a day that is not a business day, Bank will automatically process the request the following business day.

## **ELECTRONIC TAX PAYMENT SERVICE**

The Electronic Tax Payment Service allows Client to originate federal and state tax payments using the Service. To facilitate the Electronic Tax Payment Service, Client appoints Bank to act as Client's agent for the purpose of making tax payments and deposits on Client's behalf. Upon Bank's request, Client agrees to execute such additional enrollment forms and authorizations as Bank may request. Client authorizes Bank to release account and tax payment information to any taxing authority in performing the Electronic Tax Payment Service and to confirm payments.

CLIENT MUST BE PRE-ENROLLED WITH THE FEDERAL AND/OR STATE TAXING AUTHORITIES PRIOR TO USING THE ELECTRONIC TAX PAYMENT SERVICE. Client warrants that Client is enrolled in the Electronic Federal Tax Payment System (EFTPS) and has selected the ACH Credit option. Client also warrants that all special requirements of the EFTPS system have been met. Client also warrants that Client has completed appropriate enrollment requirements with each state taxing authority, as applicable.

Client is solely responsible for determining the amount of any taxes due and transmitting the correct payment information in accordance with the ACH Service requirements. Client must furnish Bank with complete and accurate tax payment information. Bank is not responsible for: (i) determining the correctness of any tax computation or payment; (ii) questioning the timing or amount of the payment; (iii) determining or questioning the correctness of any report or information submitted by Client (even if it appears incorrect on its face); or (iv) any penalty which may be imposed if Client instructs Bank to make a payment after Bank's cutoff time or the date the tax payment is due.

Bank will notify Client orally, electronically or in writing if Bank is unable to process any payment in the manner attempted by the Electronic Tax Payment Service, and will do so no later than the business day following the payment date. If Client fails to maintain sufficient collected and available funds in Client's account, Bank may refuse to perform the tax payment. If any payment is rejected, it will be Client's responsibility to resubmit the payment instruction. If Client does not have sufficient or available funds, Client may be charged an insufficient funds fee and any other fees or charges applicable to the transaction.

When Bank receives Client's payment instruction to make a tax payment, Bank will charge Client's Account for the amount of the payment(s). The funds may be held by Bank as a non-interest bearing deposit liability to Client, but will not be held in trust. Until Bank makes Client's tax payment(s), Client's funds will be subject to offset for legal process, or any debts owed to Bank.

Client assumes the risk of any failure to submit payment instructions to Bank in a timely and



correct manner. Payments should be submitted at least two business days prior to the due date. Any interruption of the Electronic Tax Payment Service, regardless of the reason, will not relieve Client of Client's obligation to make a tax payment or report. Client is ultimately responsible for promptly making any required tax payment or report. Client is responsible for promptly making required tax payments by another means in the event there is an interruption in the Electronic Tax Payment Service. Client agrees to be bound by the Rules, as amended from time to time, and all laws and regulations of the United States.

Client acknowledges that Bank's employees are not authorized or permitted to give tax advice to Client. Client agrees not to seek or place any reliance upon tax advice from Bank or Bank's employees. If the Electronic Tax Payment Service is not used for a period of ninety (90) days, the Electronic Tax Payment Service may be removed or disabled. To cancel an Electronic Tax Payment Service Communication and the payment instruction that Client has scheduled, Client must cancel online prior to the cutoff time on the processing date. Payments cannot be cancelled after this time. Bank may, at Bank's discretion, seek to assist Client in attempting to cancel or amend any payment but is not obligated to do so. If Bank does, Client will indemnify Bank in accordance with this Service Description for any losses Bank may suffer in connection with Bank's efforts.

## RECONCILIATION

Client will inspect all information made available by Bank in connection with the ACH Services. Client agrees to promptly, by telephone and in writing, or electronic transmission including email, notify Bank of any errors in such information or any discrepancies between its records and the information, statements or confirmations of transactions made available by Bank. To the extent not expressly prohibited by applicable law, if Client fails to promptly notify Bank of any such error or discrepancy, in any case no more than 2 business days from the date on which such information is made available to Client, then Client agrees that Bank will not be liable for any losses resulting from Client's failure to give such notice or any resulting loss of interest relating to any transactions and the statement will be presumed correct. Without limiting the foregoing: (i) if Client fails to notify Bank of any such error or discrepancy within one year of the date on which such information is made available to Client, then Client shall be precluded from asserting such error or discrepancy against Bank; and (ii) Bank reserves the right to, in its sole discretion, adjust transaction records for good cause after the expiration of said one year period. The notice period provided under this "Reconciliation" section shall control over the reconciliation period provided in the Master Agreement.

## CLIENT REPRESENTATIONS AND WARRANTIES

In addition to the representations and warranties provided by Client under the Master Agreement, with respect to each and every Entry initiated by Client, Client represents and warrants to Bank and agrees that:

- (a) Client shall obtain all consents and authorizations required under the Rules, and in compliance with Regulation E (as applicable, and shall retain such consents and authorizations for two years after they expire and other documents related to Entries for a period of six years. Without limiting the foregoing, each person as the Receiver of an Entry received by Bank from Client has authorized the initiation of such Entry, and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry. Client will provide Bank with a copy of such authorization whenever requested to do so within five business days. Such authorization is operative at the time of transmittal or crediting / debiting by Bank as provided herein;
- (b) Entries transmitted to Bank by Client are limited to those types of credit or debit Entries set forth in this Service Description;
- (c) If the amount of a debit Entry to a Receiver's account varies in amount from the previous debit Entry relating to the same authorization or preauthorized amount, Client will, at least ten days before the Effective Entry Date of such debit Entry, send the Receiver written notice of the amount of such debit Entry and its Effective Entry Date, unless the Receiver has previously been notified of Receiver's right to receive such notice and Receiver has elected to receive such notice only when the debit Entry does not fall within a specified range of amounts or varies from the most recent debit Entry by an agreed amount;

- (d) If any change is made by Client in the scheduled Effective Entry Date of one or more debit Entries, Client will, at least seven days before the Effective Entry Date of the first such debit Entry to be affected by such change, send the Receiver a written notice of the new Effective Entry Date(s) of such Entry or Entries;
- (e) Client shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the treatment of a payment of an Entry by the Receiving Depository Financial Institution ("RDFI") to the Receiver as provisional until receipt by the RDFI of final settlement for such Entry;
- (f) Client will not use the ACH Service to collect: (i) payments for goods or services sold by third parties; (ii) payments relating to adult entertainment, gambling services, or child pornography; (iii) obligations owing to third parties; or (iv) obligations related to cash advances by Client;
- (g) Client hereby makes the same representations and warranties to Bank with respect to Entries sent by Bank to an ACH Operator upon the authorization of Client as Bank is deemed to make under the Rules, and Bank shall have no responsibility with respect to matters so represented and warranted by Client; and
- (h) Except as previously disclosed in writing by Client to Bank: (i) Client is not a "money-services business" (as defined at 31 CFR 103.11(uu) or successor regulation) and is not subject to any state license requirements applicable to a money-services business, banks, broker-dealers or other financial institutions; and (ii) no Entry data is submitted by Client on behalf of, or as agent, service bureau or processor for another. By way of example, Client will not submit debit Entries that result from a sale of goods or services by a third party to the Receiver.

Client agrees to indemnify Bank against any loss, liability or expense (including attorney's fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or agreements.

## RETENTION

In addition to any retention obligations of Client under the Master Agreement and this Service Description, Client agrees to retain and make readily available to Bank on request all information necessary to remake any files of Entries for six years following the Settlement Date.

## AUDIT

In addition to the audit commitments provided under the Master Agreement, if transactions Client conducts involve some use of the Internet, then Client agrees to conduct an internal security audit at least annually to ensure that the financial information obtained from Receivers is protected by security practices and procedures ("security audit") that include, at a minimum, adequate levels of: (i) physical security to protect against theft, tampering, or damage; (ii) personnel and access controls to protect against unauthorized access and use; (iii) network security to ensure secure capture, storage, and distribution of financial information; and (iv) any other items identified in the Operating Guidelines of the Rules. Upon Bank's request, Client agrees to have an external security audit conducted within sixty (60) days of the request. The external security audit will include the same items described in this paragraph for an internal security audit. Client agrees to provide Bank with a copy of each internal and external audit report, as applicable, in a format acceptable to Bank within (30) days from the completion of the audit.

Without limiting the foregoing, Client specifically agrees to establish data security policies, procedures and systems as required by the Rules. This requires Client to:

- (1) Protect the confidentiality and integrity of Protected Information
- (2) Protect against anticipated threats or hazards to the security or integrity of Protected Information until its destruction; and
- (3) Protect against unauthorized use of Protected Information that could result in substantial harm to a natural person

Such policies, procedures, and systems must include controls that comply with applicable regulatory guidance on access to all systems used by Client to initiate, process and store Entries. NACHA defines Protected Information as the nonpublic personal information, including financial information, of a natural person used to create or contained within an Entry and any related Addenda record.



## Automated Sweep Service Description

### AUTOMATED SWEEP SERVICE

Client may authorize automated sweep services in accordance with the terms and conditions of this Service Description (the "Automated Sweep Service"). Client is responsible for all transfers to the fullest extent provided by law and as set forth in this Service Description. Defined terms in this Service Description shall have the meaning provided in the Master Agreement, unless otherwise defined in this Service Description.

### SWEEP NOTICE

CLIENT'S LOAN ACCOUNT IS NOT A "DEPOSIT," AS DEFINED IN THE FEDERAL DEPOSIT INSURANCE ACT. FUNDS DRAWN FROM CLIENT'S LOAN ACCOUNT BECOME A DEPOSIT WHEN THE DRAW AMOUNT IS ACTUALLY PROCESSED BY THE BANK. FUNDS TRANSFERRED FROM CLIENT'S DEPOSIT ACCOUNT TO MAKE A PAYMENT ON CLIENT'S LOAN ACCOUNT CEASE TO BE A DEPOSIT WHEN THE PAYMENT IS ACTUALLY PROCESSED BY THE BANK. ALTHOUGH THE PAYMENT IS NOT A DEPOSIT, IT REDUCES THE AMOUNT CLIENT OWES THE BANK ON CLIENT'S LOAN ACCOUNT, PURSUANT TO CLIENT'S LOAN AGREEMENT WITH THE BANK.

### DEPOSIT ACCOUNT/LOAN INFORMATION

Bank reserves the right to determine which deposit accounts are eligible for Client's sweep service. In any event, due to regulatory transfer restrictions, money market and savings account types will not be eligible for automated sweep services involving a transfer out of such account types. The deposit accounts subject to this Service Description are identified in the Supporting Documents, which may include the Acceptance (collectively referred to as "Deposit Accounts"), including the loan payment source account ("Loan Payment Source Account"), and the commercial loan account ("Loan Account"). Each Deposit Account, including the Loan Payment Source Account, and the Loan Account must have identical ownership to be eligible for the Automated Sweep Service. The term "Accounts" shall collectively mean the Deposit Accounts and the Loan Account, unless otherwise indicated herein.

### DEFINITIONS

- a. "Float" means funds not yet collected by the Bank.
- b. "Ledger Balance" means current balance excluding Float, as reflected in the Supporting Documents.
- c. "Available Balance" means current balance including Float, as reflected in the Supporting Documents.
- d. "Deposit Sub Account," "Checking Account," "Master Account," "Concentration Account," "Sweep Account," "Loan Payment Source Account," and "Loan Account" mean the Client Accounts identified as such in the Supporting Documents.
- e. "Sweep" means the transfers described in the Automatic Sweep/Payment Authorizations paragraph below, as applicable.
- e. "Target Balance" means the Ledger Balance dollar amount established by Client and identified for each Deposit Account in the Supporting Documents.

### AUTOMATIC SWEEP/PAYMENT AUTHORIZATIONS

Sweep authorizations options are detailed below and specifically selected in the Supporting Documents.

#### *Checking Account Sweep*

A Concentration Account and Sweep Account(s) with Bank is to be designated by Customer for Service and are to be designated and listed in the Supporting Documents. Under this Service, Bank shall automatically "sweep" funds to and from the designated Concentration account in order to maintain a target balance in the Sweep Account(s). The Sweep Account(s) will be established with a Target Balance which Bank shall seek to maintain. The Customer may change the Target Balance upon written notice to the Bank.

Each business day, if the Available Balance in the Sweep Account is greater than the Target Balance, the available excess funds will automatically transfer to the Concentration Account. In the event the Available Balance in the Sweep Account is less than the Target Balance at the end of a banking day, Bank will automatically transfer funds from the Concentration Account, sufficient to return the balance of the Sweep Account to the Target Balance. If the Ledger Balance of the Concentration Account is not sufficient to return the Sweep Account balance to the Target Balance, the entire available balance of the Concentration Account will be automatically transferred to the Sweep Account, which may not be sufficient to fulfill the Target Balance requirement.

#### *Zero Balance Account (ZBA) Sweep*

A Concentration Account and ZBA(s) with Bank is to be designated by Customer for Service and are to be designated and listed in the Supporting Documents.

Each business day, Bank shall maintain the zero balance status of each ZBA by automatically transferring funds from the Concentration Account to the ZBA to cover checks and other debits presented against the ZBA, provided that sufficient funds are available in the Concentration Account and will automatically transfer funds (using the Ledger Balance) to the Concentration Account for all deposits and other credits posted to the ZBA.

#### *Automated Loan Sweep - Advances*

Authorizes the Bank each business day to automatically advance funds from the Loan Account to maintain the Target Balance in the Deposit Account. This advance will only occur to the extent there are sufficient available funds on the line of credit, as determined by the terms and conditions of the applicable loan documents and agreements, including, but not limited to, the promissory note, governing the Loan Account. Further, Client agrees that this Automated Sweep Service allows partial draws against the Loan Account in order to make a deposit to the Deposit Account. This means that there will still be a draw against the Loan Account even if the entire amount needed to maintain the Target Balance is not available on the Loan Account. The amount drawn on the Loan Account in such instance will only be the amount available on the Loan Account. Notwithstanding the foregoing, nothing in this Service Description will require the Bank to honor items or other debit transactions against the Deposit Account when there are insufficient funds to cover the full amount of such transactions (including but not limited to insufficient available funds from the Loan Account).

#### *Automated Loan Sweep – Payments*

To the extent there is an Available Balance in excess of the Target Balance available in the Deposit Account, Client authorizes the Bank each business day to automatically transfer funds from the Deposit Account to pay the Loan Account in the amount as identified in the Supporting Documents. Funds swept from the designated Deposit Account to reduce the outstanding balance on the Loan Account will be applied as unscheduled reductions of principal and as such will not satisfy the installment obligations under the payment schedule for the Loan Account or pay accrued interest.

### CLIENT RIGHTS

Subject to the terms of this Service Description, the Bank hereby grants Client a non-exclusive, non-transferable right to access and use the Automated Sweep Service in connection with Client's own business operations in accordance with the Supporting Documents. Without limiting the generality of the foregoing, Client agrees not to (a) make the Automated Sweep Service available or allow use of the Automated Sweep Service in a computer bureau service business, or on a timesharing basis, or (b) otherwise disclose or allow use of the Automated Sweep Service by or for the benefit of any third party.

### ACCOUNT TRANSFER LIMITATIONS

All transfers to and from an Account will be subject to the terms and conditions applicable to the Account as set forth in the deposit agreement governing the account, including but not limited to transfer limitations. In addition, there may be other transfer limits addressed in the Supporting Documents.

## NONCOMPLIANCE WITH BORROWING BASE

This paragraph is applicable if the promissory note or other loan document for Client's Loan Account provides that the Loan Account is tied to a borrowing base of eligible receivables. At any time that Client is not in compliance with the borrowing-base requirement, the Bank may reverse any sweep transaction that constitutes an advance on the Loan Account.

## INSUFFICIENT FUNDS

The Automated Sweep Service sweeps funds from a Deposit Account only when there is an available balance. Availability of funds for purposes of the Automated Sweep Service will be determined in accordance with the Bank's then funds availability and float policies. If a hold is placed on funds in an Account they may not be swept from that Account.

## PROCESSING SWEEPS

Client agrees and acknowledges that the sweeps pursuant to this Service Description may not be done on a real time basis. The Bank will look at the end of day Ledger Balance in the Deposit Accounts to determine whether either a sweep will occur, for example, from the Master Deposit Account to a Deposit Sub-Account, or the Loan Payment Source Account to the Loan Account under this Service Description. Further Client agrees and acknowledges that although the sweeps will be completed with the Bank's normal processing procedures, the processing may occur after the Bank is closed.

## REVERSALS

At any time, or from time to time, the Bank may reverse any transfer or credit made to or from a Deposit Account or the Loan Account, for any reason or for no reason. The Bank may provide notice to Client, but is not obligated to do so. The Bank may reverse any transfer or credit, for example, if the Bank determines in its sole discretion that to do may assist the Bank in the avoidance of any loss, liability, or to correct any error, or to cover any overdraft that might arise in an Account.

## INAPPLICABLE RESTRICTIONS

Except to the extent otherwise provided in this Service Description, Client understands that transfers provided under this Service Description will occur without regard to any withdrawal or access restrictions otherwise applicable to the Deposit Accounts or the Loan Account. Client agrees that any arrangements with the Bank to restrict access to the Deposit Accounts or the Loan Account do not impact the Bank's ability to sweep funds or make payments as provided in this Automated Sweep Service Description.

## Cash Vault and Deposit Service Description

### CASH VAULT AND DEPOSIT SERVICES

Bank hereby offers its Client and Client hereby accepts the cash vault and/or deposit services (collectively referred to herein as the "Cash Vault and Deposit Services"), including the Smart Safe feature. Client expressly acknowledges that the Cash Vault and Deposit Services contemplated hereunder may be made available to Client through Bank's contracted third party financial provider ("Provider"). The Cash Vault and Deposit Services may be facilitated using one or more concentration accounts maintained by Bank on behalf of multiple customers of Bank (collectively "Concentration Accounts"), as a result, credits, debits and adjustments to Client's account(s) with Bank may be delayed one business day. Bank, not Client, will have direct access to funds in Concentration Accounts. Client represents that it is sophisticated with respect to business transactions. Client understands and agrees that this Service Description covers the Cash Vault and Deposit Service and does not cover the handling or the processing of checks drawn on any account Client may have with Bank. Further, except as modified by this Service Description, items processed remain subject to the terms and conditions of the account deposit terms and conditions. Defined terms in this Service Description shall have the meaning provided in the Master Agreement, unless otherwise defined in this Service Description.

## ARMORED COURIER

Bank may require that cash withdrawals be made by an armored courier, acceptable to Bank and at Client's sole risk and expense. Bank is not responsible for providing for Client's security, or the security of Client's agents or employees. To the extent a courier is needed by Client to facilitate the Cash Vault and Deposit Services, Client will be responsible for contracting with an armored transport carrier ("Courier") for transportation services to and from Bank and/or Provider. Courier shall for all purposes be considered the agent of Client and Client acknowledges and agrees that Courier is not an agent, employee or other representative of Bank. Neither Bank nor its employees or agents shall supervise, direct or control Courier's performance under this Service Description or under Courier's agreement with Client.

Client understands that time is of the essence to effect the Cash Vault and Deposit Services and that local traffic conditions and other circumstances may affect the timing of pick-ups and drop-offs by the Courier. Client acknowledges that the Courier may not wait for Bag(s) due to its other scheduled time commitments, further that for security reasons the Courier may abandon or delay any scheduled pick up or drop-off and Client agrees to develop alternate safekeeping procedures for shipments in such cases.

## CASH VAULT FEATURE

The cash vault feature of the Cash Vault and Deposit Services allows Client to place orders with Bank for coin and currency (collectively "Cash"). Before utilizing the cash vault feature, Client agrees to identify the name(s) and location(s) of the persons authorized by Client to receive the Cash, as well as applicable security credentials, in accordance with the Supporting Documents. Client's duty to safeguard the security credentials under this Service Description shall at least equal the duty as it applies to Security Procedures under the Master Agreement.

- (a) *Sufficient Funds.* Each time Client uses the Cash Vault and Deposit Service to order Cash, Client agrees that it must have sufficiently available funds in its account to cover the amount of the Cash order, together with applicable fees. Client authorizes Bank to debit its designated account for the amount of any Cash order under this Service Description as early as the day the Cash order is placed by Client. If Client fails to designate one of its accounts for this purpose, Client authorizes Bank to debit any of the accounts Client maintains with Bank for the amount of the Cash orders.
- (b) *Automated Service for Cash/Coin Ordering.* Requests for currency and or coin from a designated deposit account must be submitted through Bank's cash ordering system. Bank may elect to verify the authenticity or content of any request by calling Client's authorized representative or designated contact person(s).
- (c) *Cash Ordering Cutoff Time.* The Cash orders are subject to the applicable cutoff hour, as reflected in the Supporting Documents. Orders must be placed by the applicable cutoff time on Client's scheduled ordering day to allow Client's shipment to be delivered the next business day.
- (d) *Cash Ordering Limits.* Bank may establish Cash ordering limits for Client. If multiple accounts are tied to the Cash vault feature, limits may be established for each Account. Cash ordering limits may be reviewed from time to time against the actual ordering activity and may be modified at Bank's discretion. Client may submit an order limit increase request to Bank in writing. Bank may require additional documentation from Client before approving an increase request.
- (e) *Cash Deliveries.* Cash orders will only be delivered to Client's designated location on the scheduled days and times provided to Client by Bank. Bank is authorized to make Cash shipments available to any person believed to be a Client employee or agent of Client. Bank will have no responsibility for cash made available to any person at delivery location that is not a Client employee or agent of Client.

## DEPOSIT FEATURE

The deposit feature of the Cash Vault and Deposit Services allows Client to present items and Cash for deposit to Client's Bank deposit accounts, which may be made available to Client by Bank using Provider's local depository facilities. Deposits of Cash may be subject to a daily or transaction based limitations. All deposits made must be entered by Client on deposit tickets. The deposit tickets must be locked, sealed in the containers ("Bags") and placed with the Courier by Client or Client's authorized representative, or personally delivered to Provider's local depository

facility. Items delivered pursuant to this Service Description including any instructions provided in the Supporting Documents, must be payable to Client and be properly endorsed by Client.

- (a) **Contents of Bags Generally.** Client agrees deposits shall be placed in locked, sealed Bags approved by Bank, including the use of any special deposit bags or deposit slips. No other Bags will be accepted by Bank. The Bags shall include no property other than: (a) negotiable instruments payable to Client; (b) Cash; and (c) deposit slip(s) indicating the total dollar amount of such negotiable instruments, Cash and the account or accounts of Client in which such sums are to be deposited.
- (b) **Cash and/or Negotiable Instrument Packaging Requirements.** When making deposits through the service Client agrees to:
  - (i) Properly endorse all checks;
  - (ii) Complete a deposit slip to include the deposit details;
  - (iii) Count, bundle and verify cash prior to packaging;
  - (iv) Place all currency face up;
  - (v) Remove all clips and staples;
  - (vi) Bundle cash in stacks of 500 notes, as quantity permits;
  - (vii) Secure each stack with rubber bands or currency straps;
  - (viii) Clearly label the deposit bag to include the deposit destination (Mechanics Bank), Client name, location number (if applicable), account number, and the deposit total;
  - (ix) Enclose the original deposit slip with any cash and/or checks in the Bag(s);
  - (x) Properly seal the Bag(s) to prevent tampering;
  - (xi) Retain Bag(s) receipt and a copy of the deposit slip for Client's records; and
  - (xii) Replenish Client's Bag(s) supply at Client's cost.
- (c) **Receipt of Bags.** Bank or Provider, as applicable, may accept Bags from any person Bank or Provider believes in good faith to be the Courier. Bank shall not assume responsibility for collection or be considered to have received a Bag until it is actually delivered by Client, or Client's Courier as applicable, to Bank or Provider, the contents have been verified by Bank or Provider, and Client or Courier receives from Bank or Provider written acknowledgment of receipt of such delivery. Similarly, any Bag contents returned or sent to Client by or on behalf of Bank shall be deemed received by Client when delivered by Bank or Provider to the Client or Courier.
- (d) **Processing Deposits.** Upon Client or Courier's delivery of a Bag to Bank or Provider, Bank or Provider is authorized to open the Bag and verify the contents, and to credit the contents thereof for the benefit of the designated account of Client. If no account is designated, Bank may credit the deposit for the benefit of any account of Client's. If the contents of the Bag do not conform to the deposit ticket, Bank will credit only those contents as are found therein that are in compliance with this Service Description and the Supporting Documents. If the aggregate amount of the contents of any Bag, as counted by Bank or Provider, is less than that reported on the deposit slip covering that Bag, Bank will debit the Client's account by such difference. Client agrees that the record of Bank or Provider as to the contents of the Bag opened by Bank or Provider, including the amount of any Cash contained therein, shall be conclusive evidence of the contents of the Bag.

Client agrees that Bank or Provider may endorse checks processed for deposit in a manner chosen by Bank or Provider (for example, "Credit to the Account of the Within Named Payee," "Payment Accepted Without Prejudice," or "Absence of Endorsement Guaranteed"). Bank is not responsible for payor bank acceptance or rejection of the endorsements used. If appropriate after processing, Bank will deposit checks and Cash into Client's account with Bank and make such funds available to Client in accordance with Bank's funds availability policy. Bank shall make funds available to Client by credit to Client's account, and Client remains obligated for all adjustments resulting from adjustments to Client's account.

Neither Bank or Provider will be deemed a bailee, and the risk of damage, loss or shortage is expressly assumed by Client, and Bank and Provider shall have no liability for any such damage, loss or shortage. A notice of any discrepancy between the contents of the Bag and the deposit ticket will be delivered or otherwise made available to Client. Bank reserves the right to return nonconforming items to Client and Client agrees that Bank may charge Client's account for the return costs. Alternatively, and at Bank's discretion, Bank may

require Client to arrange to pick-up nonconforming items. Client agrees to hold Bank and Provider harmless for any loss or shortage, including that the contents of the Bag fail to conform to the accompanying deposit slip.

Client recognizes that in following the instructions of Client, Bank or Provider may come into possession of items to which parties other than Bank may claim an interest. In that regard, Client hereby agrees to at all times to indemnify and hold Bank harmless from and against any and all claims, actions, whether groundless or otherwise, as well as from and against, any and all liabilities, losses, damages, judgments, costs, charges, attorneys' fees, and any other expenses of every nature and character in any way related to the claims by any party or parties, whether by action or non-action, with respect to any item of any nature whatsoever, alleged or claimed to have been delivered to Bank or Provider by Client.

- (e) **Cutoff Hours.** Bags delivered by the Courier on a business day after applicable cut-off hours, or to Bank or Provider on a day when Bank or Provider, respectfully, is not regularly open for business, may not be opened, verified or credited by Bank or Provider until the following business day.
- (f) **Record of Contents of Bags.** Client shall maintain a complete record of all contents placed in the Bag(s) and in the case of loss, to promptly, diligently, and completely cooperate with Bank in the identification or replacement of the items so lost. Such cooperation shall include, without limitation, requests by Client to makers of missing checks to issue duplicates, and in the event the makers thereof refuse to do so, then to assert all its legal and equitable rights against said makers or, if applicable, to subrogate such rights to Bank or its assigns. The provisions of this paragraph are not intended to alter or modify the responsibility for any loss, shortage or discrepancy set forth in this Service Description.
- (g) **Items Not Permitted.** Client may use the deposit feature to process currency, coin and check deposits. Unless Bank specifically agrees otherwise in writing, Client may NOT use the deposit feature to deposit the following:
  - (i) Remotely created checks;
  - (ii) Image Replacement Documents (substitute checks);
  - (iii) Treasury Bonds or other securities;
  - (iv) Non-cash coupons;
  - (v) Foreign instruments;
  - (vi) Third Party items; or
  - (vii) Checks payable to Client and another party who is not a joint owner on the Account.

## SMART SAFE FEATURE

The Smart Safe feature of the Service is provided through a Smart Safe Courier and provides Client with the ability to place Cash into an on-site safe that electronically transmits reports to Bank. On each business day for which there are Cash receipts secured in and reported to Bank by Smart Safe equipment (a "Smart Safe") provided by a Smart Safe Courier, corresponding provisional credit will be applied to Client's Account(s), subject to the terms of this Service Description.

- (a) **Smart Safe Process.** Once Client has obtained and installed a Smart Safe at one of Client's locations:
  - (i) Client's employees can place Cash into the secure cassette or receptacle ("cassettes") feature of the Smart Safe at that location;
  - (ii) The Cash can be read and counted by the Smart Safe which will then transmit to Bank through Client's Smart Safe Courier on a business day basis by an electronic file reporting the amount of Cash in the cassettes and related information (the "Report");
  - (iii) For each Report received prior to the applicable cutoff hour on any business day, Bank will provisionally credit Client's Account on that business day for the amount of Cash stated in the Report; and
  - (iv) Client's Smart Safe Courier will retrieve and transport the contents of the Smart Safe to Bank or to a cash vault location operated by the Smart Safe Courier ("Virtual Vault").



- (b) **Set Up and Implementation.** Before Bank will make the Service available to Client, Client must comply with the following:
- (i) Enter into an equipment and service agreement with a Smart Safe Courier for the Smart Safe equipment, software and service, and courier services (the "Smart Safe Courier Agreement") that has been approved by and is contracted with Bank, and complete the installation and training required by Client's Smart Safe Courier; and
  - (ii) Complete the set up and implementation process for the Service including establishing or designating an Account with Bank to be provisionally credited for deposits received under this Service, designating delivery points for the contents of the Smart Safe, and establishing and testing connections with Client's Smart Safe Courier for the transmission of Reports.
  - (iii) Understand that Client is solely responsible for the selection of Client's Smart Safe Courier, its products and services, and the terms and conditions of the Smart Safe Courier Agreement.
- (c) **Smart Safe Service Requirements.** In order to participate in Smart Safe Service, Client must first complete and return a Smart Safe Service Application to Bank for Bank's approval and execute such other agreement as may be required by Bank for Client to be able to use the Smart Safe Services. Upon submitting an application to Bank, Client thereby authorizes Bank to obtain information about Client's credit history and/or financial condition from third parties in order to evaluate Client's creditworthiness and qualifications for participating in the Smart Safe Service. Bank reserves the right in its sole discretion to determine Client(s) eligibility for the Smart Safe Service. Once approved, Bank will provide Client with access to the Smart Safe Service described in this Service Description. Bank may add, delete or change the features or functions of the Smart Safe Service at any time in Bank's sole discretion.
- (d) **On-Site Safe and Maintenance.** The on-site safe used by Client must be compatible with the Smart Safe Service, including the reporting software, if any, that provides safe inventory status. The Smart Safe Service requires a minimum of one (1) pick-up by the Smart Safe Courier within each seven (7) day period.
- (e) **Secured Funds.** The placement and counting of currency in, and the compilation and transmission of Reports and other data from the Smart Safe equipment are subject exclusively to the terms of the Smart Safe Courier Agreement. The Service commences once Bank has received the first Report from Client's Smart Safe Courier reporting the amount of Cash counted and secured in a cassette ("Secured Funds ") and is subject to Bank's receipt of accurate and timely Reports in a correct and readable format. Client agrees that all Secured Funds will be delivered to Client's Smart Safe Courier for transportation to Bank or an approved Virtual Vault location for verification and processing, and will not be removed from the Smart Safe or used by Client for any purpose. Bank's Service is offered only for Secured Funds.
- (f) **Transmission of Report.** Client authorizes Client's Smart Safe Courier to transmit to Bank, and for Bank to receive the Report which, among other things will specify the amount of Secured Funds added to and contained in the cassettes each business day. Bank will rely exclusively on the accuracy of the information transmitted to Bank by Client's Smart Safe Courier in the Report in determining the amount of provisional credit Bank gives Client. Bank is not responsible for any failure of the Report to be timely communicated to Bank or for any errors in the Report. In addition, Client expressly grants Bank authority to review and access the Report and other data generated by Client's Smart Safe Courier relating to Secured Funds in the Smart Safe.
- (g) **Provisional Credit.** Ownership of Secured Funds. Bank will post provisional credit in the Account for Secured Funds on the business day Bank receives the Report subject to Bank's normal deposit cutoff hours and to any reserves Bank establishes. For example, if Client causes Client's Smart Safe Courier to transmit to Bank a Report of Monday's receipts in the cassettes after the close of business on a Monday and prior to Bank's processing cutoff time on Tuesday, the amount of Secured Funds reported in that Report will be reflected in the Designated Account for Tuesday assuming Tuesday is a business day. All credit Bank gives Client for deposits is provisional and subject to verification and correction for the amount of Secured Funds actually received by Bank including for errors, counterfeit currency and miscounts. If the contents of the Smart Safe for which Bank gave Client provisional credit are not delivered to the Virtual Vault location approved by Bank in the set up process at the next scheduled pickup, or if the amount of Cash delivered to Bank or the Virtual Vault is less than the amount reported in the Report, then regardless of the reason or circumstances, Bank will

reverse any excess credit Bank gave Client and in any case Client is obligated to Bank for any adjustment and related effects. To the extent Client retains any interest in the Secured Funds by operation of law or otherwise, Client hereby grants Bank a security interest in all such Secured Funds.

- (h) **Checks and Other Funds; Adjustments.** Client may cause Client's Smart Safe Courier to deliver checks and funds other than Secured Funds to the Virtual Vault location along with Secured Funds. If Client places Cash, including Cash rejected by the cassettes, Checks or other instruments in the Smart Safe outside the secure cassettes which are then picked up by Client's Smart Safe Courier, such Cash, checks or other instruments are not Secured Funds under this Service Description. Bank is not responsible for checks and other funds until Bank has received them directly or at a Virtual Vault location. Any checks, drafts or items delivered will be forwarded for processing. For Cash other than Secured Funds, Bank will credit the Account with the aggregate dollar amount of such Cash stated on the corresponding deposit slip accompanying delivery. Such credit is provisional and subject to adjustment upon physical receipt by Bank, or after Bank completes the physical count. Client acknowledges that Bank will adjust Client's Account for any errors or as a result of counterfeit currency delivered to Bank including Secured Funds. Similarly, provisional credit may be given for Checks and other coin and currency received on the business day of deposit, subject to applicable cutoff times.
- (i) **Counts.** Client agrees that the Smart Safe Courier's count of Secured Funds and Bank's count of other currency and coin received by Bank or through Client's Smart Safe Courier are final and conclusive. Bank is not liable for any shortage due to any counterfeit or contraband, whether discovered upon delivery to Bank or any time after delivery. In no event is Client entitled to any amount in excess of the correct balance of Client's deposit, whether the error was caused by improper commingling of funds, inaccurate counts, clerical error or otherwise.
- (j) **Retrieval.** Client is responsible for arranging for transportation of the Secured Funds and other funds to one of Bank's Virtual Vault locations designated in the set up process. Client must provide Bank in the set-up process with a copy of the written pickup schedule Client arranges with Client's Smart Safe Courier. Bank must receive the Secured Funds from Client in accordance with that schedule. Any change in the scheduled deliveries to Bank may result in a change to the charges for the Service.
- (k) **Contract with Smart Safe Courier.** Client is responsible for contracting with the Smart Safe Courier for the provision of the Smart Safe and related services, and for the pickup and transportation of the contents of the Smart Safe. Client acknowledges that Bank and Client's Smart Safe Courier are independent and separate entities and are not operating as a partnership, joint venture or other combined enterprise. The Smart Safe equipment, software and service, Report generation and transmission, and retrieval, courier and related services are provided to Client by Client's Smart Safe Courier under the Smart Safe Courier Agreement, and are not part of the Service or any other service Bank provides. Client agrees to look solely to Client's Smart Safe Courier for any problems or disputes under the Smart Safe Courier Agreement or with respect to the services, equipment, software and Reports provided by Client's Smart Safe Courier. Bank is not responsible for any obligation or liability of Client's Smart Safe Courier under the Smart Safe Courier Agreement. This means, among other things that Bank is not responsible for the equipment, software or service provided by Client's Smart Safe Courier, the content of any Report, the failure of Client's Smart Safe Courier to timely transmit a Report to Bank or the transportation of the contents of any cassette or other funds. Bank relies on the continued effect of the Smart Safe Courier Agreement in providing the Service to Client including the compliance by Client and Client's Smart Safe Courier with the terms of the Smart Safe Courier Agreement. Client agrees to promptly notify Bank of any material change in the Smart Safe Courier Agreement. Client represents and warrants to Bank that Client has made an independent investigation of the facts pertaining to the Smart Safe Service, the Smart Safe Courier and of all matters pertaining thereto, as deemed necessary and that Client's willingness to execute this Service Description is based upon Client's independent investigation, rather than any statement or representation made by the Bank.
- (l) **Client's Agent.** Smart Safe Courier shall for all purposes be considered the agent of Client in connection with the Smart Safe Service and Client acknowledges and agrees that the Smart Safe Courier is not an agent, employee or other representative of Bank. Neither Bank nor its employees or agents shall supervise, direct or control Courier's performance under the Courier Service or under Courier's agreement with Client.



## INSURANCE

- (a) *Bank's Insurance Limitations.* Bank's deposits are insured by the Federal Deposit Insurance Corporation up to the standard maximum deposit insurance amount (SMDIA). Bank also maintains insurance coverage for certain losses and damages. No insurance coverage or guarantee against loss is made or assumed by Bank for any property, including Cash, in Client's possession or Client's Courier's possession, including a Smart Safe Courier's possession, during transport of the shipments. Cash placed in the shipments delivered to Client's Courier, including Client's Smart Safe Courier, but not yet receipted for by Bank are not covered against loss by Bank's insurance coverage and Bank does not assume liability until the same are receipted for by Bank.
- (b) *Client's Insurance Obligations.* Client acknowledges that, at all times during the term of the Service Description, it shall be Client's sole responsibility to purchase and maintain insurance against loss or damage to the contents of the Bags, including Cash and including while in a Smart Safe, and while in the possession of Client's Courier, including Client's Smart Safe Courier. Bank is not and shall not be considered an insurer of any Bag, Smart Vault, or shipment contents.

## FEES

In addition to the other fees applicable to the Cash Vault and Deposit Services, Client agrees that due to the future uncertainty of fuel supply, allocation and the constant fluctuation in price, Bank may have to institute a fuel surcharge in addition to the contractual charges, based upon prevailing conditions.

## SECURITY PROCEDURES

Client agrees to implement commercially reasonable security procedures (for example, identification credentials, pass codes, pass phrases, challenge questions and/or test keys which may change from time to time) sufficient to satisfy their respective needs to ensure the authenticity of the authorized individual(s) acting on behalf of Client, the Courier and the Provider, and for the protection and transport of Bag(s). Client expressly acknowledges that Bank will not be responsible or liable to any party due to any loss or failure resulting from the existence, lack of existence, or inadequacy of Client and/or the Courier's security procedures. Client further expressly acknowledges that it has reviewed Client's security procedures and the Courier's security procedures and has determined that they are sufficiently commercially reasonable for Client's intended use of the Cash Vault and Deposit Services, including but not limited to the transportation of Cash. Bank makes no representations or warranties, express or implied, as to the existence or sufficiency of Client's security procedures or the Courier's security procedures. **UNDER NO CIRCUMSTANCES SHALL BANK BE RESPONSIBLE FOR OR HAVE ANY LIABILITY WITH RESPECT TO ANY ITEMS OR CASH UNTIL THEY ARE ACTUALLY DELIVERED TO AND RECEIPTED BY BANK, INCLUDING DELIVERED TO AND RECEIPTED BY PROVIDER ON BANK'S BEHALF, AT THE DESIGNATED BRANCH LOCATION, AS DESIGNATED BY BANK.**

## BANK'S LIMITED LIABILITY AND RISK OF LOSS; CLIENT INDEMNIFICATION

In addition to the limitations on liability otherwise provided under this Service Description and the Master Agreement, Bank shall not be liable for any act or omission of Client or Courier, including but not limited to any failure to make pick-ups or drop-offs as scheduled, or the loss or theft of any Bag. In no event shall Bank be liable for any loss of profit, indirect, special or consequential damages claimed to be incurred by Client in any way arising from or pertaining to Cash Vault and Deposit Services provided pursuant to this Service Description. No coverage or guarantee against loss is made or assumed by Bank for funds in transit to or from Bank at any time.

Except as hereinafter provided, Bank will be responsible up to the amount of fifty dollars (\$50.00) per shipment, for the reconstruction of the Client's property lost or destroyed in route from the Client's location to a Bank branch or Provider's facility. In the event reconstruction of items lost, misplaced or destroyed in route from Client's location to a Bank branch or Provider's facility is not possible, Bank shall be responsible for ten percent (10%) of the actual or face value of said items, but in no event more than fifty dollars (\$50.00) per shipment. Client agrees that Bank will not be responsible for any loss of interest incurred by Client. It is further understood and agreed that under no circumstances shall Bank be responsible or liable for any special, incidental, or consequential damages, including but not limited to loss of sales, income, interest, profits,

attorney's fees and other costs resulting from loss, delay, non-delivery or damages to a shipment.

## REJECTION

- (a) *Cash Withdrawals.* Notwithstanding anything to the contrary in this Service Description, Bank may require reasonable advance notice for large cash withdrawals. Bank may also refuse to honor a request to withdraw funds in cash if Bank believes that the amount is unreasonably large or that honoring the request would cause us an undue hardship or security risk.
- (b) *Deposits.* Notwithstanding the foregoing, Bank reserves the right to reject for deposit any item or Cash received in connection with the Cash Vault and Deposit Service at any time and with or without cause, and either with or without notice to Client. Credit for items and Cash received in connection with the Cash Vault and Deposit Service or the Smart Safe feature will be provisional, subject to Bank's right of rejection. Rejected items and cash will be returned to Client.

## Funds Transfer Service Description

### FUNDS TRANSFER SERVICE

Bank hereby offers its Client and Client hereby accepts the funds transfer service described in this Service Description (the "Funds Transfer Service"). Client may submit funds transfer requests ("Requests") to Bank in accordance with the terms and conditions of this Service Description. A "Request" includes a "payment order," as defined in Division 11 of the California Commercial Code. Client is responsible for all Requests to the fullest extent provided by law and as set forth in this Service Description. Bank may choose the funds transfer mechanism (for example, FedWire, correspondent bank transfer, internal transfer) to be used when acting upon Client's Request. Defined terms in this Service Description shall have the meaning provided in the Master Agreement, unless otherwise defined in this Service Description.

### TRANSMISSION; RELATED SERVICE DESCRIPTIONS FOR FUNDS TRANSFERS

All Requests must be provided to Bank, which may be required to be in a form prescribed by Bank, presented either in-person, by facsimile to the number approved by Bank, or secure e-mail to the address approved by Bank. If Client will communicate Requests using the Bank's Online Banking Services, all Requests must also be consistent with the separate Online Banking Service Description.

### TRANSFER LIMITS

If Client submits a Request in excess of the maximum limits established by Bank, the Request will be subject to review and approval by Bank and may not be processed at Banks' discretion. The parameters and variations of the limits shall be set at Bank's discretion, including but not limited to limits based on dollar amounts and type of transfer (e.g., foreign transfers). Bank may adjust these limitations from time to time, at Bank's discretion. Bank processing of Requests in an amount greater than the established limit(s) shall not be deemed a waiver of this provision. Bank may cease processing Requests in a greater amount at any time without prior notice.

### ACCOUNT DESIGNATION

Client authorizes Bank to debit its designated account, or any other account maintained by Client at Bank, for any fees or other amounts due Bank in connection with the Funds Transfer Services.

### ACCURACY

Client assumes the sole responsibility for providing Bank with accurate transaction information in the form and format that Bank requires. Bank is not responsible for confirming such information, or for failing to detect and reject duplicate Requests. If Client provides Bank with a Request that is incorrect in any way, Client agrees that Bank may charge Client's accounts for the transaction whether or not the error could have been detected by Bank. Bank is not obligated to detect errors in Client's transfer or payment instructions.

## COMMUNICATIONS; SECURITY PROCEDURES

For the purpose of this Service Description, Communications shall have the meaning provided in the Master Agreement and shall include Requests to Bank in connection with the Funds Transfer Service. For the purpose of this Service Description, Security Procedures shall have the meaning provided in the Master Agreement and shall include but not be limited to any Security Procedures used to access accounts and to use the Funds Transfer Services. More specifically, Client has selected the Security Procedures applicable to the Funds Transfer Service as identified in the Acceptance, or the Supporting Documents, as applicable. Bank may offer to Client or require Client to use additional authentication tools or methods from time to time (for example, dual authentication, challenge questions and phrases for employees). If Client uses Bank's Online Banking Service to initiate a Request, Client may be required to use a security token. If Client chooses not to implement supplemental authentication tools, Client's access to some or all Funds Transfer Services may be limited.

## ACCOUNT TRANSFER LIMITATIONS

All transfers to and from an account will be subject to the terms and conditions applicable to the account as set forth in the deposit agreement governing the account, including but not limited to transfer limitations. For example, federal regulations limit certain types of transactions/transfers from a money market or savings account. If Client exceeds these limits, Bank may impose a fee, close or convert Client's account, limit Client's use of the Funds Transfer Services, or any combination of the foregoing. In addition, there may be other transfer limits addressed in the Supporting Documents.

## INCONSISTENCIES

If a beneficiary of a Request is identified by both name and account number, payment may be made by Bank and by any other financial institution based on the account number even if the name and the account number are not consistent or identify different parties. If an intermediary bank or a beneficiary's bank is identified on a payment order by both name and identifying number, Bank and other financial institutions may rely on the number even if the name and the account number are not consistent or identify different parties.

## PROVISIONAL CREDIT

Client acknowledges that credit for a payment order is provisional until the receiving financial institution obtains final settlement. If final settlement does not occur, the originator of the payment order is not deemed to have made payment to the beneficiary, and the beneficiary's bank is entitled to a refund of the provisional credit. Client agrees that when Bank gives Client credit for an incoming payment order, including but not limited to, returned credited transactions or credit reversals, it is provisional until Bank receives final settlement for the payment order. Bank may delay availability of provisional funds at its discretion. If Bank does not receive final settlement, Client must return the funds previously credited to Client's account to Bank, and the person who sent the payment order will not be treated as having paid Client. Bank may refuse to permit the use of any amount credited for an incoming payment order, including but not limited to a debit entry or credit reversal if Bank believes in its sole discretion that there may not be sufficient funds in Client's account to cover chargeback or return of such transaction.

## FOREIGN CURRENCY TRANSACTIONS

If a Client requests a funds transfer in United States Dollars or in a currency other than United States Dollars to a foreign country, Bank may transfer the payment in the currency of the beneficiary bank's country at any exchange rate chosen by Bank. If a funds transfer is returned, Client agrees that the exchange rate for conversion of the foreign currency into United States Dollars may differ from that used by Bank to process the initial funds transfer.

## CUTOFF HOURS

The cutoff hour applicable to Requests is reflected in the Supporting Documents. A Request is considered executed when Bank executes it. If a Request is received after the cutoff hour or on a day that is not a business day, Bank will automatically process the Request the following business day.

## SUBJECT RULES AND REGULATIONS

Client acknowledges that any Request executed by Bank will be subject to rules and regulations applicable to payment orders, including recordkeeping and information transmittal requirement under federal Bank Secrecy Act and its implementing regulations. Client acknowledges and agrees that Bank may capture and transmit information regarding a Request (for example, beneficiary's name, address other beneficiary identifies and beneficiary's account number) as part of the processing of a payment order. Client agrees to assist Bank in connection with any requirements imposed on Bank fulfilling Bank's obligations in this regard.

## Lockbox Service Description

### LOCKBOX SERVICE

Bank hereby offers Client and Client hereby accepts the Lockbox Service (the "Lockbox Service"). Client agrees to use the Lockbox Service which Client acknowledges may be provided by or through Bank's subcontractor(s) ("Processor(s)"), subject to the terms of this Service Description. Client shall direct its customers to mail their payments in the form of checks or other payment instruments (the "Checks") to Client to the United States Post Office address identified in the Supporting Documents, or otherwise identified in writing by Bank to Client (the "Lockbox"). Bank (including Bank's Processors) will have unrestricted and exclusive access to the mail directed to the Lockbox.

Client authorizes Bank to endorse Checks received at the Lockbox, and to deposit them into Client's account designated in the Supporting Documents, or the Acceptance ("Lockbox Account"). Bank will credit the Lockbox Account with funds no later than the next business day, subject to Bank's funds availability policy. Lockbox deposits credited to Client's Lockbox Account maintained with Bank will be reflected on Client's periodic statement issued by Bank with respect to the Lockbox Account pursuant to the agreement between Bank and Client.

Client acknowledges that this Service Description covers the Lockbox Service to be provided by Bank and, except as specifically provided in this Service Description, does not cover the handling of the Lockbox Account or the processing of Checks drawn on the Lockbox Account. As a result, Client's Lockbox Account will be subject to, and Bank's operation of the Lockbox Account will be in accordance with, the terms and provisions of Bank's deposit account agreement governing the Lockbox Account, a copy of which Client acknowledges having received. Defined terms in this Service Description shall have the meaning provided in the Master Agreement, unless otherwise defined in this Service Description.

### COMMENCEMENT OF LOCKBOX SERVICE

The Lockbox Service covered by this Service Description will start on the date separately agreed to by the Bank and the Client if all of the following events have occurred prior to such date:

- (a) Bank has established a lockbox with the number and at the address specified by Bank to Client.
- (b) Client maintains one or more accounts in good standing with Bank.
- (c) Client has designated to the Bank in writing the names of Acceptable Payees. "Acceptable Payee" means Client's name and any other payee name provided to Bank by Client as an acceptable payee for Checks to be processed under the Lockbox.
- (d) Client has completed all Supporting Documents applicable to the Lockbox Service and such other information and documents in the time and manner as Bank requests to enable Bank to commence and operate the Lockbox for Client and to enable Bank to comply with Bank's other obligations under this Service Description.
- (e) Bank has completed all steps necessary to enable its Processor (as applicable) to service the Lockbox pursuant to this Service Description.

### REMITTANCE MATERIALS

Unless otherwise identified in the Supporting Documents, papers accompanying each remittance, including copies of additional correspondence, together with all unprocessed or rejected items (collectively, "Remittance Materials") will be forwarded to the Client via a mail delivery service or electronic delivery method.

## UNACCEPTABLE CHECKS

Unless otherwise requested by Client and agreed to by Bank, Bank will not deposit Checks falling into any of the following categories, or Checks which Bank has otherwise instructed Client not to deposit (collectively, "Unacceptable Checks"):

- (a) Checks on which the name or designation of the payee is not the name or designation specified as an Acceptable Payee or a reasonable variation (in Bank's opinion) of such name or designation.
- (b) Checks which do not bear a drawer's signature.
- (c) Checks with alterations.

Notwithstanding the foregoing, Bank will only use reasonable efforts to identify Checks as Unacceptable Checks and prevent deposits. As a result, Bank will have no liability whatsoever, despite anything to the contrary in this Service Description, for deposit of Unacceptable Checks unless the deposit results directly from the willful misconduct of Bank's officers or employees. Client agrees to indemnify, defend and hold harmless Bank, the drawee bank (which may include Bank) and any intervening collecting bank against any claim resulting from Bank's having processed an Unacceptable Check.

## CHECKS TO BE DEPOSITED (ALSO REFERRED TO AS "ACCEPTABLE CHECKS")

Unless Client specifies otherwise in writing to Bank, checks which do not fall into one of the categories of Unacceptable Checks will be deposited in Client's Lockbox Account, subject to this Service Description. In addition:

- (a) Checks missing a date will be deposited in Client's Lockbox Account as of the date the Check is collected from the Lockbox, unless they also fall into one of the categories of Unacceptable Checks, in which case they may not be deposited.
- (b) Checks will be deposited regardless of their date, including Checks which are postdated after the date they are collected from the Lockbox, and stale dated Checks (i.e., dated six months or more prior to the date they are collected from the Lockbox).
- (c) Checks with a discrepancy in amount may be deposited in Client's Lockbox Account after being processed in any manner deemed appropriate by Bank or Bank's Processor, which may include depositing the Check in the amount that corresponds to the written amount (rather than the numerical amount or the amount identified in the Remittance Materials). Bank reserves the right to forward as unprocessed Checks which Bank or Bank's Processor are unable to determine the amount of the Check.
- (d) Bank may disregard restrictive notations, such as "Paid in Full," and such Checks will be processed as if the restrictive notations did not appear. Bank will have no liability whatsoever, despite anything to the contrary in this Service Description, for Bank's failure to comply with such restrictive notation.

Without limiting the foregoing, Client expressly acknowledges that the Lockbox Service is for Check processing only; Client's payor may not send cash (currency and/or coin), credit transaction authorizations, or automated clearing house authorizations to the Lockbox except with Bank's specific and prior written approval. Absent an express agreement with Bank providing otherwise, Client agrees to instruct Client's customers and other obligors not to send cash, credit transaction authorizations, or automated clearing house authorizations to the Lockbox. If cash is sent to the Lockbox with any Remittance Materials, the cash will be removed from the envelope containing the Remittance Materials and a credit advice for the amount of the cash will be placed in such envelope.

## FOREIGN CHECKS

Checks drawn on a foreign bank or in a currency other than United States dollars ("foreign checks") may be automatically returned. In the event Bank agrees to deposit foreign checks, Bank or Processor may process the foreign checks through collection systems and at exchange rates chosen by Bank or Processor, and Bank may impose fees and charges for the service, which fees and charges Client agrees to pay. The currency conversion and collection process may take a long time (for example, eight weeks or more), depending on the foreign bank. Adjustments for returned foreign items or otherwise may result in a different currency exchange rate, and Client could lose or gain due to changes in the exchange rates. Bank's determination to take a foreign check for deposit on any occasion will not obligate Bank to do so in the future, unless expressly agreed by Bank otherwise.

## LOCKBOX PROCESSING

On each business day, Bank or a Processor will pick up at and transport from the Lockbox to the processing site or sites the Checks or any other mail addressed to the Lockbox. The following Lockbox Services will be performed by Bank or a Processor:

- (a) Open the envelopes picked up from the Lockbox and remove the contents.
- (b) Inspect all Checks received for acceptability based on this Service Description and the Supporting Documents.
- (c) Prepare all Acceptable Checks and their associated paperwork for further processing.
- (d) Prepare deposit tickets and process deposits daily.
- (e) Prepare and mail to Client any Unacceptable Checks and Remittance Materials as described herein.

If Bank receives any mail containing Client's lockbox number at Bank's operations locations (instead of the Lockbox), Bank may in Bank's sole discretion handle the mail as if it had been received at the Lockbox.

Bank may treat as an Acceptable Payee any variation of any Acceptable Payee's name that Bank deems to be reasonable. If any payee on the list of Acceptable Payees delivered to Bank pursuant to the Supporting Documents is a legal entity other than Client, Client represents and warrants to Bank and Processor(s) that Client has the proper authorization from such payee (a) to have such Check endorsed for deposit, and deposited, into the Lockbox Account, and (b) for Bank and any Processor(s) to perform the Lockbox Service under this Service Description for such Acceptable Payee. Client agrees to indemnify Bank and Processor(s), along with their officers, employees, agents, representatives and Processors (individually and collectively, the "Indemnified Parties") against, and hold the Indemnified Parties harmless from, any losses, liabilities, damages, claims, demands, obligations, actions, suits, judgments, penalties, costs or expenses, including, but not limited to, attorneys' fees, suffered or incurred by any of the Indemnified Parties as a result of, or in connection with, Bank's or any Processor(s) failure to have such authorization. The indemnification set forth in this Section shall be in addition to, and not in lieu of, indemnification and other rights of Bank under the Master Agreement.

## RETURNED CHECKS

If any of the Checks (or image of the same) are returned unpaid for any reason, Bank may charge any one of Client's accounts for the amount of the returned Checks plus applicable handling fees, without regard to whether the institution on which the Checks were drawn effected a timely return before its midnight deadline. If any of the Checks are returned for endorsement missing, Bank may, but will not be obligated to, supply an endorsement (utilizing Bank's endorsement stamp) and the Checks may be represented to the depository bank.

## PROCESSOR(S)

Client authorizes Bank to use Processors (which, for purposes of the Lockbox Services may include other banks, financial institutions and third parties, and their subcontractors) to provide any one or more of the Lockbox Services to Client. Client authorizes Bank to act (such as opening accounts and providing instructions) as Client's agent and on Client's behalf with Processors as necessary or appropriate to do so. Wherever under this Service Description Client authorizes Bank to take action or inaction, such authorization shall also serve as authorization for a Processor to take such action or inaction. At Bank's option, Bank may use a commingled account at a Processor and process as agent for Client and for others through the commingled account, or Bank may establish a separate account for Client at a Processor and process as Client's agent through the separate account. Bank's responsibility for Processors and liability for action or inaction by a Processor is limited as set forth in the Master Agreement.

If Bank uses a correspondent financial institution to process payments, deposits to a Lockbox Account: (a) may be delayed by one banking day; (b) may be affected by local bank holidays; and (c) the availability may depend on the availability of the correspondent institution and any required third party service provider or funds transfer system.

## CARD TRANSACTIONS

Client agrees that the Lockbox may not be used to process card payments, unless Bank has



expressly agreed to such processing and Client has agreed to Bank's separate merchant card processing terms and conditions. If Bank and Client agree to the processing of card transactions through the Lockbox, Client will ensure that all card transactions/payments are legible and contain: (i) merchant's name and account number, (ii) the information embossed on the card presented by the cardholder, (iii) the date of the transaction, (iv) description of goods or services, (v) transaction authorization number, (vi) total sale amount, and cardholder signature. Any card transactions/payments missing the required information may be returned to the Client.

## CLIENT RESPONSIBILITIES

Client's responsibilities under this Service Description include, but are not limited to each of the following:

- (a) Client agrees to encode remittance documents to meet Bank or Processors requirements if Client requires electronic data capture of information on remittance documents.
- (b) Client agrees to duly complete the Supporting Documents and all special instructions, and provide the same to Bank before start of the Lockbox Services.
- (c) Client will notify Bank in writing of any modification, addition or deletion to the list of Acceptable Payees for the Checks being received in the Lockbox. Bank will not be obligated to implement any changes until Bank has actually received the change and had a reasonable opportunity to act upon the change, such time to act may be a minimum of 30 days from Bank's receipt of notice of such changes. All changes are subject to Bank's rights to reject any addition, deletion or modification to the list of Acceptable Payees.

## FUNDS AVAILABILITY

Funds deposited in connection with this Service Description are subject to Bank's funds availability policy as disclosed in the Bank's policy. For the purpose of application of Bank's funds availability policy and Regulation CC, funds deposited to the Lockbox are considered deposited on the day on which the deposit is removed from the Lockbox and is available for processing by Bank.

## CUTOFF TIME

At the Bank's discretion or that of Processor, a cutoff time may be established, and thereafter amended, for the Lockbox Service ("Cutoff Time"). The Cutoff Time assigned dictates when on a business day the last USPS mail is opened pursuant to this Service Description.

## LOCKBOX ONLINE

At Bank's discretion, Bank may approve Client for access to the Lockbox online image viewing system ("Lockbox Online"), subject to Bank's applicable fee(s) for the service enhancement. Client acknowledges and agrees that Client's access to Lockbox Online will be subject to Client's compliance with the applicable access security protocols, as modified from time to time. Client agrees that the security protocols are a commercially reasonable means of protecting access to the information process through the Lockbox, as provided in this Service Description. Client agrees to maintain the security and controls over the security protocols to ensure protection from unauthorized access to Client's information through Lockbox Online. Each business day, Client's Lockbox deposit details are updated on an intra-day basis on Lockbox Online (the "Lockbox Detail") and are viewable each business day (excluding any adjustments) by 5:00 p.m. Pacific Time. Electronic copies of Lockbox Detail, including summary reports, will be retrievable on Lockbox Online for 24 months following the date the image is created. Copies of images will be available, subject to Bank's then applicable fee. In no event will Bank have any liability whatsoever for errors resulting from or in connection with image services provided hereunder. Client acknowledges and agrees that the image service will not be relied on as a replacement or backup for Client's independent record retention or reproduction obligations under this Service Description, or otherwise as may be required by applicable law.

If the images or other forms of the information (e.g., via CD or DVD) are made available to Client, Client agrees to verify the contents when made available and request a replacement, if necessary, within 10 days of receipt.

## REPORTS

Lockbox reporting services may be available to Client for an additional cost. Bank reserves the right to require Client to agree to additional terms to activate lockbox reporting services.

## COLLECTIONS

Unless otherwise agreed, while Client receives Lockbox Services, all funds held in the Lockbox Account shall be deemed to be Client's funds for all purposes, including adjustment, attachment, set-off, security interests, execution, garnishment and other forms of legal process. The crediting and collection of Checks will be handled under the same agreement as applied to other commercial deposits.

## RECONCILEMENT

Except as otherwise specified herein and in the Supporting Documents, Bank will not reconcile the Checks, cash or other Remittances in the envelopes to invoices, to remittance statements, or to any other documents or papers in the envelopes elsewhere.

## PROTECTED HEALTH INFORMATION

Except with prior notice to and written approval by Bank, Client shall ensure that protected health information is not provided to Bank and that the provision of Lockbox Services does not result in Bank being deemed a "business associate" within the meaning of, or otherwise subject to, the Health Insurance Portability and Accountability Act ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), including related regulations issued pursuant thereto, or otherwise under medical privacy and securities laws, rules or regulations. Client shall provide to Bank such assistance as Bank may request should Bank's provision of the Lockbox Service subject Bank to any compliance obligations under HIPAA or otherwise under medical privacy and security laws, rules or regulations.

## STATEMENT; NOTICE OF DISCREPANCY

Client agrees to notify Bank no later than five (5) calendar days after Client receives or is provided access to an advice of deposit, or electronic image summary, if there is any error in such advice or summary. If Client fails so to do, then Client shall be precluded from asserting such error or failure, and the advice or statement shall be deemed to be accurate as to any claims by Client (but shall not preclude later adjustment by Bank).

## TERMINATION

Bank may terminate, suspend or restrict some or all of Client's access to the Lockbox Services, with or without cause, at any time immediately upon notice to Client. Client has the right to terminate the Lockbox Service, with or without cause, upon sixty (60) days written notice provided to Bank. Should Client terminate this Service Description without prior notice, Client will owe Bank two (2) times the minimum monthly fees as reflected in Bank's then current Lockbox schedule. Upon termination of the Lockbox Service Bank will close the lockbox and enter a forwarding address change order to forward to Client, unless arranged otherwise between Client and Bank. Lockbox Service fees with respect to such disposition will be based on Bank's estimate and prepaid directly to Bank at the time of such termination by a check made payable to Bank.

## Online Banking Service Description

### ONLINE BANKING SERVICE

Bank hereby offers its Client and Client hereby accepts the online banking service (the "Online Banking Service"). The Online Banking Service is an Internet based service that enables Client to access its accounts and to facilitate certain electronic services online, as identified in and subject to this Service Description. Bank reserves the right, without prior written notice to Client, to place, from time to time, limits on Client's right to use the Online Banking Service.

Subject to Bank's prior approval and system limitations, Client's Online Banking Service may



include the following:

- View balances, Account history and check images on Client's linked Accounts;
- Access Account periodic statements electronically;
- Transfer funds between eligible linked Accounts, including on-us loan payment transfers but excluding certificates of deposit transfers ("Book Transfers");
- Request check stop payments;
- Initiate funds transfer requests ("Funds Transfer Service");
- Initiate bill payments ("Bill Payment Service");
- Positive pay service for check and incoming ACH transactions ("Positive Pay Service");
- Originate automated clearing house ("ACH") entries ("ACH Service");
- Remote deposit capture ("RDC");
- Access Online Banking Services with Client's Wireless Access Device ("Mobile Banking Service"), including mobile check deposits ("Mobile Deposit");
- Download and export Account information for transfer to compatible financial software programs and/or spreadsheets ("Download Service");
- Set up account alerts.

Additional Online Banking Services may be added to or removed by the Bank from time to time. Bank may allow loans and lines of credit to be linked, in which case, Client agrees that the relevant loan agreement, note or other document is modified to the extent necessary to allow the transfers or other Services that may be utilized. Bank may process transactions from loan Accounts without regard to access limitations in any loan documentation or agreements. Some Online Banking Services may not be available without special application to and approval by Bank, may be limited to specific types of accounts, and may require Client to agree to additional terms and conditions. Defined terms in this Service Description shall have the meaning provided in the Master Agreement, unless otherwise defined in this Service Description. An "account" shall mean any deposit or loan account Client maintains with Bank and can include all accounts and products Client uses with Bank. Client's "Account" shall mean the account(s) accessible through the Services.

## SEPARATE SERVICE DESCRIPTIONS

To the extent Client is enrolled in the Fund Transfer Service, the Positive Pay Service, RDC Service, or the ACH Service, Client's use of the Online Banking Services will also be subject to the terms and conditions of the separate Funds Transfer Service Description, Positive Pay Service Description, the Remote Deposit Capture Service Description, and the Automated Clearing House (ACH) Service Description, respectively.

## ACCOUNT DESIGNATION

Client may need to designate certain accounts for specific purposes in connection with some of the Online Banking Services. If Client links more than one checking account to certain transactional services, Client will need to specify the account from which transfers should be made. Bank is not obligated to establish access to any or all of Client's accounts, and not all Online Banking Services are available with all accounts.

## ADMINISTRATOR AND USER(S)

If prompted by the Online Banking Service, Client will appoint an individual to act as a company administrator (for the purpose of this Service Description, referred to herein as "Administrator") with the authority to determine who will be authorized to use the Online Banking Services on Client's behalf. The Administrator may be able to designate additional users ("Users") and remove existing Users. The Administrator may also determine what Online Banking Services will be available to particular Users, when to change passwords, and any limitations on the use of the Online Banking Services by individual Users. These features may vary depending on the underlying Service.

Depending on the underlying Service, Bank will not control or oversee the Administrator function. Client agrees to all action taken by the Administrator or any User designated or authorized by the

Administrator, and all such persons are Client's agents for purposes of use of Online Banking Services, each authorized to act individually or in concert. The fact that Bank is, or may be made aware of, or could have discovered, any limitation on access to the Online Banking Service does not make Bank obligated to enforce or attempt to enforce any limitation. Client understands that the Administrator and each User may utilize Online Banking Services (including inquiries, transfers and account verification) without regard to any restrictions otherwise applicable to an Account. For example, the Administrator and each User will be able to utilize the Online Banking Services regardless of whether they are also authorized signers on the Client's signature card.

## COMMUNICATIONS; SECURITY DEVICES

For the purpose of this Service Description, Communications shall have the meaning provided in the Master Agreement and shall include Communications to Bank in connection with the Online Banking Service. For the purpose of this Service Description, Security Devices shall have the meaning provided in the Master Agreement and shall include but not be limited to any Security Devices used to access Accounts and to use the Online Banking Services. Bank may offer to Client or require Client to use additional authentication tools or methods from time to time (for example, dual authentication, challenge questions and phrases for employees). If Client chooses not to implement supplemental authentication tools, Client's access to some or all Online Banking Services may be limited. The term "Security Devices" will include any supplemental authentication tools that are made available by Bank and used by Client.

Client has the responsibility of ensuring that Client has the current security patches installed and configured. Client maintains up-to-date virus detection program(s), and that Client regularly scans for the existence of malware and spyware and takes appropriate action if found. Client expressly acknowledges that encryption of data transmissions does not guarantee privacy. Data transferred via the Online Banking Service is encrypted in an effort to provide transmission security. Notwithstanding Bank's efforts to insure that the Online Banking Services are secure, Client acknowledges that the Internet is inherently insecure. Bank cannot and does not warrant that all data transfers utilizing the Online Banking Services will not be monitored or read by others.

## TEMPLATES

Depending on the Online Banking Service requested, Client may be assigned a free-form Service template to initiate Communications, including transfer and other requests. Client may also be granted rights and permissions to create predefined Service templates to use for repetitive or recurring Communications. If Bank authorizes Client's use of Service template(s) with maintenance authority, the designated Administrator may create Service templates through the Online Banking Service and assign such templates to other Client Users. In the event Client is not assigned free-form Service templates or Service template maintenance authority, Client's use of the underlying Service will be subject to the Online Banking Service requirements, as applicable. Access to Service templates or Service template maintenance authority does not constitute a waiver by Bank to require Client's compliance with applicable security procedure or other Service requirements.

## COMPUTER EQUIPMENT AND SOFTWARE TO ACCESS THE ONLINE BANKING SERVICES

To use the Online Banking Services, Client must have a sufficiently powerful computer hardware and appropriate software as described in the Supporting Documents. Some Online Banking Services may require Client to download software from Bank's website; in some cases, Bank may place software on Client's computer as part of Bank's security and/or user verification tools.

## ACCESS TO ACCOUNT DATA

Subject to system limitations, Client can obtain balance and other Account information through the Online Banking Services. Since certain information and transactions may not be processed by Bank until after the close of Bank's business day, some transactions may not be reflected in the online banking system ("System") until the next banking day. Posted items may be reversed due to insufficient funds, stop payment orders, legal process, and other reasons. Certain balances also may not be subject to immediate withdrawal. Bank assumes no responsibility for any loss arising from incomplete information or for any temporary interruption in the System. If Client is unable to access the System for any reason, Client may contact Client's branch of Account for account information.

## ELECTRONIC STATEMENTS

If Client elects to receive electronic statements, Bank may discontinue sending paper statements and make periodic statements available to Client in electronic form only. This includes, but is not limited to, ongoing terms currently provided on the back of Client's paper statement, notices posted as messages on the face of the statement, and all notices or other communications that accompany mailed statements. Each electronic statement will be available for Client's viewing, downloading or printing for a minimum of 12 months from the date of the statement period. Client agrees to review Client's electronic statements in a timely manner, just as Client would paper statements, and to promptly notify Bank of any errors, unauthorized activity or other problems, as provided in Bank's agreement with Client. Client will be deemed to receive electronic statements when they are made available to Client. Any time periods within which Client must notify Bank of any problems or errors reflected on Client's statement(s) will begin on the date Bank makes the electronic statement available to Client, regardless of when it is actually viewed by Client. If Client cannot access, print or view an electronic statement, Client agrees to contact Bank immediately at 800.797.6324 to make alternate arrangements. Client agrees to periodically logon and check on the delivery of new electronic statements.

## ACCOUNT TRANSFER LIMITATIONS

All transfers to and from an Account will be subject to the terms and conditions applicable to the Account as set forth in the deposit agreement governing the Account, including but not limited to transfer limitations. For example, federal regulations limit certain types of transactions/transfers from a money market or savings account. If Client exceeds these limits, Bank may impose a fee, close or convert Client's Account, limit Client's use of the Online Banking Services, or any combination of the foregoing. In addition, there may be other transfer limits addressed in the Supporting Documents.

## BOOK TRANSFERS

Transactions posted to Client's account as of a certain business day may not be reflected in account balances reported by the Online Banking Service until the following business day. Information on Book Transfers to or from Client accounts with Bank will be reflected on Client's periodic statements and will be available to Client online. Bank does not provide any other notice of the receipt or processing of Book Transfers.

**Scheduling Fund Transfers.** Client may instruct us to initiate single or recurring Book Transfers on any business day (the "Transfer Process Date"), up to 30 days in advance. If the Transfer Process Date for an automatic transfer falls on a weekend or holiday, the transfer may be sent the previous business day. To initiate a Book Transfer, Client must specify the account to be debited, the account to be credited, the transfer amount, and the Transfer Process Date.

**Scheduling Loan Payments in Advance of the Due Date.** Client is responsible for ensuring that Client initiates any loan payment instruction in time for the payment to be received by Bank before its due date (without taking into account any grace period). Bank is not responsible for any damages, costs or fees Client may suffer if Client does not allow sufficient time between the Transfer Process Date and the due date.

**Changing or Cancelling Transfer Instructions.** For same-day Book Transfer requests, once submitted, the transfers may be cancelled through online banking up to the applicable cutoff hour. For future dated Book Transfers, the transfers can be cancelled through online banking up to the applicable cutoff hour.

## BILL PAYMENT SERVICE

**Bill Payment Account Designation; Payment Details.** When using the Bill Payment Service, Client must designate the Account ("Bill Payment Account") from which the bill payments ("Bill Payments") are to be made. For each Bill Payment, Client will also be required to provide the complete name of the payee, the account number and the payee's remittance address (as exactly as shown on the billing statement or invoice), the amount of the payment and the date Client wants the payment to be processed by Bank ("Pay Date"). If the Pay Date is not a business day, then the Bill Payment will be processed by Bank the next business day. To have a Pay Date that is the same date Client accesses the System and initiates the Bill Payment instruction, the Bill Payment instruction must be received by Bank on a business day, prior to the Bill Payment

Service cutoff hour. The availability of this option may vary based on the payee.

**Setting-Up Payees.** When Client signs onto the Bill Payment Service, Client must establish Client's list of payees. A payee is anyone, including Bank, that Client designates to receive a Bill Payment; provided that Bank accepts the payee for the Bill Payment Service. Bank reserves the right to reject any payee at any time, at its discretion. Bank is not responsible if a Bill Payment is not made to a payee because Client provided Bank with incomplete, incorrect or outdated information regarding the payee or Client attempted to make a payment to a payee that is not on Client's authorized list of payees. Payments to payees outside of the United States or its territories are prohibited through the Bill Payment Service.

**Available Funds.** Prior to the applicable cutoff hour as of the Pay Date and thereafter until the Bill Payment has been applied against Client's Bill Payment Account, Client will need to have sufficient available funds in Client's Bill Payment Account to cover the amount of the Bill Payment.

**Non-Recommended Payees.** Unless Client is enrolled in Bank's Electronic Tax Payment Service, Bank does not recommend that Client use the Bill Payment Service to pay Client's federal, state or local taxes, courts or other governmental entities. Bank will not be liable for penalties, interest or other damages of any kind if Client tries to use the Bill Payment Service to remit or pay money for taxes, or to courts or governmental agencies.

**Scheduling Bill Payment.** Client must designate a Pay Date so that it is scheduled sufficiently in advance of the due date of Client's bill ("Due Date") to allow the payee to receive it on the Due Date set by Client's payee and without taking into account any grace period that may be offered by Client's payee. Some companies Client pays through Bank's Bill Payment Service will receive a paper draft on Client's behalf, rather than receiving an electronic payment. These paper draft payments can take longer to process before the payee receives the payment. Bank is not responsible for any damages Client may suffer if Client does not allow sufficient time between the Pay Date and the Due Date of Client's bill or obligation, without counting any grace period offered by the payee.

**Payment Methods.** Bank reserves the right to select the method in which to remit funds on Client's behalf to Client's payees. These payment methods may include, but may not be limited to, an electronic payment, an electronic check payment (where the check is drawn off Bank's third party service provider's account), or a demand draft payment (where a negotiable instrument is created and drawn off of Client's Bill Payment Account).

**Payment Changes and Cancellations; Stop Payments.** Client may change or cancel a payment that has been scheduled through the Bill Payment Service but has not begun processing ("Scheduled Payment") as long as Client logs onto the Online Banking Service prior to the Pay Date for the Bill Payment instruction and Client follows the Bill Payment instructions provided by the Bill Payment Service for changes and cancellations. Client's ability to stop payment on a processed Bill Payment will depend on the payment method and, if by check, whether or not the check has cleared. The Bill Payment Service must have a reasonable opportunity to respond to any stop request. To stop payment on any Bill Payment that has already been processed, Client must call Bank. Fees and additional documentation may be required by Bank to process a stop payment request. Bank will have no liability to Client for Bank's refusal or failure to stop a Bill Payment that has already been processed.

**Payment Changes and Cancellation.** Client may change or cancel a Bill Payment instruction via the Online Banking Service as long as Client logs onto the Online Banking Service prior to the Pay Date for the Bill Payment instruction and Client follows the Bill Payment instructions provided by the Bill Payment Service for changes and cancellations.

**Accurate Information on Payees.** If the Bill Payment Service provides Client with a series of options regarding payee address or location, Client is responsible for correcting that information if such information does not agree with Client's records or with Client's particular bill. Bank and the others that handle Client's Bill Payment (including the payee's bank) are entitled to rely on information Client supplies, such as the payee's account number or the routing number of the payee's bank, even if the name Client gives to Bank and the number Client gives to Bank identify different persons.

**Automated Clearing House Entries.** Electronic payments that are made through the Automated Clearing House ("ACH") are subject to the rules of the ACH, and Client agrees to be bound by the Operating Rules of the ACH, including the rule making payment to the payee provisional

until receipt by the payee's bank of final settlement of the credit transaction. If final settlement is not received, Client will not be deemed to have paid the payee the amount of the bill payment.

## CHECK STOP PAYMENT SERVICE

Client may stop payment on a check by providing Bank with timely, complete and accurate information on the check as prompted by the Online Banking Service. If any information is incomplete or incorrect, Bank will not be responsible for failing to stop payment on the item. Requests become effective when Bank has had a reasonable opportunity to confirm their receipt and have verified that the item has not been paid. Client may use the Online Banking Services to stop payment on checks that Client has written against Client's Accounts. To confirm whether a stop payment has been placed on a check, Client agrees to communicate with Bank by telephone. System messages regarding Bank's receipt of Client's stop payment order, or other system communications may not be relied on by Client to confirm whether a stop payment order has been placed.

Client may not use this check stop payment service to stop payment on any electronic fund transfer (EFT) transaction, point-of-sale EFT transfer; any cashier's check, certified check or other official institution check that have purchased from Bank or any check which Bank has guaranteed. Client understands that its stop payment request is conditional and subject to Bank's verification that the check has not already been paid, or any Online Banking Service not already performed, or that stopping payment may subject Bank to risk of loss or damages under any law or regulation (including clearing house or other processor rules).

All Stop Payment orders, renewals and revocations of stop orders will be subject to Bank's current policy on stop payment orders. From time-to-time, the System may be inoperable. If that occurs, Client's request can be communicated to Bank by telephone. A check stop payment order is effective for twelve (12) months only and will expire automatically, at which time Client is responsible for any renewal desired by Client for another twelve (12) month term. There will be a fee assessed for each stop payment request processed.

## MOBILE BANKING SERVICE

Some Online Banking Services may not be accessible while using Client's wireless access device ("Wireless Access Device"). Additional Mobile Banking Services may be added to or removed by Bank from time to time. Some Mobile Banking Services may not be available without special application to and approval by Bank, may be limited to specific types of accounts, and may require Client to agree to additional terms and conditions which may be presented online at the time the feature is activated.

*Mobile Deposit.* Client's use of the Mobile Deposit feature within the Mobile Banking Service will also be subject to the terms of the separate Remote Deposit Capture Service Description.

*Access and Use of Mobile Banking Service.* Client's access to the Mobile Banking Service is subject to Bank's prior and ongoing approval. Bank may deny Client's access to all or any part of the Mobile Banking Service, at Bank's sole discretion. To utilize the Mobile Banking Service, Client must contact Bank and also be enrolled in Bank's Online Banking system. Once Client has enrolled for the Online Banking Services, Client will need to download applicable software to their Wireless Access Device. Once Client is enrolled in the Mobile Banking Services, designated accounts linked to Client's Online Banking security codes will be accessible through Client's Wireless Access Device. Additionally, to access and utilize the Mobile Banking Service Client will need a compatible Wireless Access Device. To access the Mobile Banking Service and functions, Client's Wireless Access Device must be Internet enabled and connected to the Internet through Client's mobile communications service provider. In order to properly use the Mobile Banking Service, Client should review and follow the instructions provided in Bank's Online Banking system. Client accepts responsibility for making sure that Client, and anyone acting on Client's behalf, knows how to properly use the Wireless Access Device. If Client obtains a different Wireless Access Device, Client will be required to download and install software, to that different Wireless Access Device, under the same terms set forth in this Service Description, as amended. Client agrees to delete all such software from Client's Wireless Access Device promptly if the licenses or this Service Description terminate for any reason. Bank reserves the right to change, add to, or terminate services with Bank's third-party software providers, to substitute different software providers, and to enter into or arrange for the provision Mobile Banking Services by other licensors and third-parties.

Client agrees to exercise due care in preserving the confidentiality of any user identification, password, test key, or other code or authentication method provided by Bank or otherwise required for use of the Mobile Banking Service and shall further prevent the use of the Mobile Banking Service by unauthorized persons. Client assumes full responsibility for the consequences of any missing or unauthorized use of or access to the Mobile Banking Service or disclosure of any confidential information or instructions by Client, or anyone acting on Client's behalf.

**SMS TEXT AND EMAIL MESSAGING.** Client expressly authorizes Bank to send SMS text messages and emails to Client regarding Client's accounts and financial transactions, in connection with the Mobile Banking Services. Bank may send these messages to any mobile phone or email address Bank have in Bank's records for Client or Client's account. Message and data rates may apply.

*Hardware and Software.* Client is responsible for obtaining and maintaining the compatible Wireless Access Device required to use the Mobile Banking Service. To the extent Bank, in Bank's sole discretion, provides any hardware in conjunction with the Mobile Banking Service, the hardware will at all times remain the sole property of Mechanics Bank. Upon termination of the Mobile Banking Service, Client must promptly return any hardware that Bank provided to Client.

To the extent the Mobile Banking Service involves Bank's having granted Client software license ("software") usage rights, such grant shall be a personal, non-exclusive, non-transferable right to access and use the Mobile Banking Service in connection with Client's use in accordance with this Service Description. The Mobile Banking Services do not involve the sale of software. Nothing in this Service Description will entitle Client to receive technical support, telephone assistance regarding the software, or updates to software. Upon termination, Client agrees to immediately destroy all copies of any software which had been downloaded to Client's Wireless Access Device or otherwise in Client's possession and control as part of Client's access and use of the Mobile Banking Service. Client acknowledges that Client's license to use any software that may be required for the Mobile Banking Service is directly from the software provider, pursuant to the license agreement that appears when any such software is electronically accessed by Client or otherwise provided to Client. By enrolling in portions of the Mobile Banking Service relating to those software systems and programs, and by downloading and installing Mobile Banking software, Client will be evidencing Client's acceptance of the terms and conditions of those licenses. Bank may also condition Client's use of the Mobile Banking Service upon Client affirming such licenses by the use of "I Accept" or similar dialogue box acknowledgements, or by other affirmative or use-based acknowledgement and agreement systems.

*Mobile Banking Service Limitations.* The availability, timeliness and proper functioning of the Mobile Banking Service depends on many factors, including Client's Wireless Access Device location, wireless network availability and signal strength, and the proper functioning and configuration of hardware, software, and Client's Wireless Access Device. Neither Bank nor any of Bank's service providers warrant that the Mobile Banking Service will operate without interruption, and neither Bank nor Bank's service providers shall be liable for any loss or damage caused by any unavailability of the Mobile Banking Services, including service interruptions, delays, or loss of personalized settings. Neither Bank nor any of Bank's service providers assume responsibility for the operation, security, functionality or availability of any Wireless Access Device or mobile network which Client utilizes to access the Mobile Banking Service.

THE MOBILE BANKING SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR ANY OTHER WARRANTY AS TO PERFORMANCE, ACCURACY OR COMPLETENESS.

Client agrees to exercise caution when utilizing the Mobile Banking Service on Client's Wireless Access Device and use good judgment and discretion when obtaining or transmitting information.

*Relationship to Third Party Agreements.* Client agrees that, when Client uses Mobile Banking Services, Client remains subject to the terms and conditions of Client's existing agreements with any unaffiliated service providers, including, but not limited to Client's mobile service provider. Client understands that those agreements may provide for fees, limitations and restrictions which might impact Client's use of the Mobile Banking Services (such as data usage or text messaging charges imposed on Client by Client's mobile service provider), and Client agrees to be solely responsible for all such fees, limitations and restrictions. Client also agrees that only Client's mobile service provider is responsible for its products and services. Accordingly, Client agrees to resolve any problems pertaining to Client's Wireless Access Device or mobile services with Client's provider directly.



**Security of Data in Transition and Storage.** Client expressly acknowledges that any wireless access to Client's accounts may not be secure and, as such, Client assumes the risk associated with unauthorized access to the Mobile Banking Service and any information contained therein, resulting from such wireless connectivity. Client assumes all risk that any information Client download or otherwise stored on Client's Wireless Access Device may be accessed by unauthorized third parties. Without limiting the foregoing, Client acknowledges that Client's Wireless Access Device may become subject to unauthorized tracking, "hacking" or other manipulation by spyware, viruses or other malicious code ("malware"). Bank is not responsible for advising Client of the existence or potential effect of any malware. Client's use of Client's hardware and software is at Client's own risk.

Bank is not responsible for the security and confidentiality of information when Client: (i) uses wireless connections to download Client's account information, in which case Client acknowledge such connection may permit other persons to access the information being downloaded, or (ii) allows other persons access to Client's Wireless Access Device. Client agrees that any account information that Client downloads is done at Client's own risk, and Client is solely responsible for any damage that might occur to the electronic device to which Client downloads any information, or any loss or corruption of data that might occur as a result of the downloading or its storage on an electronic device.

CLIENT AGREES TO TERMINATE THE MOBILE BANKING SERVICE, OR DISABLE CLIENT'S REGISTERED WIRELESS ACCESS DEVICE FROM THE MOBILE BANKING SERVICE IMMEDIATELY IN THE EVENT CLIENT'S REGISTERED DEVICE BECOMES LOST, STOLEN OR IS NO LONGER IN USE BY CLIENT.

## DOWNLOAD SERVICE

The Download Service is compatible with certain financial management software programs ("Programs"). Bank will not control or oversee any administrator, user or similar function that may be made available through the Programs. The fact that Bank is, or may be made aware of, or could have discovered, any limitation on access to the Download Service as imposed by Client through the Programs, or otherwise, does not make Bank obligated to enforce or attempt to enforce any limitation. Client understands that the Program(s) may be utilized without regard to any restrictions otherwise applicable to an Account. For example, the Program(s) may be utilized regardless of whether an individual user is also an authorized signer on Client's Account signature card.

**Access to Account Data.** Client can download balance and other Account information through the Download Services. Since certain information and transactions are not processed by Bank until after the close of Bank's business day, some transactions may not be reflected in the System until the next banking day. Posted items may be reversed due to insufficient funds, stop payment orders, legal process, and other reasons. Certain balances also may not be subject to immediate withdrawal. Bank assumes no responsibility for any loss arising from incomplete information or for any temporary interruption in the System, or unauthorized access to information once it has been accessed by the Program(s).

**Software, Equipment and Third Party Content.** Client is responsible for obtaining and maintaining any software or equipment that is necessary for the Download Service to interface with the Program(s). Through the Program(s) Client may be able to access content provided or operated by third parties, including content that was originally sourced from data downloaded from Bank's Online Banking Service ("Third Party Content"). Unless Bank tells Client otherwise in writing, Bank does not operate or control any such Third Party Content or any of the information, products or services accessed or uploaded through the same. Client acknowledges and agrees that: (i) Client accesses Third Party Content at Client's own risk; (ii) Bank makes no representation or warranty, and assumes no responsibility for, Third Party Content provided or operated by third parties, actions or omissions of third parties, operators or providers; (iii) Bank makes no endorsement of, and assumes no responsibility for, Third Party Content uploaded to Bank's system or Client's hardware, or goods or services offered on or advertising on or by any other party; (iv) by using third party services or software, Client may be exposed to material that is offensive, indecent or objectionable; and (v) although Bank may have a contractual or other relationship with the operators of a linked website or the providers of Third Party Content, Bank will not be responsible for the Third Party Content, accuracy, completeness, integrity, availability, timeliness or operation of their website or the Third Party Content provided. Client agrees to hold Bank harmless in connection with all of the foregoing.

## ACCOUNT ALERTS

The account alerts ("Alerts") feature is a convenience tool that permits Client to request automated notification in specific situations. Alerts do not replace standard communications Client receives from Bank concerning Client's accounts. If Client elects to receive Alerts by text messaging from Bank, Client acknowledges that such messages will be automatically sent to Client's wireless access device. Client assumes all responsibility for the secure receipt of the text messages and acknowledges that these Alerts are not sent through a secure channel and may be intercepted or read by others. Receipt of Alerts may be delayed, or prevented by factor(s) affecting Client's access, including Internet service provider(s), phone operator(s), and other relevant entities. Bank neither guarantees the delivery or the accuracy of the contents of any Alert. Bank will not be liable for losses or damages arising from: (i) non-delivery, delayed delivery, or wrong delivery of any Alert; (ii) inaccurate content in an Alert; or (iii) Client's use or reliance on the contents of any Alert for any purposes. Bank reserves the right to terminate any request from Client for any Alert, at any time. The information in any Alert may be subject to certain time lags and/or delays. Client may stop or suspend Alerts at any time.

**Client acknowledges that Client's mobile service provider may charge for sending and receiving text messages on Client's wireless access device.**

## EMAIL COMMUNICATIONS

Electronic mail ("email") sent to Bank is not a secure method of communication. Bank may disregard email Bank receives from Client, or Bank may act on it, at Bank's option. If immediate attention is required, Client must contact Bank by telephone or in person. Client agrees not to rely on any form of email communication for any matter requiring immediate attention. Email messages will not serve as a substitute for any requirement imposed on Client to provide Bank with "written" notice.

## INCONSISTENCIES

If a beneficiary of any requested Online Banking Service, including but not limited to Bill Payments, Fund Transfer Service requests, ACH Service transmissions, payment orders or other money transactions, or any other Communication from Client (collectively, "payment order"), is identified by both name and account number, payment may be made by Bank and by any other financial institution based on the account number even if the name and the account number are not consistent or identify different parties. If an intermediary bank or a beneficiary's bank is identified on a payment order by both name and account number, Bank and other financial institutions may rely on the account number even if the name and the account number are not consistent or identify different parties.

## PROVISIONAL CREDIT

Client acknowledges that credit for a payment order is provisional until the receiving financial institution obtains final settlement. If final settlement does not occur, the originator of the payment order is not deemed to have made payment to the beneficiary, and the beneficiary's bank is entitled to a refund of the provisional credit. Client agrees that when Bank gives Client credit for an incoming payment order, including but not limited to, returned credited transactions or credit reversals, it is provisional until Bank receives final settlement for the payment order. Bank may delay availability of provisional funds at its discretion. If Bank does not receive final settlement, Client must return the funds previously credited to Client's account to Bank, and the person who sent the payment order will not be treated as having paid Client. Bank may refuse to permit the use of any amount credited for an incoming payment order, including but not limited to a debit entry or credit reversal if Bank believes in its sole discretion that there may not be sufficient funds in Client's account to cover chargeback or return of such transaction.

## CUTOFF HOURS

A number of Bank's Online Banking Services are subject to processing cutoff hours. The cutoff hours applicable to each Online Banking Service is reflected in the Supporting Documents. Instructions received after the cutoff hour or on a non-business day may be deemed received as of the next business day. Alternatively, some Online Banking Services may require Client to resubmit an instruction when it is received after the cutoff hour or on a non-business day.



## UPLOADED CONTENT; LINKED SITES AND ADVERTISEMENTS

From Bank's website, Client may be able to access uploaded content provided or operated by third parties. Unless Bank tells Client otherwise in writing, Bank does not operate or control any such content or any of the information, products or services on such linked websites. Client acknowledges and agrees that: (i) Client accesses such content and linked sites at Client's own risk; (ii) Bank makes no representation or warranty, and assumes no responsibility for, content on Bank's website and any linked site or the actions or omissions of its/their owners, operators or providers (iii) Bank makes no endorsement of, and assumes no responsibility for, content uploaded to Bank's website or goods or services offered on or advertising on or by any other website; (iv) by using other websites and services, Client may be exposed to content that is offensive, indecent or objectionable; and (v) although Bank may have a contractual or other relationship with the operators of a linked website or the providers of content, Bank will not be responsible for the content, accuracy, integrity, availability, timeliness or operation of their website or content. Client agrees to hold Bank harmless in connection with all of the foregoing.

Bank reserves the right, but shall have no obligation, to reject, move, or delete content that Bank, in Bank's sole discretion, believes violates this Service Description, or contains content, including viruses, that may interfere with the operation of Bank's website. Bank may, but has no obligation to, monitor, and/or retain copies indefinitely of, uploaded content, message boards, chat rooms or other forums or review content, or messages posted at such locations, to confirm their compliance with these guidelines. Bank shall have the right, but not the obligation, to disclose content to any third party if required or permitted by law or if Bank believes reasonably necessary to: (a) comply with legal process; (b) enforce this Service Description; (c) respond to claims that any content violates rights of third parties; or (d) protect Bank's rights, properly, or personal safety, or those third parties.

## THIRD PARTY CONTENT

Bank may receive, process, and make available to Client content that Bank receives from Client and others. In this regard, Bank is merely a passive conduit for such content, although Bank reserves the right to block or remove any content that Bank believes violates this Service Description. Bank assumes no responsibility for determining the accuracy, reliability, timeliness, ownership, legality, appropriateness or completeness of any information that Client or others provides to Bank, nor for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity on such sites. Bank will not have a duty to interpret or evaluate any content transmitted to Bank or through Bank's website or the Online Banking Service, except to the limited extent, if any, set forth in this Service Description. Bank will not be required (by means of any security procedure or otherwise) to detect errors or illegality in the transmission or content of any content Bank receives from Client or third parties. Bank will not have a duty to notify Client about any inaccuracy, unreliability, ownership, incompleteness or other problem that may be associated with third party content on Bank's website, even if Bank has reason to know of its existence. Use of any content Client obtains from Bank's website is at Client's own risk.

## PROPRIETARY RIGHTS

Client acknowledges and agrees that the software and content used by Bank in the operation of Bank's website and provision of the Online Banking Service, and the copyright patent, trademark, trade secret and all other rights in and to the technology, software, content, designs, graphics, and trademarks included by Bank's website and as part of the Online Banking Service and Bank's name and product names and the website's URL (collectively, by the "Intellectual Property"), are owned by Bank and Bank's licensors. As such, Client will not gain any ownership or other right, title or interest in or to such Intellectual Property by reason of this Service Description or otherwise. Client may not use, reproduce, duplicate, copy or distribute the content found at Bank's website or provided by the Online Banking Service.

Client may not distribute, reuse, reproduce, duplicate, copy, publish, sell, or otherwise transfer (i) any portion or element of the Online Banking Service or the Intellectual Property or (ii) access to Bank's Online Banking Service or Intellectual Property. Further, Client may not (a) create derivative works of any portion or element of the Online Banking Service or Intellectual Property; (b) reverse engineer, modify, decompile or disassemble any of the Intellectual Property; (c) deactivate or disable any password protection or other protection, security or reliability technology Bank incorporates in the Online Banking Service; (d) modify or erase any copyright

or trademark notice Bank places in connection with the Online Banking Service; (e) engage in the practice known as "screen-scraping" or otherwise attempt to, or actually, obtain copies of content provided through the Online Banking Service (sometimes known as "scrapers," "spiders," "robots" or "bots") to systematically access and download data; (f) frame any content provided through the Online Banking Service or any Intellectual Property; or (g) use any circumvention tools, meta tags or any other "hidden text" utilizing Bank's name, trademark, URL, product name or other Intellectual Property. Client agree to comply with the terms of any license agreement made available to Client through the Online Banking Service.

## Positive Pay Service Description

### POSITIVE PAY SERVICE

Bank hereby offers its Client and Client hereby accepts the positive pay service with check and ACH reconciliation features (the "Positive Pay Service"). Defined terms in this Service Description shall have the meaning provided in the Master Agreement, unless otherwise defined in this Service Description.

### SUPPORTING DOCUMENTATION; RELATED SERVICE DESCRIPTION

Bank systems used in the delivery of the Positive Pay Service (the "System") may include, but are not limited to, a browser based online application which permits Client personnel to add, modify, and delete information and to review and take action on information processed by the System. Client's use of each of the Positive Pay Service features must be facilitated through Bank's Online Banking Service and Client's use of the Positive Pay Service will also be subject to the separate Online Banking Service Description.

### ACCOUNT DESIGNATION

Throughout the term of this Service Description, Client will maintain the deposit account (the "Account") with Bank designated in the Supporting Documents, or otherwise in writing, to which the Positive Pay Services will be made available. Client acknowledges that this Service Description covers the Positive Pay Service to be provided by Bank and, except as specifically provided in this Service Description, does not cover the handling of the Account or the processing of checks or electronic funds transfers against the Account. As a result, the Account will be subject to, and Bank's operation of the Account will be in accordance with, the terms and provisions of Bank's deposit account agreement governing the Account, a copy of which Client acknowledges having received.

### EXCEPTION DECISIONS

All exceptions must be reviewed and decided by Client by the applicable deadline or the System will apply the pay/return default, as applicable, to the entire file. If Client's exception decision is to return a check or ACH transaction, Client must select an applicable reason code. Client may research suspect items in the System by viewing the check image. In some cases, Client may correct and Exception Item or ACH Exception after researching a discrepancy. Bank is under no obligation to honor Client's corrected Check-Issued Files or ACH Exceptions when the correction is received by Bank after the applicable cutoff hour.

### CHECK POSITIVE PAY

- (a) The Check Positive Pay feature provides certain account services through an automated check matching system. Client's lists of checks to be issued will be compared against the exact amounts and check numbers of the checks that actually clear against the specified Client account(s) activated for the Positive Pay Service and listed on the Supporting Documentation. Client agrees that Bank will only be obligated to match the check number and dollar amount from the Checks-Issued File (defined below) and that Bank may in its sole discretion, but is not obligated to, match additional data provided in the Checks-Issued File ("Additional Data"), including but not limited to payee name. Regardless of whether Bank decides to match against Additional Data, and notwithstanding the fact that Additional Data may be included in the Checks-Issued File, Client further agrees that Bank will not be liable to Client and Client agrees to hold Bank harmless from loss or liability resulting from

Bank's action or inaction with respect to Additional Data. Bank's determination to match Additional Data in any case will not obligate Bank to continue to do so in other instances. Notwithstanding the foregoing, Bank and Client may agree to Bank's review of Additional Data, subject to additional terms, fees and conditions.

- (b) Client must submit a file ("Checks-Issued File") to Bank prior to the cut-off time provided in the Supporting Documentation, on the day of issuance (or earlier) of any checks against accounts that are subject to the Positive Pay Service. The Checks-Issued File must be in the format and contain the information specified by Bank in the Supporting Documentation. Client's Checks-Issued File is not considered received by Bank for processing until Client receives acknowledgement of receipt of the file from Bank.
- (c) The term "presented item(s)" shall mean checks that are presented for payment against Client's Account through the normal check collection system. Presented items that do not match an item included in a Checks-Issued File, pursuant to this Service Description, will be identified as "error" ("Exception Item") and will appear on a record describing the Exception Items ("Exception File") which Bank will provide to Client under this Service Description. Client must submit a pay, or return request decision for each item to Bank on the same business day by the deadline specified in the Supporting Documentation.
- (d) Client grants Bank full authority to honor all checks that match the check numbers and amounts corresponding to Client's Checks-Issued File.
- (e) Client agrees not to reuse check numbers that have previously been issued or negotiated from the Account. If Client orders or prints checks from any check-printing vendor other than a Bank selected vendor, Client agrees to meet the Bank's MICR encoding specifications.
- (f) The Positive Pay Service applies to checks that are presented for payment to Bank through normal interbank automated clearings. Client acknowledges that the Positive Pay Services do not cover checks which are (collectively "ineligible checks"): (i) presented over-the-counter, (ii) presented by mail for collection, (iii) misencoded or duplicate items, (iv) items which Bank has already cashed, negotiated or paid or which Bank is already committed to honor or pay under applicable laws, regulations or the ACH rules. Bank may, in its sole discretion, attempt to compare Checks-Issued File data, as otherwise provide in this Service Description, against ineligible checks, but Bank will not be liable for its failure or refusal to do so.
- (g) Unless otherwise agreed to by Bank, Bank shall default to a "return" decision for any Exception Item for which Client has not submitted a decision on the same business day by the deadline specified in the Supporting Documentation. DEFAULT CHECK RETURNS WILL BE RETURNED WITH THE DEFAULT REASON CODE OF UNAUTHORIZED.

#### ACH POSITIVE PAY

- (a) Client may use the ACH Positive Pay feature to review and confirm incoming ACH debit and credit transactions that post to the specified Client accounts listed on the Supporting Documentation.
- (b) Client shall establish (and update from time to time) through the System its ACH policies which govern permissible transactions by: Originating Company Name; Originating Company ID; Standard Entry Class transaction code (SEC); Transaction Type Debit/Credit/Both; Dollar Range; Minimum or Maximum Dollar; Effective Date or Expiration Date; and/or Transaction Code, as specified further in the Supporting Documentation. Client may also elect to block all incoming ACH transactions for specified Client accounts, in which case all incoming ACH transactions (debit or credit) will be treated as exceptions and available for the Client's review.
- (c) Bank shall compare incoming ACH debit and credit transactions against Client's established ACH policies and accept those transactions which are authorized under Client's ACH policies as established by Client in the System.
- (d) Bank shall submit to Client as exceptions ("ACH Exceptions") any ACH transactions which do not meet Client's ACH policies (unless the Client has chosen to block all incoming ACH transactions to the applicable Account(s), in which case all ACH transactions may be treated as exceptions).
- (e) Client shall review ACH Exceptions it receives from Bank through email notifications made through the System and/or online through the System, and determine if the exceptions will be treated as authorized or unauthorized ACH transactions.
- (f) Client shall make its exceptions decisions online through the System on each business day

by the deadline specified in the Supporting Documentation.

- (g) Client acknowledges that the Positive Pay Service does not cover ACH debit or credit items which Bank has already paid or finalized or which Bank is already committed to pay or honor under applicable laws, regulations or the ACH Operating Rules.
- (h) Bank shall make reasonable efforts to make exceptions available to Client on each business day by the deadline specified in the Supporting Documentation.
- (i) Unless otherwise agreed to by Bank, Bank shall default to a "return" decision for any exception for which Client has not submitted a decision on the same business day by the deadline specified in the Supporting Documentation. DEFAULT ACH RETURNS WILL BE RETURNED WITH THE DEFAULT REASON CODE OF UNAUTHORIZED.

#### SYSTEM INTERRUPTION OR FAILURE

In the event of system interruption or failure, either that of Client's or Bank's system, resulting in Bank's inability to receive or process Client's Checks-Issued File or other communication, the Checks-Issued File or other Client communication will be deemed as having not been sent by Client, even if Bank has possession of the Checks-Issued File or other Client communication.

#### LIMITATION ON LIABILITY

In addition to any other limitation on liability in the Master Agreement, Client agrees that if Bank pays or rejects checks or items in accordance with this Service Description, Client releases Bank and holds it harmless from any claim that the checks or items were not properly payable, or for wrongful dishonor, as applicable.

### Remote Deposit Capture Service Description

#### INTRODUCTION

Bank hereby offers its Client and Client hereby accepts the remote deposit capture service ("Remote Deposit Capture Service") described in this Service Description. The Remote Deposit Capture Service allows Client to transmit paper checks converted to Imaged Items to Bank for processing and deposit into the designated account of Client maintained at Bank. Client desires to use the Remote Deposit Capture Service to facilitate the services as identified in and subject to this Service Description. Bank reserves the right, with prior written notice to Client, to place, from time to time, limits on Client's right to use the Remote Deposit Capture Service.

Bank will provide to Client the Remote Deposit Capture Services described in this Service Description to enable Client to transmit Imaged Items to Bank or Bank's designated processor to be cleared as Substitute Checks or Image Exchange Items. To the extent Client accesses the Remote Deposit Capture Services using Bank's online services, Client's use of the Remote Deposit Capture Services must also be facilitated pursuant to the separate Online Banking Service Description.

#### ACCESS

The Remote Deposit Capture Service enables Client to use an approved Software application together with a compatible wireless access device ("Wireless Access Device") or other compatible scanning hardware maintained by Client to create electronic images of the front and back of Original Checks and transmit those images and other information, including, without limitation, information captured from the magnetic ink character recognition ("MICR") line, to Bank for review and processing in accordance with this Service Description.

Client agrees to exercise due care in preserving the confidentiality of any user identification, password, test key, or other code or authentication method provided by Bank or otherwise required for use of the Remote Deposit Capture Service and shall further prevent the use of the same by unauthorized persons. Client assumes full responsibility for the consequences of any missing or unauthorized use of or access to the Remote Deposit Capture Service or disclosure of any confidential information or instructions by Client, or anyone acting on Client's behalf.

**Wireless Access.** Client's access to the Remote Deposit Capture Service via Client's Wireless Access Device ("Wireless RDC") is subject to Bank's prior and ongoing approval. Bank may

deny Client's access to all or any part of the Remote Deposit Capture Service, at Bank's sole discretion, including wireless access. To access and utilize Wireless RDC Client will need a compatible Wireless Access Device that is connected to the Internet through Client's mobile communications service provider. If Client obtains a different Wireless Access Device, Client will be required to download and install software, to that different Wireless Access Device, under the same terms set forth in this Service Description, as amended. Client agrees to delete all such software from Client's Wireless Access Device promptly if the licenses or this Service Description terminate for any reason. The availability, timeliness and proper functioning of Wireless RDC depends on many factors, including Client's Wireless Access Device location, wireless network availability and signal strength, and the proper functioning and configuration of hardware, Software, and Client's Wireless Access Device. Neither Bank nor any of Bank's service providers warrant that Wireless RDC will operate without interruption, and neither Bank nor Bank's service providers shall be liable for any loss or damage caused by any unavailability of Wireless RDC, including service interruptions, delays, or loss of personalized settings. Neither Bank nor any of Bank's service providers assume responsibility for the operation, security, functionality or availability of any Wireless Access Device or mobile network which Client utilizes to access the Remote Deposit Capture Service. Client agrees that, when Client uses Wireless RDC, Client remains subject to the terms and condition of Client's existing agreements with any unaffiliated service providers, including, but not limited to Client's mobile service provider. Client understands that those agreements may provide for fees, limitations and restrictions which might impact Client's use of Mobile RDC (such as data usage or text messaging charges imposed on Client by Client's mobile service provider), and Client agrees to be solely responsible for all such fees, limitations and restrictions. Client also agrees that only Client's mobile service provider is responsible for its products and services. Accordingly, Client agrees to resolve any problems pertaining to Client's Wireless Access Device or mobile services with Client's provider directly.

*Security of Data in Transition and Storage.* Client expressly acknowledges that any wireless access to Client's accounts may not be secure and, as such, Client assumes the risk associated with unauthorized access to the Remote Deposit Capture Service and any information contained therein, resulting from such wireless connectivity. Client assumes all risk that any information Client download or otherwise stored on Client's Wireless Access Device may be accessed by unauthorized third parties. Without limiting the foregoing, Client acknowledges that Client's Wireless Access Device may become subject to unauthorized tracking, "hacking" or other manipulation by spyware, viruses or other malicious code ("malware"). Bank is not responsible for advising Client of the existence or potential effect of any malware. Client's use of Client's hardware and Software is at Client's own risk.

Bank is not responsible for the security and confidentiality of information when Client: (i) uses wireless connections to download Client's account information, in which case Client acknowledge such connection may permit other persons to access the information being downloaded, or (ii) allows other persons access to Client's Wireless Access Device. Client agrees that any account information that Client downloads is done at Client's own risk, and Client is solely responsible for any damage that might occur to the electronic device to which Client downloads any information, or any loss or corruption of data that might occur as a result of the downloading or its storage on an electronic device.

CLIENT AGREES TO TERMINATE THE REMOTE DEPOSIT CAPTURE SERVICE, OR DISABLE CLIENT'S REGISTERED WIRELESS ACCESS DEVICE FROM THE REMOTE DEPOSIT CAPTURE SERVICE IMMEDIATELY IN THE EVENT CLIENT'S REGISTERED DEVICE BECOMES LOST, STOLEN OR IS NO LONGER IN USE BY CLIENT.

## PRIMARY ACCOUNT DESIGNATION

Client may use the Remote Deposit Capture Services to facilitate a deposit to any deposit account Client has with Bank (other than those with deposit restrictions, such as certificate of deposits). The account to which Client designates a deposit shall be referred to as the "RDC Account" for the purpose of this Service Description and the deposit transaction. Client authorizes Bank to debit the RDC Account (or any other account maintained by Client at Bank) for any fees or other amounts due Bank in connection with the Remote Deposit Capture Services. If the RDC Account is closed for any reason, Client's Remote Deposit Capture Services will be stopped along with any unprocessed Remote Deposit Capture Services transfers. To reinstate its Remote Deposit Capture Services, Client must designate a new RDC Account.

## CLIENT RIGHTS

Subject to the terms of this Service Description, Bank hereby grants Client a non-exclusive, non-transferable right to access and use the Remote Deposit Capture Service in connection with Client's own business operations in accordance with the Supporting Documents.

## DEFINITIONS

Unless otherwise defined below or in this Service Description, terms in this Service Description shall have the meaning provided in the Master Agreement. For the purpose of this Service Description, the term "Communications" shall have the meaning provided in the Master Agreement and shall include Communications to Bank in connection with the Remote Deposit Capture Service, including transmission of output files from Client to Bank; the terms "Security Procedures" and "Security Devices" shall have the meaning provided in the Master Agreement and shall include but not be limited to any Security Procedures and Security Devices used to access the RDC Account and to use the Remote Deposit Capture Service.

- (a) "Check" means an Original Check, as defined in Regulation CC.
- (b) "Endpoint" means any Federal Reserve Bank, financial institution, local clearing house, courier or other entity or location for the delivery of cash letters or other presentment of Electronic Items or Substitute Checks.
- (c) "Image Exchange Item" means a digitized image of an Item cleared and settled directly with a Paying Bank without conversion to a Substitute Check.
- (d) "Imaged Item" means the digitized image of a Check that is created by Client and transmitted to Bank using the Remote Deposit Capture Service.
- (e) "Item" means a Check that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution and payable or endorsed to Client, and includes Original Checks, Substitute Checks and Image Exchange Items.
- (f) "Non-cash Item" means an Item that would otherwise be an Item, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice of payment or dishonor; (iii) it consists of more than a single thickness of paper, except an Item that qualifies for handling by automated check processing equipment; or (iv) it has not been preprinted or post-encoded in magnetic ink with the routing number of the Paying Bank.
- (g) "Non-qualifying Item" means Non-cash Items, Items payable in a medium other than United States money, currency, warrants, Items payable to third parties, Items payable to joint payees (unless payable to the payees alternatively and deposited into an account in the name of all payees), demand drafts or remotely created checks as defined by the UCC and Regulation CC, respectively, Items that are stale dated by six months or more or post dated, savings bonds, Items payable to "cash," Substitute Checks, non-negotiable Items, Items that have been returned unpaid for any reason and any Item that exceeds Client's transaction limitations as established by Bank from time to time.
- (h) "Original" with respect to a Check means the first paper Item issued with respect to a particular payment transaction.
- (i) "Paying Bank" means the United States financial institution ordered in an Item to make payment to the payee(s) named on the Item.
- (j) "Remote Deposit Capture Services" means the services described in this Service Description, to be provided by Bank to Client to enable the processing of Items digitally as Image Exchange Items through image exchange networks or through creation of Substitute Checks and presentment to established Endpoints, including collectively the procedures, protocols, and software used by Bank and its licensors and contractors in connection with the electronic processing of Items.
- (k) "Software" means any software which may be offered or required by Bank for use in receiving, validating and packaging images and data from a bulk file to be forwarded to Bank for additional processing.
- (l) "Substitute Check" means a paper reproduction of an Item that satisfies the requirements and definition of "substitute check" set forth in Regulation CC.
- (m) "UCC" means the Uniform Commercial Code as enacted and amended in the state whose law governs interpretation of this Service Description.



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

#### REMOTE DEPOSIT SERVICE

- (a) Client will create images of Checks at Client's location by use of scanning hardware and Software, if any, approved or provided by Bank (as applicable). Client will enter all amounts and any other required information correctly and as provided in the Supporting Documents.
- (b) The electronic images of Checks will be transmitted by Client to Bank, or Bank's authorized processor, over the Internet through a secure web-based interface.
- (c) Client's RDC Account will be provisionally credited upon Bank's acceptance of the Imaged Items for deposit which are received by Bank from Client through the Remote Deposit Capture Service.
- (d) Client will maintain the RDC Account for Client to receive credit and provide other specific information required by Bank related to the Remote Deposit Capture Service. As set forth in this Service Description, all deposits received by Bank are accepted subject to Bank's verification and final inspection and may be rejected by Bank in Bank's sole discretion. All deposits are subject to the terms of the deposit account agreement governing Client's accounts.

#### CLIENT RESPONSIBILITIES

In connection with the Remote Deposit Capture Services, Client shall comply with the following:

- (a) Client shall maintain the RDC Account at Bank for the receipt of deposits of Items.
- (b) Client will create images of Checks at Client's location by use of scanning hardware and Software approved or provided by Bank. Client will enter all amounts and any other required information correctly.
- (c) Client will only submit Checks for processing to Bank that meet the definition of "Item" as provided in this Service Description and will ensure that the Items scanned meet the standards for image quality established by the American National Standard Institute (ANSI) required by Regulation CC, or other standards established or required by Bank or applicable law, as amended from time to time. Client will not process any Non-qualifying Items. Bank's processing of any Non-qualifying Items shall not constitute a waiver by Bank or obligate it to process such Non-qualifying Items in the future. Bank may discontinue processing of Non-qualifying Items at any time, without cause or prior notice.
- (d) Unless prior approval by Bank in writing, Client will not attempt to scan and transmit to Bank any Item which is drawn on a deposit account of Client at Bank or any other financial institution, or a deposit account of any business entity of which Client is a principal, officer or authorized signer. Client will only use the Remote Deposit Capture Service for its own purposes and in accordance with this Service Description.
- (e) Client will not attempt to scan and transmit to Bank any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substituted Check must be physically deposited with the Bank. Notwithstanding the foregoing, Bank may redeposit any returned Substitute Check or Image Exchange Item consistent with the terms of the deposit account agreement governing Client's accounts.
- (f) Client will (i) ensure that Items are restrictively endorsed or otherwise processed to permit only financial institutions to acquire rights of a holder in due course in the collection process of Items, (ii) handle, process, maintain and destroy Original Checks as set forth in this Service Description and in the Supporting Documents, and (iii) ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser receives presentment or return of, or otherwise is charged for an Item more than once in any form.
- (g) Except to the extent otherwise expressly agreed by Bank, Client will provide, at its own expense, a broadband Internet connection, such as via a digital subscriber line (DSL) or other connectivity having equivalent or greater bandwidth and all other computer hardware, software, including but not limited to a compatible Web browser, and other equipment and supplies required to use the Remote Deposit Capture Service, all of which must satisfy any minimum requirements set forth in the Supporting Documents or as otherwise may be acceptable to Bank. Except to the extent otherwise provided in this Service Description or

the Supporting Documents, Client will provide, or obtain from another party selected by Client at Client's expense, support and maintenance of such Internet connection and all other computer hardware, software, and equipment required to use the Remote Deposit Capture Service, including without limitation troubleshooting Internet connectivity issues with Client's internet service provider (ISP).

- (h) Client will balance the dollar amount of each deposit to the sum of Checks prior to transmitting to Bank.
- (i) Client will: (i) maintain a daily control record of all Checks, including transaction counts and dollar amounts; and (ii) balance transactions transmitted from the previous business day and immediately notify Bank of any error or discrepancy discovered.
- (j) Unless Bank specifically agrees otherwise in writing, Client will not use the Remote Deposit Capture Service to deposit any Check or Checks that exceed the transaction limits established by Bank from time to time. Bank may communicate the transaction limits, including changes to the same, by written or electronic notice to Client.
- (k) Client will be responsible for verifying Bank's receipt of Client's transmission(s) by verifying that deposits have been posted to the RDC Account, in addition to cooperating in any investigation and resolving any unsuccessful or lost transmission with the Bank.
- (l) Client will maintain fully qualified, properly trained and experienced administrative staff and employees sufficient to perform its obligations under this Service Description.
- (m) Client shall exercise due care in preserving the confidentiality of any user identification, password, test key, or other code or authentication method provided by the Bank or otherwise required for use of the Remote Deposit Capture Service and shall further prevent the use of the same by unauthorized persons. Client assumes full responsibility for the consequences of any missing or unauthorized use of or access to the Remote Deposit Capture Service or disclosure of any confidential information or instructions by Client, its employees and agents (as applicable).
- (n) Client will ensure that, prior to scanning, Checks are restrictively endorsed "For Remote Deposit Only to Mechanics Bank." Without limiting the foregoing, to the extent Client utilizes the imprinting (referred to as "franking") technology of the scanning equipment, Client agrees that each Check processed will be imprinted with the message "For Remote Deposit Only to Mechanics Bank." Client agrees that it will not present a Check that what was previously remotely deposited or franked through the Remote Deposit Capture Services to Bank or any other bank for payment (no second presentment).

#### EQUIPMENT

- (a) Client is responsible for obtaining and maintaining the compatible and Bank approved scanner equipment to facilitate the Remote Deposit Capture Service. Client agrees to use only scanner equipment and software that meet Bank's service specifications, and shall not use any scanner equipment purchased or provided by a third parties without Bank's prior written consent. "Scanner equipment" will mean any compatible and Bank approved hardware, including a Wireless Access Device. Client will ensure that the equipment is clean and operating properly, and will inspect and verify the quality of images and ensure that the digitized images of Original Checks are legible for all posting and clearing purposes. Client will be solely responsible for verifying the compatibility of any equipment used with the Remote Deposit Capture Service.
- (b) To the extent Bank provides access to equipment for Client's use of the Remote Deposit Capture Service ("Bank-Provided Equipment"), Client agrees not to remove the Bank-Provided Equipment from Client's place of business, Client is responsible for the maintenance of the Bank-Provided Equipment and Bank may require Client's use of the same to be subject to additional terms. Bank's provision of Bank-Provided Equipment may be subject to separate terms and conditions. If any Bank-Provided Equipment is lost, stolen, or damaged in such a manner that Client cannot comply with the capture, transmission, processing, and other applicable procedures and requirements of this Service Description, Client agrees to inform Bank and to then obtain and substitute new equipment that is acceptable as shown in the supporting documentation, before Client continues using the equipment and the Remote Deposit Capture Services. If Client's use or maintenance resulted in damage to any Bank-Provided Equipment, Client agrees to reimburse Bank on demand for Bank's costs to repair the equipment, or to replace the equipment if repair is not reasonably feasible. Upon termination of this Service Description, Client's right to use the Bank-Provided Equipment

shall terminate and Client agrees to return the scanner and all program materials within 10 calendar days (or Bank shall charge Client the replacement cost of the scanner).

- (c) Bank assumes no liability for any computer virus or related problems arising in connection with Client's use of equipment, including Bank-Provided Equipment, and Client shall indemnify, defend and hold harmless the Bank for any losses, damages, costs and expenses resulting directly from any computer virus or related problems the Bank may suffer or incur from any computer virus or related problem caused by Client.

## SOFTWARE

At any time during the term of this Service Description, Bank may require in its sole discretion the use of Software in connection with the Remote Deposit Capture Services. Bank may require Client to upgrade the Software which client agrees to do within 30 days of notice, or sooner if directed by Bank.

- (a) Client will implement and use the Software, as set forth in the Supporting Documents and any applicable materials relating to the Supporting Documents to transmit output files to Bank.
- (b) To the extent the Remote Deposit Capture Service involves Bank's having granted Client Software license usage rights, such grant shall be a personal, non-exclusive, non-transferable right to access and use the Remote Deposit Capture Service in connection with Client's use in accordance with this Service Description. The Remote Deposit Capture Service does not involve the sale of software. Nothing in this Service Description will entitle Client to receive technical support, telephone assistance regarding the Software, or updates to Software.
- (c) Client acknowledges that (i) its license to any Software that may be required for the Remote Deposit Capture Service is directly from the Software provider, pursuant to the license agreement that appears when any such Software is electronically accessed by Client or otherwise provided to Client, (ii) Bank may but is not obligated to provide certain "first level" support to Client with respect to the Software, but that Bank will have no responsibility, for maintenance, support, infringement protection, or otherwise, to Client with respect to the Software, and (iii) Client will look strictly to the Software provider, or its successors, with respect to any issues concerning the Software that cannot be satisfactorily resolved with Bank's assistance.
- (d) Client will use the Software solely for the purpose of transmitting output files to Bank consistent with this Service Description and not for communications with any other party. Client will not allow access to the Software or the use of the Remote Deposit Capture Service by any person other than Client, and will only process Items arising from a transaction or obligation between Client and its direct payor. Without limiting the foregoing, Client agrees to implement and maintain separation of duties and dual control procedures at Client's location(s) to ensure compliance with the limitation on access commitments provided under this Service Description.
- (e) Client acknowledges and agrees that the Software and content used by Bank in the operation of Bank's website and provision of the Remote Deposit Capture Service, and the copyright patent, trademark, trade secret and all other rights in and to the technology, software, content, designs, graphics, and trademarks included by Bank on Bank's website and as part of the Remote Deposit Capture Service and Bank's name and product names and the website's URL (collectively, by the "Intellectual Property"), are owned by Bank and Bank's licensors. As such, Client will not gain any ownership or other right, title or interest in or to such Intellectual Property by reason of this Service Description or otherwise. Client may not use, reproduce, duplicate, copy or distribute the content found at Bank's website or provided by the Remote Deposit Capture Service.
- (f) Client may not distribute, reuse, reproduce, duplicate, copy, publish, sell, or otherwise transfer (i) any portion or element of the Remote Deposit Capture Service or the Intellectual Property or (ii) access to Bank's Remote Deposit Capture Service or Intellectual Property. Further, Client may not (a) create derivative works of any portion or element of the Remote Deposit Capture Service or Intellectual Property; (b) reverse engineer, modify, decompile or disassemble any of the Intellectual Property; (c) deactivate or disable any password protection or other protection, security or reliability technology Bank incorporates in the Remote Deposit Capture Service; (d) modify or erase any copyright or trademark notice Bank places in connection with the Remote Deposit Capture Service; (e) engage in the practice

known as "screen-scraping" or otherwise attempt to, or actually, obtain copies of content provided through the Remote Deposit Capture Service (sometimes known as "scrapers," "spiders," "robots" or "bots") to systematically access and download data; (f) access the Remote Deposit Capture Service by any means other than via Client's Wireless Access Device; (g) frame any content provided through the Remote Deposit Capture Service or any Intellectual Property; or (h) use any circumvention tools, meta tags or any other "hidden text" utilizing Bank's name, trademark, URL, product name or other Intellectual Property. Client agrees to comply with the terms of any license agreement made available to Client through the Remote Deposit Capture Service.

- (g) Client will promptly return all copies of the Software and Supporting Documents, including materials related to the Supporting Documents, to Bank upon termination of this Service Description.
- (h) To ensure Client's retention obligations under this Service Description, Client agrees to implement and maintain business continuity procedures, including but not limited to those needed to ensure proper backup of data and periodic testing of the same.
- (i) Bank reserves the right to change, add to, or terminate services with Bank's third-party software providers, to substitute different software providers, and to enter into or arrange for the provision Remote Deposit Capture Services by other licensors and third-parties.

## RETENTION AND DESTRUCTION OF ORIGINAL CHECK

Client will retain each Original Check in accordance with the Supporting Documents. If not directed otherwise by the Bank, Client will store Original Checks in a safe and secure environment for a minimum of 7 days and a maximum of 45 days (or if submitted using Wireless Access Device, retain for 14 days) after such Item has been digitized and posted. Client shall take appropriate security measures to ensure that: (i) only authorized personnel shall have access to Original Checks, and (ii) that the information contained on such Original Checks or on any corresponding Imaged Items are not disclosed to third parties. Client will promptly (but in any event within 5 business days) provide any retained Original Check (or, if the Original Check is no longer in existence, a sufficient copy of the front and back of the Original Check, with the copy indicating that it is a copy on its face) to Bank as requested to aid in the clearing and collection process to resolve claims by third parties with respect to any Item or as Bank otherwise deems necessary. If Client fails to produce the Original Check upon Bank's request, Client agrees that Bank may deduct the amount of the Original Check from any of Client's accounts. Client will use a commercially reasonable method which is consistent with any requirements of Regulation CC and approved by Bank to securely and permanently destroy Original Checks after Client's retention period has expired. Client agrees to mark Original Checks "VOID" just before destroying as provided in this Section.

## PROCESSING TIMES

- (a) Notwithstanding any provisional credit that may be applied to the RDC Account in connection with Client's transmitted Imaged Items, Imaged Items processed for deposit through the Remote Deposit Capture Service will be deemed to have been received by Bank for deposit at the time the Imaged Items are actually received and accepted at the location where Bank or its designated agent posts the credit to the RDC Account. A deposit of Imaged Items will be deemed to have been received and accepted by Bank for deposit when all of the following have occurred: (i) Bank has preliminarily verified that the image quality of the Imaged Items is acceptable to Bank in its discretion, all Item information is complete and the deposit totals are balanced to the Item information provided for the deposit; and (ii) Bank has successfully performed all further validation routines with respect to the deposit. Notwithstanding the foregoing, Imaged Items received by Bank for deposit may be rejected by Bank in Bank's sole discretion.
- (b) Items will be processed and ready for presentment by Bank after Bank receives all good digitized images and associated data for any given transmission from Client. Client agrees to view the images of each scanned Item that is sent to Bank. If Item information received by Bank is not complete or cannot be processed by Bank for any reason, Bank may reject the Imaged Item, notwithstanding any transmission confirmation and charge the amount back against any provisional credit to Client's RDC Account. Client will be responsible for verifying Bank's receipt of Client's transmissions by verifying that deposits have been posted to Client's RDC Account. Bank will use commercially reasonable efforts to present

Items for payment to the applicable Endpoint within a reasonable period of time following such receipt.

- (c) If an Imaged Item is not accepted for deposit, Client may then submit the Original Check to Bank for processing or contact the maker to reissue the Check. If Client submits the Original Check for processing, Bank reserves the right to refuse to process the Check for deposit and presentment to the Paying Bank and may instead require Client to have the maker reissue the Check.
- (d) It is Client's responsibility to understand and build into its transmission schedules the appropriate deadlines necessary to meet the availability schedules of Bank as set forth in the Master Agreement or as otherwise established by Bank. Client is further responsible for understanding and building into its transmission schedule the changes in transmission windows required by time changes associated with Daylight Savings Time.

#### RETURNED ITEMS

Client understands and agrees that an Item that is not paid by a Paying Bank, or is otherwise returned for any reason, will in Bank's discretion be: (i) re-presented to the Paying Bank; or (ii) returned to Client and Client's RDC Account charged for the amount of the Item plus any associated fees as disclosed in Bank's applicable fee schedule, which may be changed from time to time in Bank's discretion. Client agrees that Items may be returned as Image Exchange Items, rather than Substitute Checks. Bank's right to charge the RDC Account of Client will apply without regard to whether the Item is timely returned to Bank or whether there is any other claim or defense that the Item has been improperly returned to Bank.

#### BANK RIGHTS AND RESPONSIBILITIES

- (a) For all Imaged Items processed by Client pursuant to this Service Description, either (i) digitized images will be converted to Substitute Checks and presented for payment to established Endpoints, or (ii) Imaged Exchange Items will be presented for payment through image exchange networks. Bank may in its sole discretion determine the manner of processing. All such processing and presentment shall be done in accordance with timeframes and deadlines set forth in the Supporting Documents and as otherwise established by the Bank from time to time.
- (b) Unless otherwise agreed by Client and Bank, Bank will process any returned Items in accordance with applicable law and the Master Agreement.
- (c) Subject to the terms of this Service Description, availability of credit from Items processed under this Service Description will be subject to the availability schedule of Bank, which may be amended from time to time.
- (d) Bank may at its sole option, with or without cause, at any time and from time to time, refuse to process any Imaged Items. Bank may from time to time establish transaction limitations and assign them to Client.
- (e) Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission, or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Bank's control. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Item for presentment if such transmittal would result in Bank's having exceeded any limitation upon its intraday net funds position established pursuant to Federal Reserve guidelines or if Bank's otherwise violating any provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. In the event of any failure or delay, Client acknowledges that it may instead deposit directly with Bank any Original Items for processing and presentment, provided such Original Items have not been previously imaged and processed in connection with the Remote Deposit Capture Services.
- (f) In addition to any other rights Bank may have with regards to the accounts of Client, Bank may hold and use funds in any Client account following termination of this Service Description for such time as Bank reasonably determines that any Item processed by Bank prior to termination may be returned, charged back or otherwise a cause for any loss, liability, cost, exposure or other action for which Bank may be responsible. Without limitation, you recognize that under the UCC, Regulation CC, the Electronic Check Clearing House Organization™ ("ECCCHO") Rules (as applicable), and the rules of any image exchange network, our representations and warranties with regards to Image Exchange Items and

Substitute Checks may expose us to claims for several years following processing of the Image Exchange Item or Substitute Check.

#### CLIENT REPRESENTATIONS AND WARRANTIES

Client makes the following representations and warranties with respect to each Item, including Non-qualifying Items, processed by Client pursuant to this Service Description:

- (a) The Imaged Item is a digitized image of the front and back of the Original Check and accurately represents all of the information on the front and back of the Original Check as of the time Client converted the Original Check to an Imaged Item;
- (b) The Imaged Item contains all endorsements applied by parties that previously handled the Original Check in any form for forward collection or return;
- (c) Except as otherwise specifically disclosed in writing to Bank, Client is not now engaged, and will not during the term of this Service Description engage, in any business that would result in Client being or becoming a "money service business" as defined in the Federal Bank Secrecy Act and its implementing regulations;
- (d) All encoding, transfer, presentment and other warranties made under applicable law as Bank is deemed to make under applicable law, including without limitation those under the UCC, Regulation CC and the rules of any image exchange network;
- (e) There will be no duplicate presentment of a Check in any form, including as a digitized image, as a paper negotiable instrument or otherwise and Client will be liable for and otherwise assume responsibility for any such duplicate presentment of any Check. Client agrees to indemnify and defend Bank against any and all claims, causes of action or demands arising out of or directly or indirectly related to the duplicate presentment of any Check; and
- (f) Client will not engage in any activity directly or indirectly related to the use of the Remote Deposit Capture Service that is illegal or fraudulent.

#### BANK'S LIABILITY

In addition to any limitations in the Master Agreement, Bank will not be liable to Client for any refusal of a Paying Bank to pay an Image Exchange Item or Substitute Check for any reason (other than the gross negligence or willful misconduct of Bank), including without limitation, that the Original Check, Image Exchange Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature.





800.797.6324

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