

# Master Treasury Management Services Agreement

This MASTER TREASURY MANAGEMENT SERVICES AGREEMENT sets forth the general terms and conditions that apply to the use of our Treasury Management Services (the “Services”). As used throughout this Agreement, the terms “Company”, “you”, “your”, and “Business” (and related terms) refer to the client identified on the Treasury Management Services Enrollment Form (the “Enrollment Form”) or other Account Documents and the terms “Bank”, “we”, “us”, and “our” (and related terms) refer to NBH Bank. By enrolling in, requesting, and/or using these Services from time to time, you agree to comply with the terms and conditions of this Agreement. This Agreement is in addition to other agreements between you and Bank, including but not limited to your deposit account agreements, credit card agreements and loan agreements as each may be modified from time to time (“Account Documents”).

## 1. DEFINITIONS

- A. *ACH* means Automated Clearing House.
- B. *Account* means a demand deposit, savings, certificate of deposit or loan account owned by Company and held at Bank.
- C. *Addendum* means terms and conditions of additional Services requested in attachments hereto, which are made a part of the Agreement.
- D. *Administrator* means the person you appoint who will be responsible for creating and maintaining subsequent user accounts for you, including assigning and revoking access privileges for users and providing new and subsequent Codes to users. In addition, the Administrator has access to all accounts applied for with the Services and is bound by this Agreement and the specifications outlined in Addenda for specific Services attached.
- E. *Agreement* means this Master Treasury Management Services Agreement, its Addenda, any forms enrolling in or requesting Services (e.g., the Enrollment Form or otherwise), as well as user guides and other reference materials regarding the Services, each as provided and updated by Bank from time to time.
- F. *Authorized Account* means the Account(s) of the Company, maintained at the Bank, to which the Services rendered by the Bank will apply as applied for on forms provided by the Bank (e.g., the Enrollment Form or otherwise), or other acceptable method.
- G. *Authorized Signer* means a person or persons authorized by the Account resolution, Treasury Management Services Resolution and Authorization, or other governing document, to act on behalf of the Company for transactions concerning Accounts or Services.
- H. *Available Funds* means funds on deposit in an Account and available for withdrawal pursuant to Regulation CC and the Bank’s applicable funds availability schedule and policies.
- I. *Business Day* means 8:00 am CT to 5:00 pm CT Monday through Friday, excluding all Bank holidays.
- J. *Business Hours* means Monday through Friday from 8:00 am CT to 5:00 pm CT, excluding all Bank holidays, except as specifically set forth in any Addendum attached or otherwise noted in literature at a specific Bank location or within literature provided pertaining to a specific service.
- K. *Code* means any user identification (ID) code, access code, personal identification number (PIN), password, physical token, soft token, OOB (out of band authentication), or anything else considered to be a method of authenticating users of the Services.
- L. *Concentration Account* means an Account designated by you as the offset to a Zero Balance Account.
- M. *Electronic Communication* means any electronic means of sending or receiving instructions, reports or other communications, including without limitation, facsimile transmission, voicemail, Email, FTP Site, beeper or other telephonic methods.
- N. *Electronic Mail or Email* means a method of Electronic Communication available for use to contact the Bank.
- O. *Eligible Account* means any Account that is eligible for access through the Service.
- P. *FTP (File Transmission Protocol) Site* means a communications protocol governing the transfer of files from one computer to another over a network.
- Q. *Fee Schedule* means the most current Treasury Management Services fee schedule established by Bank from time to time.
- R. *Internet* means an interconnected system of networks that connects computers around the world to facilitate data transmission and exchange.
- S. *Internet Services Provider* means your Third Party Provider that you use to connect to the Internet.
- T. *Investment Sweep Account* means an Account whereby, based on an established target balance, sweeps will take place at the end of each Business Day and excess funds in the Account will be invested with a financial services provider designated by Bank.
- U. *NACHA* means the National Automated Clearing House Association.
- V. *National Automated Clearing House Association* means a not-for-profit organization that develops electronic solutions to improve the ACH payment system and develops operating rules and business practices for the ACH network and electronic payments.
- W. *Online Banking* means the Web Based Service providing access to your Account(s) and other Services as maintained at Bank.
- X. *Password* means the Code sent to you by Bank for use during the initial login, or the Codes you select after the initial login, that establishes your connection to the Services.
- Y. *Person* means a natural person, corporation, sole proprietorship, limited liability company, partnership, government unit or instrumentality, trust, or any other entity or organization.
- Z. *Promissory Note* means a written promise to pay a specified sum of money to Bank at a fixed time or on demand.
- AA. *Regulation CC* means a federal regulation that governs the availability of funds deposited in checking accounts and collection of checks.
- BB. *Security Procedures* means the authentication or other security devices or procedures, including without limitation, identification Codes, access Codes, personal identification numbers (PIN’s), login credentials, and telephonic confirmation related to any of the Services. Security Procedures also refers to protection of Company data, networks, hardware and systems used in conjunction with the

Services. A number (and non-exclusive list) of our Security Procedures are described in the Enrollment Form or as otherwise disclosed by the Bank from time to time.

CC. *Sweep* means any arrangement whereby a target balance is established for an Account by which a sweep of funds will occur from/to another Account at such time the target balanced is reached.

DD. *Third Party Provider* means an outside provider used by Bank for providing a Service or used by Company in accessing Services.

EE. *Treasury Management Services ("Services")* means the various services offered and/or provided by Bank from time to time in connection with the Agreement, including, but not limited to, the services described in Section 2 of the Agreement.

FF. *U.C.C.* means the Uniform Commercial Code as in effect from time to time in Missouri.

GG. *User ID* means the identification Code sent to you by Bank for use during the initial login, or the identification Codes you select after the initial login, that establishes your connection to the Service.

HH. *Web Based Services* means any Services delivered to you via the Internet.

II. *Zero Balance Account* means an Account designated by you that is intended to have a zero balance at the end of each Business Day.

## 2. SCOPE OF TREASURY MANAGEMENT SERVICES

Services that may be provided to you include, but are not limited to, Online Banking, ACH, Wire Transfer, Positive Pay and Account Reconciliation, FTP Site, Remote Deposit, Lockbox Services, Sweep Accounts, Investment Sweep Accounts, and Zero Balance Accounts, or any other Service provided from time to time and referenced in this Agreement or an attached Addendum, hereinafter referred to as Services. By enrolling in, requesting, and/or using the Services from time to time, you agree to the terms and conditions of this Agreement. You also agree to the terms relating to specific Services that you receive from us. If you choose to subscribe to (or enroll in) an additional Service, the terms of this Agreement and accompanying Addenda will apply to it after we have approved your use of the Service. Please refer to the following Addenda for additional terms and conditions that will apply to your use of specific Services (as applicable):

- **Addendum A – Online Banking Services**
- **Addendum B – ACH Origination Services**
- **Addendum C – Remote Deposit Services**
- **Addendum D – Positive Pay and Account Reconciliation Services**
- **Addendum E – Lockbox Services**
- **Addendum F – Wire Transfer Services**
- **Addendum G – ACH Positive Pay Services**
- **Addendum H – Escrow Account Management Services**

## 3. GOVERNING LAWS AND RULES

The Agreement and the Services are governed by, and the Agreement should be interpreted in accordance with, applicable federal laws and the internal laws of the State of Colorado. ACH Origination Services are also subject to the NACHA rules. Hereinafter all of the aforesaid laws, rules, and regulations shall be referred to collectively as "Applicable Laws" and are subject to change.

## 4. REPRESENTATIONS AND WARRANTIES

Company and Bank each represent and warrant to the other, as of the date this Agreement is entered into and at the time any Service is used or performed, that: (a) it is validly existing and in good standing under the laws of the jurisdiction of its organization; (b) it has all requisite power and authority to execute and deliver, and to perform its obligations under this Agreement and each Service used or performed by it; (c) this Agreement has been duly authorized and executed by it and constitutes its legal, valid and binding obligation; and (d) any consent or authorization of any governmental authority or third party required to be obtained by it in connection with this Agreement or any Service used or performed by it has been obtained. Bank makes no representation or warranty, express or implied, and disclaims all warranties as to the merchantability, fitness for a particular purpose or suitability of any Services for Company, or as to the compatibility of Bank software, equipment or communication interfaces with those of Company. Company represents and warrants to Bank, and agrees with Bank, that the Services are not intended to and shall not be used by Company for personal, family, or household purposes or for any purpose that violates the Applicable Laws.

## 5. LIABILITY, LIMITATIONS ON LIABILITY, AND INDEMNITY

Unless a different standard of care is specified in the relevant Addendum, Company agrees to the maximum extent permitted by Applicable Laws that Bank's obligations in performing a Service are limited to: (a) complying in all material respects with the Agreement; and (b) to the extent (but only to the extent) required by Applicable Laws, acting in good faith and exercising ordinary care in performing such Service. In that regard, the Services have several unique characteristics that relate to Bank's duty of care. For example, most of the Services involve large volumes of items or transactions that are processed in a highly automated environment. The procedures set forth in the Agreement for each Service have been designed in light of those characteristics to maximize Company's ability to use such Service in an efficient manner while minimizing its cost and inconvenience. As a result, Company agrees to the maximum extent permitted by Applicable Laws that (x) the procedures for each Service are commercially reasonable and that Bank will be deemed to have acted in good faith and exercised ordinary care if it complies in all material respects with those procedures and (y) clerical errors, mistakes in judgment, and/or occasional or unintentional deviations by Bank from those procedures will not be deemed to constitute a failure on the part of Bank to act in good faith or to exercise ordinary care. Nor shall the Bank have any liability for any third party's actions or inactions, including those of the Company, a Third Party Provider, any government entity or other financial institution.

Unless a different limit on Bank's liability is specified in the relevant Addendum, Company agrees to the maximum extent permitted by Applicable Laws that Bank's liability will be limited as set forth herein. Bank's liability shall be limited to the lesser of actual damages sustained by Company that are a direct result of Bank's failure to satisfy the applicable standard of care set forth above or the total fees paid by the Company for the Services resulting in such liability in the month preceding the date the claim accrued or, in the case of a transfer executed pursuant to Addendum B or Addendum F, the amount of the disputed transfer and any related fees plus loss of interest as set for the below. Bank's liability is conditioned upon Company taking actions to mitigate any losses, giving written proof of all losses and providing reasonable cooperation in investigating the claim. Bank's liability is further conditioned upon Company bringing any action against Bank with respect to such claim within one (1) year after it arose. Furthermore, Company shall transfer any rights and claims it has against third parties to Bank and will cooperate with Bank in recovery efforts if Bank reimburses Company for any losses hereunder.

IN NO EVENT SHALL BANK BE LIABLE TO YOU OR ANY THIRD PARTY FOR SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL LOSS, COST, EXPENSE OR DAMAGE OF ANY KIND, INCLUDING LOST PROFITS AND LOSS OF GOODWILL, HOWEVER CAUSED AND ARISING UNDER ANY THEORY OF LIABILITY (EVEN IF BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, COST, EXPENSE OR DAMAGE). COMPANY ACKNOWLEDGES THAT BANK PROVIDES THE SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS AND THAT BANK HAS NOT AND DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SERVICES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE. WITHOUT LIMITING THE FOREGOING, BANK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

For Wire Transfers and ACH Credit Entries that are governed under Article 4A of the U.C.C., Bank will compensate Company, to the extent required by Applicable Laws and conditioned upon Company notifying Bank within thirty (30) days after a confirmation, report, statement or other document reflecting the relevant transaction is sent or made available to Company, for Company's loss of interest on funds as a direct result of Bank's failure to comply with such law in executing a transfer; such compensation shall be based upon the Fed Funds Rate at the Federal Reserve Bank of New York in effect at the time of the claimed loss of interest (as determined by Bank in its reasonable discretion). Except to the extent otherwise provided by Applicable Laws, Bank shall not be liable for Company's attorneys' fees in connection with any claim for loss of interest, or otherwise.

Under no circumstances shall the Bank be responsible for any liability, loss or damage resulting from any delay in the performance of or failure to perform in connection with any Service which is caused by interruption of telephone, telefacsimile or communication facilities, delay in transportation, equipment breakdown or mechanical malfunction, electrical, power or computer failure, accidents, fire, flood, explosion, theft, natural disaster or other catastrophe, acts or failure to act by Company or any Third Party Provider, strikes or lockouts, emergency conditions, riots, war, acts of government or other circumstances which are unavoidable or beyond Bank's reasonable control. Bank shall not be liable for failure to perform any of its obligations in connection with any Service if such performance would result in a breach of any Applicable Laws. If Bank improperly fails to credit any of the Company's Accounts utilized in connection with any Service, the only liability of Bank is to properly credit such Account upon discovery and proper notification of such error, and Bank shall not incur any liability in addition, including any loss resulting from failure by Company to invest the amount of funds properly credited to the Account.

Unless finally determined by a court having proper jurisdiction to have been caused exclusively by Bank's gross negligence or intentional misconduct, Company agrees to the maximum extent permitted by Applicable Laws to defend, indemnify, protect and hold Bank, its affiliates and their respective officers, directors, employees, attorneys, agents and representatives harmless from and against any and all liabilities, claims, damages, losses, demands, fines (including those imposed by any Federal Reserve Bank, clearing house or funds transfer system), judgments, disputes, costs, charges and expenses (including litigation expenses, other costs of investigation or defense and reasonable attorneys' fees) which relate in any way to the Agreement or the Services, including, but not limited to, those caused by: (a) Company's failure to comply with any of the provisions of the Agreement; (b) the failure of any of Company's representations or warranties to be true and correct in all respects at any time or (c) Bank following any of Company's instructions.

You hereby release us from any liability and agree not to make any claim or bring any action against us for honoring or allowing any actions or transactions where you have authorized the person performing the action or transaction to use your Account(s) and/or the Services and/or you have given Codes to such person, or, in the case of a jointly held Account such person is one of the owners of the Account. You agree to indemnify and hold us harmless from and against any and all liability (including but not limited to reasonable attorney fees) arising from any such claims or actions.

You agree to promptly notify Bank in writing as directed in Section 13 of this Agreement of any error in connection with any Service and any discrepancies between any records maintained by Company and any Notice Company received from Bank with respect to any Service, and shall provide Bank with any information it may reasonably request in connection therewith. Company agrees that thirty (30) days from the date Bank sends or makes available to Company information that would disclose the error is a reasonable time for the Company to notify the Bank of errors or discrepancies unless other agreements, Addenda, Service terms and conditions, or Applicable Laws provide for a shorter period and are not waivable. You also agree that your failure to promptly notify the Bank of such error or discrepancy will relieve the Bank from liability to you on account thereof.

## **6. PAYMENT OF FUNDS**

Bank may, without prior notice or demand, obtain payment of any amount due and payable (including, without limitation, any account fees that are subject to change from time to time) to it under the Agreement by debiting the Account(s) of Company maintained at the Bank. Company shall at all times maintain a balance in the Account(s) sufficient to cover its payment obligations under this Agreement. You also grant the Bank a security interest in your Account(s) to secure all of your obligations to the Bank under this Agreement.

## **7. ACCESS TO SERVICES**

You will access most Services over the Internet. Generally, access will only be available through the use of Codes. In those cases, we will provide Codes to you and you will be responsible for managing access to the Codes and their use. You are responsible for selecting a means of accessing the Internet, via an Internet Service Provider (ISP) and communications software, or by other means. You understand that we will not provide any software or recommendation for an ISP. You are fully responsible for any defect, malfunction, or interruption in service or security due to your computer hardware, communications software, or ISP.

Many Services require the use of computer hardware and data communication devices. You are solely responsible for maintaining your computer equipment in good working order, with the necessary compatibility and format to interface with our systems, including, without limitation, the ability to support Security Procedures applicable to your Services. We have no responsibility to continue to provide Services if you do not maintain and upgrade your hardware, anti-virus software, and other relevant data communications devices from time to time as necessary to provide the level of security we may require in our discretion.

Each time you use our Service, or you permit any other person to use our Service, you are agreeing to the terms and conditions that we have set out in this Agreement, as amended, by each amendment we may make to this Agreement from time to time. Each time you use our Service, or you permit any other person to use our Service, you are also acknowledging receipt and understanding of this disclosure.

When the use of any Service generates items to be charged to your Account, you agree that we may debit your Authorized Account or the Account on which the item is drawn without requiring any signature on the item without prior notice to you even if your Account otherwise requires two signatures to authorize transactions. Any transactions resulting from your instructions that we receive under your Codes shall be deemed to have been “in writing” and authenticated by you “in writing.” All records maintained by us of transactions under your Code shall be deemed to have been “signed” and to constitute an “original” when printed from records established and maintained by us or our authorized agent in the normal course of business. You agree not to contest the authorization for, or validity or enforceability of, the records and “signed” documents, or the admissibility of copies or digital images 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 our written request, you agree to manually sign or place your signature on any paper original of any record or “signed” document which we provide to you containing your purported signature.

A business Account cannot be “linked” to a personal Account under the Services with the exception of a sole proprietor relationship. Accounts that are “linked” under the Service will have one common owner, tax identification number and signer.

All Services involving your Accounts with us are subject to our terms and conditions of deposit Accounts, other agreements concerning your Accounts and Services we provide, and availability schedules in effect from time to time. Certain Services require additional agreements and authorizations. Access to these Services will not be granted until completed agreements and authorizations are obtained.

## **8. THIRD PARTY PROVIDERS**

Bank may act on any communication and provide any Service using any payment system or intermediary organization it reasonably selects, including Third Party Providers. Bank’s performance of Services is subject to the rules and regulations of any such system or organization. We do not warrant and are not responsible for Services provided by Third Party Providers. Bank shall have no obligation to disclose arrangements with Third Party Providers to Company or obtain Company’s consent thereto. Company authorizes the transfer of information relating to Company to Third Party Providers and agents of Bank or Company for use in connection with Services or as required by Applicable Laws.

## **9. SECURITY PROCEDURES**

Certain procedures, including but not limited to use of Codes, cookies, encryption, passwords, login identifications, personal or location identification numbers, repetitive codes, physical tokens, soft tokens and other security devices, systems and software, and internal dual control procedures designed to verify the origination of instructions, orders and other communications sent by Company may be used in connection with Services. Company agrees that any Security Procedures that you and we mutually agree to use shall be deemed commercially reasonable. We shall not be obligated to act on a communication not transmitted in accordance with the Security Procedures and may refuse to act on any communication if we reasonably doubt its authorization, contents, origination or compliance with the Security Procedures. We shall have no duty to discover, and shall not be liable for errors or omissions by Company. If we comply with the Security Procedures for communication, we shall be entitled to act on that communication and shall not be obligated to verify the content of such communication, establish the identity of the person giving it, or await any confirmation thereof. Nor shall we be liable for acting on, any communication sent in the name of Company, including any communication entered in connection with the use of Company’s physical token soft token or other Code, whether or not authorized. If Company selects certain Security Procedures to use in connection with the Service and those Security Procedures provide less protection against unauthorized transactions or activity than other Security Procedures we offer in connection with

such Service, you are waiving any claim against us for failure to use the Security Procedures we offer that provide greater protection. We reserve the right to issue new Security Procedures and/or to cancel or change any Security Procedures from time to time. Whenever the Security Procedures include the assigning to Company of any confidential Codes, Company shall not disclose such Codes except to employees or agents authorized by the Company to act for the Company in connection with the Services. Company shall implement such safeguards as are reasonably necessary to ensure the confidentiality and integrity of such Codes. Company shall be solely responsible for the safekeeping of such Codes and assumes all risk of accidental disclosure or inadvertent use of such Codes by any Person whatsoever, whether such disclosure or use is on account of Company negligence or deliberate acts or otherwise.

In addition, we may from time to time employ various analytical tools and procedures that are designed to assist us in identifying suspicious behavior and potentially unauthorized instructions and communications. Our use of those tools and procedures constitute part of the Security Procedures, even if the specific tools and procedures we use have not been disclosed to you. If, based on those tools and procedures or for any other reason, we suspect an instruction or communication may be unauthorized, we may seek additional confirmation of the authenticity of that instruction or communication even if that instruction or communication otherwise satisfies the applicable Security Procedures for a specific Service.

Company is responsible for the security of its own networks, hardware and software used in conjunction with Services. Company agrees to adhere to reasonable security standards including, but not limited to, use of firewalls, conducting periodic testing of security measures, use of secure networking protocols when using unsecured network connections, ensuring hardware and software security updates are applied in a timely manner, and use of current anti-virus software and virus signatures to protect all computing systems. Company should perform periodic intrusion testing of its internal firewalls and network servers to verify that assets and Internet connections are protected against unauthorized access. Company is responsible for maintaining backups of data files, report files and programs used in conjunction with Services. Appropriate backup procedures should be in place to safeguard such media from intentional or unintentional changes or damage. Company is responsible for ensuring that its contingency plans are adequate to handle processing disruptions. In connection with the above-mentioned responsibilities, Company represents and warrants that its certifications contained in the Security Certification made on the enrollment form or otherwise are true and correct, and if at any time such certifications change or become untrue, false or misleading, Company will immediately notify Bank.

Company will maintain physical, technical, procedural and administrative controls and safeguards reasonably designed (taking into account the nature and circumstances of such party's business) to ensure the security, integrity and confidentiality of confidential information, and to protect against any anticipated threats or hazards to the security or integrity of, or unauthorized access to, the confidential information.

We are not responsible for unauthorized access of Company systems or for maintaining backups and contingency plans of Company data files, report files and programs used in conjunction with Services. Company acknowledges that the purpose of these Security Procedures is for verification of authenticity and not to detect an error in Account data maintained at Bank, being sent from Company to Bank, or being sent to Company from Bank. No Security Procedures for the detection of any such error have been agreed upon between Bank and Company.

If Company believes or suspects that any information or instructions or any of Company's tokens or other Codes have been known or accessed by unauthorized persons, Company agrees to notify Bank immediately as directed in Section 13, followed by written confirmation if requested by Bank.

If Bank issues Company one or more physical security tokens or other security authentication technology in connection with the use of any of the Services, Company hereby acknowledges receipt of such security tokens or security authentication technology for each of its authorized users of such Services before single sign on procedures are implemented. Such security tokens or other security authentication technology are the property of Bank and security tokens (or other security authentication technology, if applicable) must be returned to Bank at the address specified by Bank from time to time in its user guide or other document upon termination of the Services to which such security tokens pertain or upon change of use, including change of authorized users. By accepting such security tokens or other security authentication technology, Company acknowledges and agrees to the following security procedures, which are in addition to the Security Procedures in effect between Company and Bank from time to time:

- Company agrees to immediately notify Bank in the event that an authorized user of a token or other security authentication technology is no longer authorized for any reason;
- Company will pay Bank the then-current replacement charges for any token that is replaced for any reason prior to its expiration date, including, without limitation, if the security token is lost, stolen, or damaged;
- Company shall notify Bank ninety (90) days prior to the date on which a security token or other security authentication technology expires to ensure that a new security token or other security authentication technology may be issued and Company acknowledges that failure to provide such advance notice may result in disruption of Services; and
- Company agrees not to attempt to suspend security token or other security authentication technology authentication for its authorized users of the applicable Services and agrees to assume responsibility for all losses and other liabilities resulting from such unauthorized suspension.

## 10. RECORDING AND USE OF COMMUNICATION

Company and Bank, on behalf of their officers, employees and agents, agree that all telephone conversations or data transmissions between them or their officers, employees or agents made in connection with this Agreement may be electronically recorded and retained by Bank for its reasonable use.

## **11. COOPERATION IN LOSS RECOVERY EFFORTS**

In the event of any damages for which Bank or Company may be liable to each other or to a third party pursuant to the Services provided under this Agreement, Bank and Company will undertake reasonable efforts to cooperate with each other, as permitted by Applicable Law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party. Company represents and warrants that any third parties used in conjunction with Services has agreed to undertake reasonable efforts to cooperate, as permitted by Applicable Law, in performing loss recovery efforts in connection with any actions that Bank may be obligated to defend or elects to pursue against another third party.

## **12. INTERCOMPANY SERVICES/AUTHORITY TO TRANSFER OR COMMINGLE FUNDS**

In the event that you request us to provide Services to a parent company, subsidiary, affiliate, or other commonly owned controlled or affiliated company, we may, in our sole discretion in special circumstances and under additional written agreements, allow you to request Services on their behalf. If so, you agree that you will be jointly and severally liable for that company's actions in the same manner as you would be responsible for your Company. You represent and warrant to us that any and all transfers and commingling of funds required or permitted by any Service requested by you, and all other aspects of the performance hereby agreed to by us and you, have been duly authorized by all necessary parties, including, without limitation, the Account holder of each Account, and that you have obtained and will maintain in your regular business records and make available to us upon reasonable demand, for a period of 7 years after termination of Service, adequate documentary evidence of proper authorization from the Account holder of each Account.

Any non-linked Account will not be accessible through the Service unless appropriate agency agreements and authorizations are provided. An Account that requires two or more signatures to make withdrawals, transfers or transactions may not be designated as an Authorized Account. You agree to sign additional authorizations if requested by Bank.

## **13. NOTIFICATION**

The best method of notifying the Bank immediately of errors or omissions is through direct contact by telephone at (877) 936-2418 or in person at the nearest Bank facility.

Alternative methods of contact are:

In writing at: NBH Bank  
Attn: Treasury Management Client Services  
1111 Main St. Suite 2600  
Kansas City, MO 64105

By email at: [treasurymanagementclientservices@nbhbank.com](mailto:treasurymanagementclientservices@nbhbank.com)

## **14. ELECTRONIC MAIL**

Subject to Section 13, you can use Email to contact us about inquiries, maintenance and/or problem resolution issues. Email is not a secure method of communication and we recommend you do not send confidential information by Email. You should never use unsecured Internet Email to initiate a transaction against your Account. If you send Bank an Email message, Bank will be deemed to have received it on the following Business Day. Bank will have reasonable time to act on your Email. We will use reasonable efforts to contact you on the next Business Day. To send secure transmissions to the Bank, it is recommended you use the contact bank link from the Bank's website or the contact bank link from within your Online Banking account as a secure messaging alternative to Email.

You agree that Bank may respond to you by Email with regard to any matter related to the Service, including responding to any claim of unauthorized electronic funds transfer that you make. Any such Email sent to you by Bank shall be considered received within three (3) days of the date sent by Bank, regardless of whether or not you sign on to the Service within that time frame.

## **15. HOURS OF OPERATION FOR WEB BASED SERVICES**

We strive to make the Web Based Services available 24 hours a day, 7 days a week, except during special maintenance periods. For purposes of transactions, Bank's Business Day restrictions are in effect. All Web Based transaction requests received after the processing cut off times for each Service, and all transactions which are requested on Saturdays, Sundays or holidays on which Bank chooses to remain closed, will be processed on the next Business Day.

## **16. MODIFICATIONS TO THIS AGREEMENT**

Bank may modify the terms and conditions of the Agreement (including, but not limited to, those applicable to any Service) from time to time upon mailing, emailing or delivering via the Service a notice of the modifications to you. By continuing to use the Service, you will be deemed to have accepted all such modifications. Bank will rely upon the contact information shown on our Account records for the notification and the modified terms and conditions shall be effective at the earliest date allowed by Applicable Laws. For email or other

electronic delivery, you will have been deemed to have received the notification within three (3) days after it is sent, regardless of whether you check email or sign on to the Service during that time period.

## **17. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION**

The Service and any documentation provided shall be deemed the confidential information of Bank for purposes of this Agreement.

HOWEVER; we will, and you hereby approve, the disclosure of information to third parties about your Account or the transfers or transactions you make:

- A. where it is necessary for completing the transfer or transactions;
- B. in order to verify the existence and condition of your Account for a third party, such as a credit bureau or merchant;
- C. in order to comply with government or court orders, or other reporting requirements;
- D. if you give us your written permission in a separate writing or through signing other Bank documents which give such permission; and/or,
- E. as required or allowed by Applicable Laws.

## **18. ADMINISTRATION OF SERVICES AND AUTHORIZED USERS**

An Authorized Signer must designate in writing an Administrator of your use of the Services and/or for each Service that requires an Administrator in the request for (or enrollment in) Services. The Administrator is authorized to act on your behalf in all actions and transactions contemplated in the Agreement. The Administrator is responsible for authorizing and maintaining other users of our Services. An Authorized Signer may revoke the authority of or change the Administrator at any time by providing us with written notice signed by an Authorized Signer. No change or revocation will be binding upon us until we have received the required written notice in a form acceptable to us and have had a reasonable opportunity to act.

The Administrator is our main contact with respect to the Services and is responsible for managing all aspects of your use of the Services, including but not limited to managing security, verifying the initial Services set-up, setting up users and assigning user accounts and access privileges, training users, and updating us with changes in contact and other relevant information. You understand that the Administrator has the capability of providing administrative privileges identical to that of the Administrator to any user, including the ability to create and maintain subsequent users and assigning and revoking access privileges. Bank is not responsible for approving the access granted herein to any user. If at any time you wish to make Company-specific changes to the Services and/or to add Authorized Accounts accessed by the Services, your request must be in writing by an Authorized Signer on the Account.

## **19. FILE PROCESSING SERVICES**

The Bank, from time-to-time, may engage in transaction processing and or data transmission Services for you in addition to or in place of those referred to in the Agreement (including, but not limited to, those referred to in any Addenda attached hereto). The Bank shall not be liable for errors in transmission or for errors in the data contained within a transmission. This Service is subject to the Bank's receipt of timely, accurate and complete data in a form and on media specified by, or acceptable to, the Bank. All records will be legible, correct, and complete and will contain information satisfactory to the Bank. Bank and Company will adhere to commercially reasonable security procedures in the processing or transmission of data. All data will be transmitted via an agreed upon communications channel and at a time and frequency agreed upon between Bank and you. Transactions and data will conform to all Applicable Laws and internal Bank procedures as agreed to by Bank and Company from time to time.

## **20. TERM AND TERMINATION**

You are responsible for complying with all the terms of this Agreement and with the terms of the agreement governing the Accounts which you access using the Service. We can terminate (or suspend your use of) Services under this Agreement without notice to you if you do not pay any fee when due or if you do not comply with the agreement governing your Accounts or your Accounts are not maintained in good standing. In addition, the Bank can terminate this Agreement (or suspend your use of Services) at any time at the Bank's sole discretion. We will promptly notify you if we terminate (or suspend) this Agreement or your use of the Services.

To cancel a Service, an Authorized Signer must notify Bank in writing and provide your name, address, and the effective date to stop the Service. When Service is terminated, any prescheduled payments made through the Service will also be terminated. Your final charges will be assessed at the end of your statement cycle.

## **21. FEE SCHEDULE**

You may be charged monthly fees or usage fees depending on the Services accessed. Fees may change from time to time. Please contact the Bank for current fees. You authorize us to automatically deduct all applicable charges and fees from your Account(s). You may also be charged additional fees that may be assessed by your Internet Service Provider, telephone company, or other Third Party Provider.

## **22. ZERO BALANCE ACCOUNTS, SWEEPS AND INVESTMENT SWEEP ACCOUNTS**

Our Zero Balance Account Services allow you to transfer funds at the end of each Business Day to or from your Zero Balance Account to or from your Concentration Account. At the end of each Business Day, we process debit and credit transactions to the Zero Balance Account and transfer funds to or from the Concentration Account to maintain your Zero Balance Account with a zero balance for that day. You must designate the Zero Balance Account and the Concentration Account in the request for (or enrollment in) Services. Initiating a same-day transaction on a Zero Balance Account may result in delay or rejection. Initiating an ACH transaction or other transaction against your

Zero Balance Account when there are insufficient funds in your Zero Balance Account or Concentration Account may result in delays in processing the transaction.

Our Sweep Account Services allow you to transfer funds at the end of each day to or from an Authorized Account based on a target balance. At the end of each Business Day, we process debit and credit transactions to the Authorized Accounts to satisfy the target balance for that day. You must designate the Authorized Accounts in the request for (or enrollment in) Services. Initiating a same-day transaction on a Sweep Account may result in delay or rejection. Initiating an ACH transaction or other transaction against your Sweep Account when there are insufficient funds in the Sweep Account may result in delays in processing the transaction.

Our Investment Sweep Account Services are governed by separate terms and conditions for the type of sweep investment option you select (such as a Money Market Sweep or a Repurchase Agreement Sweep) and that are signed by you at the opening of the Investment Sweep Account.

### **23. AUTOMATIC DRAWS ON LOAN LINES OF CREDIT**

You have established or may establish a line of credit with us, which is evidenced by a Promissory Note and various other documents (together, the “Loan Documents”). You authorize us to make transfers to an Authorized Account and to make draws on the line of credit per the request for Services. You understand and agree that we are under no obligation to extend credit, provisional or otherwise, to you as a result of this arrangement, also known as a loan sweep arrangement. All credit from us to you is governed by the Loan Documents. Any past extension of credit to you or any series or pattern of such extensions, does not obligate us to make additional credit available to you on any particular occasion, except to the extent required by the Loan Documents. Nothing in this Agreement affects, limits, waives or impairs any of our rights and remedies under the Loan Documents.

### **24. AUTHORIZED SIGNERS**

The Person signing the Enrollment Form (or other Account Documents) on behalf of the Company represents and warrants that he or she has full authority to do so, is listed as an Authorized Signer in the authorizing resolution filed with the Bank, and that this Agreement binds the Company.

### **25. AUDIT**

You authorize us to audit your records as we deem appropriate to confirm that you are complying with Applicable Laws and Bank policy and procedure, for any Services that you request (or enroll in), and/or otherwise use. If you violate any Applicable Laws and a fine is imposed on us as a result of the violation, you are responsible for payment of the fine, as well as any penalties and/or other costs or expenses we incur in connection with the fine (including, but not limited to, reasonable attorney’s fees).

### **26. MISCELLANEOUS**

The headings in this Agreement are for convenience or reference only and will not govern the interpretation of the provisions. Any waiver, express or implied, by the Bank of any default or breach of this Agreement must be in writing and shall not constitute a waiver of any other or subsequent default or breach.

You may not assign this Agreement (by operation of law or otherwise) without first obtaining the Bank’s written consent. The Bank shall have the right to assign this Agreement in its discretion, including, but not limited to, to any successor of the Bank or purchaser of a substantial portion of its assets.

Certain of the obligations of the parties pursuant to this Agreement by their nature would continue beyond the termination, cancellation or expiration of this Agreement and shall survive termination, cancellation or expiration of this Agreement.

If any court or tribunal of competent jurisdiction determines that any provision of this Agreement is illegal, invalid, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

There are no other agreements concerning the Services other than as set forth and there are no oral agreements between the parties that have not been merged into this Agreement. This Agreement is binding upon your heirs, executors, personal representatives, successors and permitted assignees.

If the Bank is required to enforce any of its rights under this Agreement, you also agree to pay its reasonable attorney fees.

By signing the Enrollment Form or receiving similar Account Documents and by continuing to use the services, you agree that you have received a copy of this Agreement, have had a reasonable opportunity to read and understand its provisions, and on behalf of the Company agree to all of its terms and conditions.

THE COMPANY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL. THE COMPANY AND BANK EACH HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EITHER OF THEM MAY HAVE OR ACQUIRE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ARISING OUT OF OR IN CONNECTION WITH ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE COMPANY OR OF BANK.

# **Addendum A**

## **Online Banking Services**

### **Terms and Conditions**

This Addendum sets forth additional terms and conditions that apply to the use of our Online Banking Services.

#### **1. DEFINITIONS**

In addition to the various terms otherwise defined in the Agreement:

- A. *Bill Payment* means a payment by check or electronic funds transfer to a Payee using the Bank's Online Banking system.
- B. *Mobile Device* means any web-enabled portable phone, tablet, or electronic device used to access the Web Based Service.
- C. *Payee* means the person or business to whom a check or electronic funds transfer is made payable.
- D. *Payment Date* means the date on which the Bill Payment is scheduled to be processed by the Bank or its Third Party Provider.
- E. *Stop Payment* means a request by Company to decline payment of a check drawn on Company.
- F. *User ID* means the User ID used to authenticate the Company employee for the Service.
- G. *User Password* means the Password used to authenticate the Company employee for the Service.

#### **2. ACCESS**

Company shall designate an individual to act as Administrator to access Services.

During your enrollment for the Service, the Administrator will be assigned a User ID and User Password. Use of these Codes is an agreed upon Security Procedure to access the Service through the Internet. You agree to keep these Codes confidential to prevent unauthorized access to your Accounts and to prevent unauthorized use of the Service. For security purposes we recommend that you do not use the same Codes you use for other Bank products. In addition, the Bank may assign additional Codes for verification purposes from time to time.

This Service allows the Administrator to create additional User IDs and User Passwords for authorized users and allows them to access Authorized Accounts and create transactions within the limits established in the Agreement and, if applicable, based on stipulations set forth by the Administrator. We are entitled to act on instructions received under User IDs and User Passwords. If you grant access to your employees, you authorize us to complete transactions initiated by the employees.

#### **3. CHANGES IN SERVICE**

New Services may be introduced from time to time, each of which will be subject to the terms of this Agreement. Bank will notify you of the existence of these new Services. By using these Services when they become available, you agree to be bound by any terms, conditions, and/or rules which made available to you concerning these Services.

We may convert your account to inactive status if you do not sign on to the Service or have any transactions scheduled through the Service during any consecutive 90 day period. If your account is considered inactive, you must contact us to have the Service activated before you will be able to schedule any transaction through the Service.

#### **4. LIMITATIONS**

Because of restrictions on certain types of Accounts, such as Investment Sweep Accounts, certificates of deposit, and loan accounts, only balance and interest information may be available online. Accessibility of Eligible Accounts may vary based on the Service(s) you use.

#### **5. ACCURACY AND TIMELINESS OF INFORMATION**

We will use reasonable efforts to provide information requested through the Service in a prompt fashion, but shall not be liable for temporary failure to provide timely information. If the Service is unavailable, you shall be responsible for carrying out banking business through alternative delivery channels. We shall not be liable for any inaccurate or incomplete information with respect to transactions which have not been completely processed or posted to our system prior to being made available pursuant to the Service. Information with respect to all transactions is provided solely for Company's convenience and we shall have no liability to you resulting from your use of such information.

#### **6. STOP PAYMENT REQUESTS**

Company agrees that Stop Payment orders or cancellations initiated using the Service will be handled as provided in terms and conditions of any deposit Accounts which Company has chosen to be accessible through the Service. Before placing Stop Payment requests, Company is responsible for verifying nonpayment of the item during all prior check information retention periods. Bank will verify nonpayment during the current check information retention periods. Company is responsible for verifying that Stop Payment orders and cancellations are entered correctly.

#### **7. BILL PAYMENT SERVICES**

Bill payment permits you to use the Service to direct payments from your Account(s) to third parties. Any Account used for bill payments must be a checking Account. You may designate multiple Accounts. You can pay bills from your Account(s) to businesses or individuals.

While the Bank coordinates bill payments with a Third Party Provider, the Third Party Provider performs all functions in connection with bill payment. By using bill payment, you acknowledge and agree that the Third Party Provider is solely responsible and liable for administration of the bill payments and you will follow all directives of the Third Party Provider.

All payments you make will be deducted from the Account that you designated for that payment. Any payments must be payable in U.S. dollars to a Payee located in the United States. We reserve the right to restrict types of Payees from time to time. You should not use bill payment to make payments to settle securities purchases, payments to interest bearing accounts, tax payments, or court ordered payments. If you use bill payment for payments to these Payees, any late charges, interest or other damages will be your sole responsibility if your payment is delayed or improperly processed or credited, regardless of whether such issue is your fault.

Funds must be available in your Account on the scheduled Payment Date. If the date you schedule a payment to be initiated falls on a non-Business Day, funds must be available in your Account the following Business Day. After funds are withdrawn from your Account to make a payment, we may make the payment either by transferring funds electronically to the Payee or by mailing the Payee a check.

You may choose to schedule payments to occur at regular intervals (a “recurring payment”). If a recurring payment is chosen, the bill will be paid automatically each billing period. If the payment is not a recurring payment, it will be a “one-time payment”. One-time payments are not made until you enter the amount of the current bill. To ensure on-time payments, you should allow the time frames as listed within the system. If you do not, you will be fully responsible for all late fees, finance charges or other action taken by the Payee.

We are only responsible for exercising ordinary care in processing and sending payments upon your authorization in accordance with this Agreement. We will not be liable in any way for damages you incur for delays in mail delivery, for changes to the Payee’s address or account number, for the failure of any Payee to correctly account for or credit the payment in a timely manner, or for any other circumstances beyond the reasonable control of the Bank.

If you ask us to cancel a payment made by check after the check is issued and we agree to do so, we may charge you a fee. Stop Payment orders must comply with Section 6 of this Addendum. Upon termination of your use of the Service, you will be responsible for making arrangements to pay any future payments. We reserve the right to refuse to pay a Payee for reasons we deem sufficient.

## **8. MOBILE SERVICES**

You can gain access via your Mobile Device using your Codes. Access to and use of any Service by this method is governed by all terms and conditions of the Agreement. Bank will not provide any software, hardware, or recommendation for a Third Party Provider for the mobile service and is not be liable to you for any losses caused by your failure to properly use your Mobile Device. Services available on your Mobile Device are limited and may change from time to time. You are responsible for communications, software, or hardware devices provided by your Third Party Provider for mobile services. You and your Third Party Provider are responsible for adhering to all laws governing sale and use of Mobile Devices. We will not be liable for damage or misuse of communications, software, or hardware provided by your Third Party Provider. The contract between you and your Third Party Provider is your sole responsibility. Bank is not responsible for fees charged by your Third Party Provider for accessing any Services via your Mobile Device (message and data rates may apply). You may also download an application for Mobile Device. If you use any location-based features of your Mobile Device when accessing and using any Service by this method you agree that we may collect and use geographic location and other personal information collected by those location-based features. If you do not want us to collect and use such information you must cease using location-based features of your Mobile Device when accessing and using any Service by this method.

## **9. INFORMATION REPORTING**

All information provided to you prior to completion of our end-of-day processing is not final and is subject to change. Authorized Account balances and other information will be provided to you for the current day and past days. Information is downloadable in various formats. Available formats are subject to change from time to time. Images of items deposited to your Authorized Accounts and checks drawn on your Authorized Accounts will be made available for a period of time. Historical information for activity conducted via the Service will be made available to you for a period determined by Bank.

## **10. ADDITIONAL SERVICES**

ACH Origination, Positive Pay/Account Reconciliation and Wire Transfer Services – and other Services as added from time to time – can be facilitated via this Service. Additional terms and conditions applicable to the use of these Services may be provided for elsewhere in the Agreement and its accompanying Addenda.

## **Addendum B**

### **ACH Origination Services**

### **Terms and Conditions**

This Addendum sets forth additional terms and conditions that apply to the use of our ACH Origination Services.

Unless otherwise defined herein, capitalized terms shall have the meanings provided in the National Automated Clearing House Association (NACHA) Rules (the “Rules”). The terms “Entries” or “Entry” shall have the meaning provided in the Rules and shall also mean the data received from Company hereunder from which Bank prepares Entries.

Company wishes to initiate Credit and/or Debit Entries pursuant to the terms of this Agreement and the Rules as they may be amended from time to time, and Bank is willing to act as an Originating Depository Financial Institution (“ODFI”) with respect to such Entries. It shall be the responsibility of the Company to obtain a copy of the Rules and all current and future updates, which can be obtained by contacting NACHA or any NACHA approved regional payments association.

#### **1. DEFINITIONS**

In addition to the various terms otherwise defined in the Agreement:

- A. *ACH Operator* means the central clearing facility operated by a private organization or a Federal Reserve Bank on behalf of the Bank, to or from which the Bank transmits ACH Entries.
- B. *ACH Credit* means debiting an account in order to send funds to credit another account.
- C. *ACH Debit* means bringing funds into an account by debiting another account.
- D. *Effective Entry Date* means the date an Originator enters on an ACH file to indicate the date they intend the transactions to post.
- E. *Notification of Change* means an ACH Entry used to notify an Originator of the need to change or correct account information.
- F. *Originating Depository Financial Institution or ODFI* means the financial institution that processes ACH files, on behalf of the Originator, into the ACH network – in this case the Bank.
- G. *Originator* means Company or individual that initiates an ACH transaction according to NACHA Rules.
- H. *Receiver* means natural person or organization that has authorized the Originator to initiate an ACH Entry to the Receiver’s account with the RDFI.
- I. *Receiving Depository Financial Institution or RDFI* means the financial institution that receives ACH Entries from the ACH Operator and posts the entries to the account of the Receiver.
- J. *Settlement Account* means the Account held at Bank for the settlement of Entries.
- K. *Third Party Sender* means a service provider that is not an Originator, but rather is the intermediary between the Originator and the ODFI. In this type of relationship, there is generally no contractual agreement between the ODFI and the Originator. The Third Party Sender is the Bank’s client.

#### **2. TRANSMITTAL OF ENTRIES BY COMPANY AND ALLOWABLE ENTRIES**

The Company shall transmit Entries to Bank in compliance with the formatting and other requirements set forth in the Rules and by the Bank. Bank’s formatting and other requirements may be updated from time to time to incorporate changes to procedures and Rules. The types of Entries Company may transmit are limited to those set forth in the Enrollment Form (or on other Account Documents with the Bank).

ACH files can be transmitted to Bank using the Online Banking system. Alternatively, ACH files can be transmitted to the Bank’s FTP Site or other agreed upon delivery method. A separate agreement may be required for alternate delivery channels. Control totals and other requested file information must be used to confirm each file. The control totals and other requested information should be provided via the agreed upon delivery method as defined in Bank procedures. The Company shall be responsible for providing accurate and timely control totals, and failing to do so may result in a delay of processing by the Bank. It shall be the responsibility of the Company that the origination of ACH transactions complies with the laws of the United States. This includes, but is not limited to, sanctions enforced by the Office of Foreign Assets Control (OFAC). It shall further be the responsibility of the Company to obtain information regarding such OFAC enforced sanctions. This information may be obtained directly from the OFAC Compliance Hotline at (800-504-OFAC). The Company will obtain written authorizations for consumer entries in accordance with the Rules and Applicable Laws and shall retain the original or microfilm for at least two (2) years after termination or revocation of such authorization.

#### **3. RISK LIMITS AND FREQUENCY OF FILES**

Company agrees that its ability to originate Entries under this Agreement is subject to risk limits and limitations on frequency of Entry submissions in accordance with the Rules and Bank procedures. The total dollar amount of Entries transmitted and the frequency of Entries shall be as agreed upon between Company and Bank from time to time.

#### **4. PROCESSING, TRANSMITTAL, AND SETTLEMENT BY BANK**

Except as provided in Sections 5 and 6 of this Addendum, Bank shall:

- A. Process Entries received from Company to conform with the file specifications set forth in the Rules and this Agreement;
- B. Transmit such Entries as an ODFI to the Federal Reserve (the “ACH Operator”); and
- C. Settle for such Entries as provided for in the Rules.

Bank shall transmit such Entries to the ACH Operator by the Bank’s deadline set forth below, provided such Entries are submitted on a Business Day, the Effective Entry Date is at least one day after such Business Day, and the ACH Operator is open for business on such Business Day. Company shall transmit Entries to Bank according to the Bank’s stated deadline as evidenced in Bank procedures and updated from time-to-time. If any of the requirements of this Section are not met, Bank shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline on which the ACH Operator is open for business.

## **5. TRANSMITTAL OF SAME DAY ENTRIES**

Subject to Bank’s approval, Company may elect to have Company’s ACH Entries originated on a “same- day” basis, for settlement on the same day as the Effective Entry Date (each a “Same Day Entry” and collectively “Same Day Entries”). Bank may, in its sole discretion, establish exposure limits limiting the number of Entries or dollar thresholds of Same Day Entries that Company may have outstanding at any time. Further, Bank may terminate Company’s right to originate Same Day Entries at any time.

A Same Day Entry: (i) the Entry must be received on a Business Day by the Bank’s designated cut-off time for Same Day Entries; (ii) the Entry may not exceed the per transaction limits established by NACHA from time to time as set forth in the Rules; (iii) the Entry must contain an Effective Entry Date as the same Business Day of receipt or you have selected the option for same day processing; and (iv) the ACH Operator must be open for business on the Business Day the Bank receives the Same Day Entry. Company is responsible for all fees associated with same-day processing.

Bank does not represent, warrant or otherwise guarantee that a receiving depository financial institution is able to receive or initiate Same Day Entries, or will post Same Day Entries by applicable deadlines, or will otherwise make funds available in a timely manner, and the Bank shall not be responsible for any loss resulting therefrom. Company acknowledges that in the case of a Same Day Entry any request by Company to cancel the Entry must be made immediately in order for Bank to have an opportunity to effect cancellation. Despite Bank’s commercially reasonable efforts to act on such a request, cancellation of a Same Day Entry may nevertheless be impossible and Company understands and accepts the risk of this occurrence. The Company is responsible for all fees associated with same-day processing and agrees to pay any and all fees and charges in connection with any Same Day Entry.

## **6. ON-US ENTRIES**

Except as provided in Section 6 of this Addendum, in the case of an Entry received for debit or credit to an Account maintained with Bank (an “On-Us Entry”), Bank shall debit or credit the Receiver’s account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in Section 4 of this Addendum are met. If any of those requirements are not met, Bank shall use reasonable efforts to debit or credit the Receiver’s account on the next Business Day following such Effective Entry Date.

## **7. REJECTION OF ENTRIES**

Bank may reject any Entry which does not comply with the requirements of this Agreement, or which contains an Effective Entry Date more than fourteen (14) days after the Business Day such Entry is received by Bank. Bank shall have the right to reject an On-Us Entry for any reason for which an Entry may be returned under the Rules. Bank shall have the right to reject any Entry if Company has failed to comply with its Account balance obligations set forth in the Agreement. Bank shall notify Company by telephone or electronic transmission of such rejection no later than the Business Day such Entry would otherwise have been transmitted by Bank to the ACH Operator or, in the case of an On-Us Entry, its Effective Entry Date. Bank shall have no liability to Company by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein. The Bank shall retain the right to reject any On-Us Entries for any valid reason such as, but not limited to, insufficient funds or revoked authorization whether or not arising out of the Bank’s exercise of setoff rights.

## **8. CANCELLATION OR AMENDMENT BY COMPANY**

Company shall have no right to the cancellation or amendment of any Entry after its receipt by Bank. However, Bank shall use reasonable efforts to act on a request by Company for cancellation or amendment of an Entry prior to transmitting it to the ACH Operator or, in the case of an On-Us Entry, prior to debiting or crediting a Receiver’s account. The Bank shall have no liability if it fails to effect the cancellation or amendment.

## **9. NOTICE OF RETURNED ENTRIES**

The Bank shall notify Company by delivery of documentation of the receipt of a returned Entry from the ACH Operator by mailing or electronically delivering the items no later than one (1) Business Day after the Business Day of such receipt. The Bank shall have no obligation to retransmit a returned Entry if the Bank complied with the terms of this Agreement with respect to the original Entry. If a customer of the Company returns any transaction, then it is the Company’s responsibility to collect any funds that are owed. The Bank has no obligation to originate a transaction where authorization has been revoked.

## **10. NOTIFICATION OF CHANGES**

Bank shall make a reasonable effort to notify Company of all Notifications of Change (“NOC”) received by Bank related to Entries transmitted by Company by mail or electronic delivery no later than two (2) Business Days after receipt thereof. Company shall ensure that changes requested in the NOC are made by, or on behalf of, the Originator within six (6) banking days of the receipt of the NOC information from Bank or prior to initiating another Entry to the Receiver’s account, whichever is later.

## **11. PAYMENT**

Company shall pay Bank the amount of each credit Entry transmitted by Bank pursuant to this Agreement at such time on the date of transmittal by Bank of such credit Entry as Bank, in its discretion, may determine, and the amount of each On-Us Entry at such time on the Effective Entry Date of such credit Entry as Bank, in its discretion, may determine. Bank may, in its discretion, require Company to prefund all credit Entries and/or maintain a collected reserve balance in one or more Accounts.

Company shall promptly pay Bank the amount of each debit Entry returned by an RDFI that was transmitted by Bank pursuant to this Agreement.

Bank shall pay Company the amount of each debit Entry transmitted by Bank pursuant to this Agreement at such time on the Settlement Date with respect to such debit Entry as Bank, in its discretion, may determine, and the amount of each On-Us Entry at such time on the Effective Entry Date with respect to such Entry as Bank, in its discretion, may determine.

Bank shall promptly pay Company the amount of each credit Entry returned by an RDFI that was transmitted by Bank pursuant to this Agreement.

## **12. SECURITY PROCEDURES**

The Bank will notify you of the Security Procedures applicable to the ACH Origination Service and may update such Security Procedures from time to time. Your continued use of the ACH Origination Service after being notified of any changes to the Security Procedures shall be deemed assent that such Security Procedures are commercially reasonable. You agree to use the Security Procedures when you deliver Entries to us. You represent and warrant each time you use the ACH Origination Service that, in view of your requirements, the Security Procedures are a satisfactory method for verifying the authenticity of Entries. You agree we may act on any Entries the authenticity of which we have verified through the use of Security Procedures and you agree to be bound by such Entries whether or not they were in fact authorized. The purpose of the Security Procedures is to verify the authenticity of Entries delivered to us in your name and not to detect errors in the transmission or content of Entries.

## **13. COMPANY REPRESENTATIONS AND AGREEMENTS; INDEMNITY**

Company agrees that (a) each person shown as the Receiver on an Entry received by Bank from Company has authorized the initiation of such Entry and the crediting of its account in the amount and on the Effective Entry Date shown on such Entry, (b) such authorization is operative at the time of transmittal or crediting by Bank as provided herein, (c) Entries transmitted to Bank by Company are limited to those types of Entries set forth in Section 2 of this Addendum, (d) Company shall perform its obligations under this Agreement in accordance with all Applicable Laws and the Rules, (e) Company shall be bound by and comply with the Rules in effect from time to time, including without limitation the provision thereof making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry; and specifically acknowledges that if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Company shall not be deemed to have been paid by the Receiver, and (f) the Company will comply with the Applicable Laws including, but not limited to, the Uniform Commercial Code Article 4A (U.C.C. 4A) if applicable, and the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”). Company shall indemnify Bank against any loss, liability or expense (including reasonable attorneys’ fees and costs) resulting from or arising out of any breach of any of the foregoing warranties, representations, or agreements.

Company also represents and warrants that, as it pertains to WEB initiation Entries, the proper authentication methods, fraud detection systems, and technology for secure transmission is in place and that data transmission adheres to reasonable encryption standards. Company also represents and warrants that an annual audit of physical and network security, along with personnel and access controls, is conducted.

The Rules contain special requirements and impose additional obligations on Bank when we act as the ODFI with respect to certain Entry types. As a result, Bank must obtain additional agreements and representations from Company with respect to those Entry types. If Company transmits any of the Entry types for which special requirements are imposed on Bank as the ODFI and/or with respect to which Bank makes special representations under the Rules, Company automatically makes the additional agreements and representations to Bank that are set forth for that Entry type in the Rules.

## **14. INCONSISTENCY OF NAME AND ACCOUNT NUMBER**

Company acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted to the RDFI might be made by the RDFI (or by Bank in the case of an On-Us Entry) on the basis of the account number even if it identifies a person different from the named Receiver, and that Company’s obligation to pay the amount of the Entry to the Bank is not excused in such circumstances.

## **15. DATA RETENTION**

Company shall retain data on files adequate to permit remaking of Entries for five (5) Business Days following the date of their transmittal by Bank as provided herein, and shall provide such data to Bank upon its request. Without limiting the generality of the foregoing provision, Company specifically agrees to be bound by and comply with all applicable provisions of the Rules regarding the retention of documents, including, without limitation Company's responsibilities to retain all items, source documents and records of authorization in accordance with the Rules. The Company will retain the original or copy of the customer authorization record and source document as required by the Rules for a period of not less than two (2) years after termination or revocation of such authorization and will, upon request of Bank, furnish such original or copy to the Bank. Company agrees to use commercially reasonable methods to store the authorizations and source documents and to use commercially reasonable standards and guidance on the destruction of such information.

## **16. THIRD PARTIES**

The Company shall assume full responsibility for any action made by any third party processor used by the Company at its discretion to initiate Entries on its behalf.

## **17. REVERSING ENTRIES**

The Company may initiate a reversing Entry or file of Entries as permitted by the Rules. The Company shall notify the Receiver that a reversing Entry has been transmitted to the Receiver's account no later than the settlement date of the reversing Entry. This notification may be made by the Company's method of choice (fax, telephone, etc).

## **18. AUDIT; TERMINATION**

You authorize us to audit your records as we deem appropriate to confirm that you are complying with all Applicable Laws relating to ACH transactions on consumer accounts, including without limitation obtaining written authorization for debit transactions to consumer accounts. If you violate the NACHA Rules and a fine is imposed on us as a result of the violation, you are responsible for payment of the fine, as well as any penalties and/or other costs or expenses we incur in connection with the fine (including, but not limited to, reasonable attorney's fees).

The Company will conduct annual audits to ensure that the financial information it obtains from Receivers is protected by security practices and procedures that include, at a minimum, adequate levels of (a) physical security to protect against theft, tampering, or damage, (b) personnel and access controls to protect against unauthorized access and use, and (c) network security to ensure secure capture, storage, and distribution.

Without limiting the Bank's termination rights otherwise set forth in this Agreement, the Bank may terminate this Agreement immediately upon its determination that the Company has violated this Agreement, the Rules, or Applicable Laws. Any termination of this Agreement shall not affect any of Bank's rights or Company's obligations with respect to any Entries initiated by Company prior to such termination, or the payment obligations of Company with respect to services performed by Bank prior to termination, or any other obligations that survive termination of this Agreement. Company's obligation with respect to any Entry shall survive termination of this Agreement until any applicable statute of limitation has elapsed.

## **19. INTERNATIONAL ACH TRANSACTIONS (IAT)**

Company agrees that any IAT Entry initiated or transmitted by Company to Bank that is intended to settle in a country outside the United States will be in compliance with Applicable Laws, including, but not limited to, the laws and regulations of the receiving country. Company bears the risk of any loss caused by any delay, tax, cost, tariff, fee, or other charge incurred on account of the Entry in any country outside the United States. Company agrees and acknowledges that the Bank shall not be liable to Company for any gains or losses related to foreign exchange conversion and that Company exclusively assumes all risk related thereto. Company further agrees that Bank shall not be liable for any loss or delay caused by an erroneous IAT Entry.

## **20. PRENOTIFICATION ENTRIES**

If Company 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) banking days following the settlement date of the prenotification Entry. Prenotifications will be provided to Bank in the format provided in the Rules. If Company receives notice that a prenotification has been rejected or returned, Company will research the problem and make any necessary corrections before transmitting another Entry.

## **21. THIRD PARTY SENDERS**

Companies acting as Third Party Senders and submitting files on behalf of an Originator will be bound by the terms and conditions of this Agreement as if they were the Originator. The term Company used throughout this Addendum will be synonymous with the term Third Party Sender.

In addition, Third Party Sender represents and warrants that it will not transmit to Bank any Entries that violate Applicable Laws or the Rules. Third Party Sender represents and warrants that the Originator of the Entry has agreed to assume the responsibilities of an Originator under the Rules and has acknowledged that the Originator may not initiate Entries that violate the Applicable Laws.

For each and every Entry transmitted by Third Party Sender to Bank, the Third Party Sender represents and warrants to Bank and agrees that Third Party Sender shall: (a) perform all of the duties, including, but not limited to, the duty to identify Originators; (b) assume all of the

responsibilities, including, but not limited to, the responsibilities of ODFIs and Originators; (c) make all of the warranties including, but not limited to, the warranties of ODFIs and the warranty that Originators have agreed to assume the responsibilities of Originators under the Rules; (d) make all of the representations; and (e) assume all of the liabilities, including, but not limited to, liability for indemnification for failure of an Originator to perform its obligations as an Originator.

Third Party Sender shall obtain all consents and authorizations required under the Rules and shall retain such consents and authorizations for at least two (2) years after they expire. Third Party Sender shall provide Bank an initial list of Originators and shall adhere to the Rules and Bank procedures regarding notification to Bank of Originators as added from time-to-time. Originator information provided to Bank shall include legal company name of Originator, along with business purpose of Originator, projected dollar amount of files, file types, and other information deemed necessary. Procedures established by Third Party Sender for Originator approval and monitoring shall be supplied by Third Party Sender to Bank upon request. Bank reserves the right to discontinue ACH Origination Services to an Originator.

Third Party Sender agrees to notify Originator by phone or electronic mail of the receipt of a return Entry no later than one (1) Business Day after the Business Day of receiving notification from the ODFI.

Bank shall be entitled to rely solely on the information, representations, and warranties provided by Third Party Sender pursuant to this Agreement, and shall not be responsible for the accuracy or completeness thereof. Bank shall not be responsible for Third Party Sender's acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal, or authorization of any Entry received from Third Party Sender) or those of any other person, including, without limitation, any Federal Reserve Bank, ACH Operator or transmission or communications facility, any Receiver or RDFI (including, without limitation, the return of an Entry by such Receiver or RDFI), and no such person shall be deemed Bank's agent. Third Party Sender agrees to indemnify Bank against any loss, liability, or expense (including attorney's fees and costs) resulting from or arising out of any claim or any person that the Bank is responsible for any act or omission of Third Party Sender or any other person as described in this Section 20.

## Addendum C

### Remote Deposit Services

### Terms and Conditions

This Addendum sets forth additional terms and conditions that apply to the use of our Remote Deposit Services.

Through the use of Bank's processing systems (the "System"), Bank offers the Company the ability to process checks digitally and through Image Replacement Documents (IRDs). The Service generally facilitates the electronic clearing of checks and enables the Company to convert checks payable to it or its order that are drawn on or payable at or through Financial Institutions to Electronic Items and to transmit those items electronically for deposit into the Company's Account at Bank.

The Company hereby desires to use the Service, by means of a Web Based Service, and to transmit and process digitized images of checks electronically for deposit and collection purposes. The Company desires that Bank provide the Service as set forth in this Agreement.

#### 1. DEFINITIONS

In addition to the various terms otherwise defined in the Agreement:

- A. *Check 21 Act* means Public Law 108-100 (October 28, 2003), 12 U.S.C. 5001, et seq.; and the regulations thereunder, as from time to time in effect.
- B. *Electronic Item* means a digitized image of a check, an IRD, an Image Exchange Item (as defined in the Check 21 Act), or any other electronic version of a check or other electronic transactions approved by Bank for processing through the System.
- C. *Federal Reserve Bank* means any of the banks in the Federal Reserve System that carry out various functions including operating a nationwide payments system, supervising and regulating member banks and bank holding companies, and serving as a banker for the U.S. Treasury.
- D. *Financial Institution* means (a) any Person, located in the United States, engaged in the business of banking; (b) a Federal Reserve Bank; (c) a Federal Home Loan Bank; and (d) to the extent it acts as a Payor Financial Institution, the U.S. Treasury, the U.S. Postal Service, or a state or local government.
- E. *Image Replacement Document and IRD* mean a document created from the digitized image of a check with the following characteristics:
  - 1) consists of an image of the front and back of the check that accurately and legibly represents all of the information that was on the check (including the full MICR Line), with the exception of color, background designs, and texture, pen pressure, and other similar non-textual information that cannot be captured by a digitized representation;
  - 2) includes the endorsement information for any Person that handles the check or IRD;
  - 3) bears a legend stating that the check has been retained and identifying the IRD as an IRD;
  - 4) if the document is a returned IRD, bears a legend stating the reasons for return;
  - 5) is on paper, MICR-encoded to match the MICR Line of the check and suitable for automated processing in the same manner as the check; and,
  - 6) meets such other technical standards as required under the Check 21 Act.
- F. *Indemnifying Bank* means a bank that is providing an indemnity under the Check 21 Act with respect to a Substitute Check.
- G. *MICR Line* means the numbers, which may include the bank routing number, account number, check number, check amount, and other information, that are printed near the bottom of a check in magnetic ink in accordance with generally applicable industry standards.
- H. *Payor Financial Institution* means the Financial Institution ordered in a check to make payment to the payee(s) named on the check.
- I. *Substitute Check* means a paper reproduction of the original check that:
  - 1) contains an image of the front and back of the original check;
  - 2) bears a MICR Line containing all the information appearing on the MICR Line of the original check, except as provided under generally applicable industry standards for Substitute Checks to facilitate the processing of Substitute Checks;
  - 3) conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards, including Check 21 Act, for Substitute Checks; and,
  - 4) is suitable for automated processing in the same manner as the original check.

#### 2. EQUIPMENT

Bank will provide the name of the authorized supplier or sell directly the necessary hardware and other equipment to the Company in order to enable and facilitate the scanning of checks and/or the processing of Electronic Items. The Company must limit the use of any and all equipment to the processing of transactions with Bank. The Company may not use the equipment with any other Person or for any other purpose without the prior express written authorization of Bank. The Company shall make known to Bank the location of all scanners used in conjunction with the Service and will notify Bank of any changes or additions of scanner locations. Company agrees that Company will not place scanners outside of the United States.

### 3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants that, with respect to each check and corresponding Electronic Item processed in connection with the Service:

- A. The check is not a counterfeit item;
- B. The check and Electronic Item have not been altered;
- C. The Electronic Item is a digitized image of the check and accurately represents all of the information on the front and back of the check as of the time the check was converted to an Electronic Item;
- D. Neither the check, nor any Electronic Item or other digitized image of the check, will be presented for payment such that an endorser, depository bank, Payor Financial Institution, or the drawer will be asked to make a payment twice with respect to the check, including, without limitation, by placing such restrictive endorsement on checks, or voiding checks, as Bank may reasonably require;
- E. The check and Electronic Item are not subject to a defense or claim in recoupment of any party that can be asserted against the Company;
- F. The Company has no knowledge of any insolvency proceeding commenced with respect to the Company, or in case of an unaccepted check, the drawer;
- G. All checks will be made payable to the business name on the Account;
- H. Any returned Electronic Item is enforceable against the Company and the drawer of the check; and,
- I. The check is not considered a deposit until its transmission through the Service is received at Bank.

Without limiting the generality of the foregoing, Company makes all the representations and warranties to Bank with respect to each Electronic Item processed in connection with the Service that Company would have made if it deposited the original check to which such Electronic Item relates in one of its Accounts.

### 4. COMPANY ACCOUNTS

The Company agrees to reimburse Bank immediately for any shortfalls that occur due to non-sufficient funds in the Company Authorized Account. To the extent permitted by Applicable Laws, Bank reserves the right to delay the availability of funds for deposit without prior written notice to the Company if, in its sole discretion, Bank deems itself at financial or relative risk with respect to the Service.

The Company hereby acknowledges and agrees that Bank shall have a right of setoff against any and all deposit Accounts and other amounts owed the Company by Bank, for all penalties, charges, fees, returns, refunds and other amounts owed to Bank by the Company under this Agreement.

Bank has specific processing deadlines. Transactions received by the deadline will be processed that day. Transactions received after the deadline will be processed the next Business Day. Please contact Bank for more information about our current deadline(s).

### 5. ACCESS

Company shall designate an individual to act as Administrator to access Services. Bank will control access to the Service by the use of one or more User IDs and Passwords and other Codes as deemed necessary.

During your enrollment for the Service, the Administrator will be assigned a User ID, Password, and other Codes as deemed necessary. The Administrator will be required to change the Password upon initial login. Use of these Codes is an agreed upon Security Procedure to access the Service through the Internet. You agree to keep these Codes confidential to prevent unauthorized access to your Accounts and to prevent unauthorized use of the Service. For security purposes we recommend that you do not use the same Codes you use for other Bank products. The Administrator may change their Password at any time through the Service.

This Service allows the Administrator to create additional User IDs and Passwords for authorized users and allow them to access Accounts and create transactions within the limits established in the Agreement and, in some cases, based on stipulations set forth by the Administrator. The Administrator is responsible for creating and managing the User IDs and Passwords issued to employees of Company. Other users authorized by the Administrator may change only their own Passwords. If a user other than the Administrator gets locked out of the Service, only the Administrator, or user with like access, can reset the User's Password or unlock their access. The Bank will only change or unlock the Administrator's access and will only do this upon authorization from the Administrator and after verifying the identity of the Administrator through a process selected by Bank. When creating new user profiles for the Company, the Administrator may not exceed file and access limits imposed by the Bank for specific Services. We are entitled to act on instructions received under User IDs and Passwords. If you grant access to your employees you authorize us to complete transactions initiated by the employees. Changes in access for the Administrator must be submitted in writing by the Administrator. If the Administrator is not an Authorized Signer for the Company, changes must be submitted by an Authorized Signer for the Company on behalf of the Administrator.

### 6. BANK'S RESPONSIBILITIES

- A. Bank will provide installation and training support as reasonably required for the Company's implementation of the Service. Any onsite installation or training support outside the Bank's area shall be on such terms and conditions as the parties agree, including reimbursement for Bank's reasonable travel costs.

- B. Bank may reject any digitized image that Bank in its sole discretion determines to be ineligible for the Service (each, an “Exception Item”), including, without limitation, electronic images of paper items drawn on banks located outside of the United States, electronic images that are illegible, duplicate electronic images of items previously converted to Substitute Checks, and electronic images with unreadable MICR information. In the event electronic images are not complete, are not useable, or do not adhere to such data specifications, the images will not be processed by Bank or its agents, in which event the Company Authorized Account balance will be adjusted and notification will be provided.
- C. The Company’s digitized images will be processed after Bank has received the Company’s transmission of the digitized images. Bank will use commercially reasonable efforts to present items for collection. Unless Bank notifies the Company otherwise, Bank will make funds from accepted digitized images available according to Bank’s Funds Availability Policy and Substitute Check Policy Disclosure (“Collected Funds Schedule”). Bank’s Collected Funds Schedule will be provided to the Company upon request and may be amended by Bank from time to time.
- D. If a Payor Financial Institution returns an item to Bank unpaid, Bank will charge the Company Authorized Account for such returned item, and may either (1) return the item to the Company, or (2) re-present the item to the Payor Financial Institution before returning it to the Company. Items may be returned as Image Exchange Items (as defined in the Check 21 Act), rather than IRDs, as agreed to by the parties. If a Payor Financial Institution or other third party makes a claim against Bank or seeks a recredit with respect to any Electronic Item, Bank may provisionally freeze or hold aside a like amount in the Company Authorized Account pending investigation and resolution of the claim.

## **7. COMPANY RESPONSIBILITIES**

- A. The Company may use only Bank approved equipment in connection with the Service. Unless otherwise provided in a separate written agreement between the parties, the Company, and not Bank, shall be responsible for ordering, obtaining and maintaining all equipment. The Company will be responsible for maintaining any interface Web Based Service used in connection with the equipment.
- B. Digitized images shall be deemed received upon successful receipt of the transmission at the Bank of such images that are complete, usable, and adhere to the data specifications set forth by Bank, which may change from time to time.
- C. The Company will use the equipment and the Web Based Service, including the entering, processing and transmittal of items, in accordance with the data specifications as otherwise provided. With limiting the foregoing, the Company will comply with all Security Procedures described in this Agreement, and will not bypass, override or disable any security mechanisms in the equipment or Web Based Service.
- D. The Company will inspect and verify the quality of images daily, and ensure the equipment is clean and operating properly and that check images when scanned are legible for all posting and clearing purposes.
- E. The Company will be responsible for training its employees on the use of the Service.
- F. For security purposes, the Company will retain and securely store each check for a reasonable period of time, but in no event more than 60 days after such check has been digitized and processed. The Company will promptly provide any retained check to Bank as requested to aid in the clearing and collection process or to resolve claims by third parties with respect to any check. The Company will use a commercially reasonable method approved by Bank to destroy checks after the Company’s retention period has expired.

## **8. DEPOSIT/RISK LIMITS**

Individual check limits and the total dollar amount of deposits transmitted, along with number of items, shall be as agreed upon between Company and Bank from time to time.

## **Addendum D**

### **Positive Pay and Account Reconciliation Services**

### **Terms and Conditions**

This Addendum sets forth additional terms and conditions that apply to the use of our Positive Pay and Account Reconciliation Services.

#### **1. DEFINITIONS**

In addition to various terms otherwise defined in the Agreement:

- A. *Account Reconciliation Services* means the providing of paid Item information from the Bank's system to Company on an Authorized Account in an electronic format.
- B. *Check Issue File* means an electronic record provided to the Bank by the Company describing checks drawn by the Company on an Authorized Account that may include, but not be limited to, dollar amount, check number, date, and payee name.
- C. *Exception Check* means a Presented Check that is deemed by the Bank to need additional review to determine if it is payable. A check may not be payable for reasons such as, but not limited to, if the check image is unreadable, missing information, a duplicative item, found to be fraudulent, was not included on the Check Issue File or otherwise not properly issued or authorized as determined by the Bank.
- D. *Exception Check Listing* means a list of Exception Checks and corresponding images, which is provided by the Bank to the Company through Online Banking as further described under Section 3 of this Addendum.
- E. *Item* means a check, draft or other payment order.
- F. *Over the Counter* means any check brought to any Bank location to tender.
- G. *Pay Request* means the instructions of the Company to the Bank ordering the Bank to pay an Exception Check on the Company's behalf.
- H. *Payee Positive Pay* means the service whereby the Bank looks to match Presented Checks against dollar amount, check number and payee name as indicated by the Company. The Company may either upload a Check Issue File or enter check information into Online Banking. If the Check Issue File is not uploaded, all checks will be presented on the Exception Check Listing for additional review by Company.
- I. *Positive Pay* means the service whereby the Bank looks to match Presented Checks against dollar amount and check number as indicated by the Company. The Company may either upload a Check Issue File or enter check information into Online Banking. If the Check Issue File is not uploaded, all checks will be presented on the Exception Check Listing' for additional review by Company.
- J. *Presented Check* means a check drawn on an Authorized Account and presented to the Bank for payment in paper form through the check collection system, specifically excluding ACH or electronic transactions.
- K. *Void Request* means a check that was never produced or has been destroyed by the Company prior to its negotiation and next to which the Company should have a "V" inserted by it in the Check Issue File or manually identified through Online Banking. If the check is ever presented to the Bank for payment, it will be treated as an Exception Check.

#### **2. CHECK ISSUE FILE**

The Company shall electronically transmit a Check Issue File to the Bank over the Bank's system or other secure electronic delivery system as agreed upon and acceptable by the Bank. Manual check issues can also be created and entered through Online Banking. The Check Issue File shall, at a minimum, accurately state the check number, the exact amount, and, if the Company is enrolled in Payee Positive Pay, the Payee of each check drawn on each Authorized Account since the last Check Issue File was submitted. The Company shall ensure that all Check Issue Files are transmitted to the Bank in a file format compatible with the Bank's systems. Check Issue Files should be transmitted to Bank by the Bank's stated deadline on the Business Day that any check is tendered to a third party, or on the first Business Day after a check is tendered to a third party in the event that the check is not tendered during a Business Day. For purposes of this Addendum, the term "transmit" and any derivative thereof refers to the secure electronic transmission of files or other data over the agreed upon and acceptable secure electronic delivery system in accordance with the procedures provided from time to time by the Bank. If the Company does not provide a Check Issue File, all checks for payment will be presented as an Exception Check and the Company must notify the Bank if any check shall be paid.

#### **3. PAYMENT OF PRESENTED CHECKS AND REPORTING OF EXCEPTION CHECKS PRESENTED BY ANOTHER DEPOSITORY BANK**

Upon receipt of any check presented by another depository bank, the Bank shall compare each Presented Check by check number, amount, and, if the Company is enrolled in Payee Positive Pay, Payee against each Check Issue File or manually entered check through Online Banking, each as received by the Bank. On each Business Day, the Bank:

- A. May pay and charge to the Authorized Account each Presented Check that matches by check number, amount, and, if the Company is enrolled in Payee Positive Pay, Payee a check shown in any Check Issue File;

- B. Shall make reasonable efforts to provide to the Company a listing of all Exception Checks that indicates whether, as of the Bank's stated cutoff time on the preceding Business Day, the Bank had received any Exception Checks and, if so, specifies the complete check number, amount, and, if the Company is enrolled in Payee Positive Pay, Payee of any such Exception Check, if available; and
- C. Shall transmit the Exception Checks to the Company over the Bank's system or other agreed upon delivery method by the Bank's stated delivery time on the current Business Day.

#### **4. PAYMENT AND DISHONOR OF EXCEPTION CHECKS PRESENTED BY ANOTHER DEPOSITORY BANK**

The Bank shall return to the depository bank any Exception Check drawn on an Authorized Account, stamped accordingly, unless the Company transmits a Pay Request by Bank's stated deadline on the same Business Day that an Exception Check was provided to the Company pursuant to Section 3 of this Addendum. The Pay Request shall identify each Exception Check that the Company desires to be paid by the check number, the amount, and, if the Company is enrolled in Payee Positive Pay, the Payee specified in the Exception Check and shall instruct the Bank to pay such Exception Check. The Bank shall finally pay and charge to the Authorized Account any Exception Check that the Company timely directs the Bank to pay as provided above. In the event that the Company notifies the Bank that an Exception Check is believed to be fraudulent, the Bank shall handle any such Exception Check pursuant to its standard fraudulent check presentment procedures.

#### **5. PAYMENT OF PRESENTED CHECKS AND REPORTING OF EXCEPTION CHECKS PRESENTED OVER THE COUNTER DURING BUSINESS HOURS**

The Bank shall compare each Presented Check Over the Counter during Business Hours by check number, amount, and, if the Company is enrolled in Payee Positive Pay, Payee against each Check Issue File received by the Bank. Upon each presentment, the Bank may pay and charge to the Authorized Account each Presented Check that matches by check number, amount, and, if the Company is enrolled in Payee Positive Pay, Payee a check shown in any Check Issue File and shall attempt to contact the Company or its representative regarding any Exception Check so presented.

#### **6. PAYMENT AND DISHONOR OF EXCEPTION CHECKS PRESENTED OVER THE COUNTER DURING BUSINESS HOURS.**

The Bank shall return to the presenter any Exception Check presented Over the Counter during Business Hours when and if the contact attempt under Section 5 of this Addendum was unsuccessful. The Bank shall finally pay and charge to the Authorized Account any Exception Check that the Company directs the Bank to pay as provided above. In the event that the Company notifies the Bank that an Exception Check presented Over the Counter is believed to be fraudulent, the Bank shall handle any such Exception Check pursuant to its standard fraudulent check presentment procedures.

#### **7. PAYMENT OF PRESENTED CHECKS AND REPORTING OF EXCEPTION CHECKS PRESENTED OVER THE COUNTER AFTER BUSINESS HOURS**

The Bank shall compare each Presented Check presented Over the Counter after Business Hours by check number, amount, and, if the Company is enrolled in Payee Positive Pay, the Payee against each Check Issue File received by the Bank. Upon each presentment, the Bank may pay and charge to the Authorized Account each Presented Check that matches by check number, amount, and, if the Company is enrolled in Payee Positive Pay, the Payee a check shown in any Check Issue File.

#### **8. DISHONOR OF EXCEPTION CHECKS PRESENTED OVER THE COUNTER AFTER BUSINESS HOURS.**

The Bank shall return to the presenter any Exception Check presented Over the Counter after Business Hours.

#### **9. COMPANY AND BANK COMMUNICATIONS**

- A. The Company or the Bank, at its discretion, may each submit to the other party a revision of any communication provided for under this Addendum. The revised communication must (1) identify the original communication, and (2) be sent in the format and medium, by the deadline(s), and at the place(s) established by the receiving party. A properly submitted revised communication serves to revoke the original communication.
- B. The Bank shall only use Check Issue Files that comply with Section 2 of this Addendum and have not been revoked in accordance with this Section 9 of this Addendum (dealing with the proper revocation of Company and Bank communications).
- C. The Company shall use only Exception Check Listings that comply with the section 3 of this Addendum entitled Payment of Presented Checks and Reporting of Exception Checks Presented by Another Depository Bank and that have not been revoked in accordance with this section 9 of this Addendum (dealing with the proper revocation of Company and Bank communications). The Bank shall not be obligated to comply with any Pay Request received in a format or medium, after a deadline, or otherwise in any manner not permitted under this Agreement but may instead treat such a Pay Request as though it had not been received.
- D. The Bank is not responsible for detecting any Company error contained in any Check Issue File or Pay Request sent by the Company to the Bank.
- E. The Bank is authorized to rely upon any information transmitted to the Bank via the agreed upon secure electronic delivery system, or any oral or other communication reasonably believed by the Bank to be received from either the Company or its representative.

## **10. STOP PAYMENTS**

If a Company desires to issue a Stop Payment on a previously issued item, the Company shall follow the Bank's standard Stop Payment procedures.

## **11. WRONGFUL HONOR**

It shall constitute wrongful honor by the Bank if the Bank pays an Exception Check listed in a timely Exception Check Listing unless the Company issued a timely Pay Request. In the event that there is wrongful honor:

- A. The Bank's liability to the Company shall be limited to the amount of the wrongfully paid Exception Check.
- B. The Bank retains the right to assert the Company's failure to exercise ordinary care under U.C.C. Section 84-3-406.
- C. The Bank retains the right to assert the defense that the Company has sustained no damages because the Bank's honor of the Exception Check discharged for value an indebtedness of the Company.
- D. The Bank shall have no liability to the Company for any actual, indirect, incidental, special, consequential, exemplary, or punitive damages for wrongful dishonor of a check when the Bank, acting in good faith, returns an Exception Check:
  - 1) that it reasonably believed was not properly payable;
  - 2) because it did not receive a timely Pay Request from the Company for the check;
  - 3) if there are insufficient funds on deposit in the Authorized Account; or
  - 4) if required to do so by the service of legal process on the Bank or the instructions of regulatory or government authorities or courts.

## **12. RIGHTFUL PAYMENT AND DISHONOR**

- A. If the Bank honors an Exception Check in accordance with any provision in this Addendum, such honor shall be rightful, and the Company waives any right it may have to assert that the Exception Check was not properly payable under U.C.C. Section 84-4-401.
- B. If the Bank dishonors an Exception Check in accordance with instructions issued by the Company, the dishonor shall be rightful, and the Company waives any right it may have to assert that the dishonor was wrongful under U.C.C. Section 84-4-402.
- C. The Company agrees that the Bank exercises ordinary care whenever it rightfully pays or returns an Exception Check consistent with the provisions of this Addendum.

## **13. ACCOUNT RECONCILIATION SERVICES**

Bank will provide to Company paid Item information for an Authorized Account. Paid Item information from Bank systems will be provided to Company through Online Banking. Account Reconciliation Services are based on the MICR line of each paid Item. If the MICR line is incorrect, missing or unreadable, information may not be available to Company. Company assumes full responsibility for such information. Bank assumes no liability for incorrect, missing or unreadable MICR information.

## **14. SECURITY PROCEDURES**

- A. If the Customer accesses the Positive Pay and Account Reconciliation Services through the Online Banking Service, the Security Procedures applicable to the Positive Pay and Account Reconciliation Services are those that apply to the Online Banking Service.
- B. The Customer agrees that these Security Procedures are commercially reasonable for the Customer in light of the anticipated size, type and frequency of the Customer's instructions.

## **Addendum E**

### **Reverse Positive Pay**

### **Terms and Conditions**

This Addendum sets forth additional terms and conditions that apply to the use of our Reverse Positive Pay Service.

#### **1. DEFINITIONS**

In addition to various terms otherwise defined in the Agreement:

- A. *Exception Check* means a Presented Check that appears in the Exception Check Listing.
- B. *Exception Check Listing* means a record describing all Presented Checks which require a pay or return decision by the Company by the stated deadline.
- C. *Over the Counter* means any check brought to any Bank location to tender.
- D. *Return Request* means the instructions of the Company to the Bank ordering the Bank to return payment on a Presented Check.
- E. *Presented Check* means a check drawn on an Authorized Account and presented to the Bank for payment in paper form through the check collection system, specifically excluding ACH or electronic transactions.

#### **2. REVERSE POSITIVE PAY SERVICE**

Under the Bank's Reverse Positive Pay Service, the Bank will present each Presented Check to Company via the Exception Check Listing on Online Banking. Company shall promptly, but no later than the cut-off time established by the Bank, review the Exception Check Listing and provide a pay/return decision for all checks on the same Business Day.

All Presented Checks for which you do not provide a Return Request shall be paid in the normal course of business by us. Your failure to notify us of any returns on a given Business Day shall be deemed an express authorization by you that such Presented Checks be timely paid and charged to the Authorized Account, regardless of whether such checks, in fact, were properly payable, and such inaction by you shall constitute a waiver and release by you of any and all claims you may then or in the future have that such checks were not properly payable.

Under the Reverse Positive Pay Service, you are authorizing us to pay any Presented Check drawn on your Authorized Account. You acknowledge and agree that each Presented Check which is issued, or allegedly issued, by you on your Authorized Account shall be paid by us, and, except in the event of a lack of good faith by us or a failure by us to exercise ordinary care, shall be deemed by the parties to be a properly payable check, and you shall not subsequently contest the validity thereof. For any Presented Check that you indicate to us should be returned, you are authorizing us to deny payment of any Presented Check drawn on your Authorized Account. You acknowledge and agree that each Presented Check which is issued, or allegedly issued, by you on your Authorized Account shall be denied by us, and, except in the event of a lack of good faith by us or a failure by us to exercise ordinary care, shall be deemed by the parties to not be a properly payable check, and you shall not subsequently contest the validity of the denial of payment. You agree, except in the event of a lack of good faith by Bank or a failure by Bank to exercise ordinary care, to indemnify, protect and hold Bank, its affiliates and their respective officers, directors, employees, attorneys, agents and representatives harmless from and against any and all liabilities, claims, damages, losses, demands, fines, judgments, disputes, costs, charges and expenses (including litigation expenses, other costs of investigation or defense and reasonable attorneys' fees) which relate in any way to Bank's payment or deposit for immediate credit any Presented Check drawn on your Authorized Account.

#### **3. PAYMENT OF PRESENTED CHECKS PRESENTED OVER THE COUNTER**

If a Presented Check is presented for payment by the Bank Over the Counter, the Bank shall attempt to contact the Company or its representative regarding any such Presented Check. In the event that the Company notifies the Bank that a Presented Check presented Over the Counter is believed to be fraudulent, the Bank shall handle any such check pursuant to its standard fraudulent check presentment procedures. If the Bank is unable to reach the Company and the representative, including after business hours, the Bank shall pay the Presented Check, subject to its ordinary fraudulent check presentment procedures.

#### **4. COMPANY AND BANK COMMUNICATIONS**

- A. The Company or the Bank, at its discretion, may each submit to the other party a revision of any communication provided for under this Addendum. The revised communication must (1) identify the original communication, and (2) be sent in the format and medium, by the deadline(s), and at the place(s) established by the receiving party. A properly submitted revised communication serves to revoke the original communication.
- B. The Bank shall not be obligated to comply with any Return Request received in a format or medium, after a deadline, or otherwise in any manner not permitted under this Agreement but may instead treat such a Return Request as though it had not been received.
- C. The Bank is not responsible for detecting any Company error contained in any Return Request sent by the Company to the Bank.

- D. The Bank is authorized to rely upon any information transmitted to the Bank via the agreed upon secure electronic delivery system, or any oral or other communication reasonably believed by the Bank to be received from either the Company or its representative.

## **5. STOP PAYMENTS**

If a Company desires to issue a Stop Payment on a previously issued item, the Company shall follow the Bank's standard Stop Payment procedures.

## **6. WRONGFUL HONOR**

It shall constitute wrongful honor by the Bank if the Bank pays a Presented Check when the Company has issued a Return Request by the deadline. In the event that there is wrongful honor:

- A. The Bank's liability to the Company shall be limited to the amount of the wrongfully paid Presented Check.
- B. The Bank retains the right to assert the Company's failure to exercise ordinary care under U.C.C. Section 84-3-406.
- C. The Bank retains the right to assert the defense that the Company has sustained no damages because the Bank's honor of the Presented Check discharged for value an indebtedness of the Company.
- D. The Bank shall have no liability to the Company for any actual, indirect, incidental, special, consequential, exemplary, or punitive damages for wrongful dishonor of a check when the Bank, acting in good faith, returns a Presented Check:
  - 1) that it reasonably believed was not properly payable;
  - 2) if there are insufficient funds on deposit in the Authorized Account; or
  - 3) if required to do so by the service of legal process on the Bank or the instructions of regulatory or government authorities or courts.

## **7. RIGHTFUL PAYMENT AND DISHONOR**

- A. If the Bank honors a Presented Check in accordance with any provision in this Addendum, such honor shall be rightful, and the Company waives any right it may have to assert that the Presented Check was not properly payable under U.C.C. Section 84-4-401.
- B. If the Bank dishonors an Presented Check in accordance with instructions issued by the Company, the dishonor shall be rightful, and the Company waives any right it may have to assert that the dishonor was wrongful under U.C.C. Section 84-4-402.
- C. The Company agrees that the Bank exercises ordinary care whenever it rightfully pays or returns a Presented Check consistent with the provisions of this Addendum.

## **8. SECURITY PROCEDURES**

- A. If the Customer accesses the Reverse Positive Pay Services through the Online Banking Service, the Security Procedures applicable to the Positive Pay and Account Reconciliation Services are those that apply to the Online Banking Service.
- B. The Customer agrees that these Security Procedures are commercially reasonable for the Customer in light of the anticipated size, type and frequency of the Customer's instructions.

## **Addendum F**

### **Lockbox Services**

### **Terms and Conditions**

This Addendum sets forth additional terms and conditions that apply to the use of our Lockbox Services.

#### **1. DEFINITIONS**

In addition to the various terms otherwise defined in the Agreement:

- A. *Data Entry* means the keying or capture of data to the Bank's lockbox system from the payment instructions or associated documents.
- B. *Lockbox Address* means the Post Office Box used in conjunction with the Service.
- C. *Post Office Box* means a container at a central mailing location in which the Company's incoming mail addressed to the Lockbox Address is held until picked up by the Bank.

#### **2. SCOPE OF SERVICE**

The Bank and the Company have agreed to arrangements for the collection and crediting of checks, drafts, money orders, other approved payment instruments, and associated documents ("Remittance") by the establishment of a lockbox as set forth below. Lockbox Services can also extend to Data Entry Services. Certain details of the lockbox arrangement are set forth on requests for Treasury Management Services.

#### **3. TERMS AND CONDITIONS**

The Bank and the Company hereby agree as follows:

- A. The Company will instruct customers to mail Remittances to the assigned Lockbox Address.
- B. Based on volume, the Post Office Box is rented in either the name of the Company or the Bank. The Company hereby authorizes the Bank to have unrestricted and exclusive access to the Post Office Box for the purpose of collecting mail therein from time to time.
- C. The Bank will use commercially reasonable efforts to collect mail from the Post Office Box as agent for the Company on each Business Day and to open the envelope and remove Remittances, examining for the presence of date, signature, Payee and amounts.
- D. The Bank will use commercially reasonable efforts to provide the designated information to the Company. Company may elect to use the online reporting module provided by the Bank to receive information. Alternatively, the Company may elect to receive the information via U.S.P.S. mail or another communication method approved by the Bank. If Company chooses to use one of the electronic methods approved by the Bank, the Company will complete any additional documentation, forms, or agreements as Bank may require for that Service and will abide by Section 4 of this Addendum.
- E. The Bank will use commercially reasonable efforts to deposit Remittances for collection in the Authorized Account the same Business Day as received if Remittances are found to be in proper order. Bank will use commercially reasonable efforts to perform Data Entry Services the same Business Day as Remittances are received.
- F. The Bank does not guarantee collection of any payments from your customer. All credits to the Authorized Account are provisional, and we may reverse any credit or debit for any check that is not honored by a drawee bank.
- G. The Bank does not guarantee that we will process all Remittances on the same day received. Items will be processed until our cutoff time established, which can change from time to time. Remittances processed after the cutoff time will be posted on the next allowable Business Day.
- H. The Bank will handle checks, drafts, money orders and other mutually agreed upon payment instruments only. You must advise your customers not to send currency or coin to the Lockbox Address. We will not handle Remittances drawn in foreign currency or on foreign banks in your Lockbox. These items will be batched and deposited separately from your daily lockbox deposits.
- I. You will provide us with the names of acceptable Payees. We will process a Remittance only if it is made payable to an acceptable Payee and is in accordance with the Bank's check cashing policy. You represent and warrant that each designated acceptable Payee has authorized checks payable to it to be credited to your Authorized Account. You authorize us to treat as an acceptable Payee any variation of any acceptable Payee's name we deem to be reasonable. Alternatively, you may designate all Payees as acceptable.
- J. We may reject Remittances for deposit that are irregular in any way, cannot otherwise be read, or are not in accordance with the Bank's check cashing policy. At our discretion, we may process, send for collection, or forward to you for disposition Remittances that contain discrepancies or minor errors, including, but not limited to, postdated checks, stale dated checks, checks bearing Payee names different from your name, checks that do not bear the drawer's signature, altered checks, checks drawn on foreign bank or in a foreign currency, and other irregular items. Although we may attempt to discover and forward checks bearing notations such as "Payment in Full," you agree that we will not be liable for our failure to do so, even if we could have done so with the exercise of ordinary care.
- K. The Bank will retain images of Remittances for a period set forth in the Bank's record retention schedule from time to time. At your request and expense, we will prepare copies of Remittances for you. Remittance data is available for a period of time through the Lockbox Online Website.
- L. The following rules and procedures shall govern the processing of Remittances received in the Post Office Box:

- 1) The bank will endorse all checks on your behalf and deposit them in the Account you designate.
  - 2) The credit and collection of all checks shall be subject to the same terms, conditions, and charges as would apply to deposits received by the Bank directly from the Company.
  - 3) The Bank may charge any of the Company's Accounts for any check not paid upon presentation, and mail such check together with an advice of charge. The Bank may make a second presentation of any check not paid upon first presentment without authority or notification from the Company.
- M. The Bank will make every reasonable effort to ensure, but cannot guarantee, 100% accuracy of Data Entry Services. Bank will make every reasonable effort to capture usable Remittance images, but cannot guarantee 100% readability.
- N. All costs associated with maintenance of the Lockbox, including renting or maintaining the Post Office Box, will be paid by the Company.

#### **4. LOCKBOX ONLINE ACCESS**

The Bank will control access to the Service by acting as the system administrator.

During your enrollment for the Service, the Administrator or Authorized Signer on the account will send Bank written instructions on who each Lockbox online Access user will be. The Bank will then assign a User ID and Password to each authorized user. Use of these Codes is an agreed upon Security Procedure to access the Service through the Internet. You agree to keep these Codes confidential to prevent unauthorized access to your Accounts and to prevent unauthorized use of the Service. For security purposes we recommend that you do not use the same Codes you use for other Bank products. Authorized users may change their Password at any time through the Service.

We are entitled to act on instructions received under User IDs and Passwords. If you grant access to your employees, you authorize us to complete transactions initiated by the employees. Changes in access for an authorized user must be submitted in writing by the Administrator or Authorized Signer for the Company.

## **Addendum G**

### **Wire Transfer Services**

### **Terms and Conditions**

This Addendum sets forth additional terms and conditions that apply to the use of our Wire Transfer Services.

#### **1. BACKGROUND**

Company may, from time to time, request that Bank transfer funds of the Company on deposit at Bank by means of telephonic, telegraphic, oral or written requests or orders, or our Online Banking Services to other banks for credit to persons or accounts designated by the Company (collectively “Wire Transfers”).

#### **2. AGREEMENT**

Bank agrees to honor, execute and charge to the Account(s) of Company at Bank, telephonic, oral or written requests or orders for Wire Transfers when such requests or orders are received from an authorized representative of Company and when such requests are made in compliance with the Bank’s transfer procedures and Security Procedures. Each such request for a Wire Transfer shall be made by an authorized representative of Company designated on the signature card. In addition, Bank will honor, execute and charge to the Account(s) of Company at Bank, all Wire Transfers requested by Company or its agents through the use of the Bank’s Online Banking Services. Company acknowledges and agrees that Bank cannot verify the identity of the person requesting a Wire Transfer through the use of the Online Banking Services and that Company shall have the sole responsibility for restricting access thereto to authorized representatives of Company. Company agrees that Bank is authorized to record telephone calls from Company regarding Wire Transfers.

Bank agrees to act upon all requests for Wire Transfers on the date received or on the next Business Day if such request is received after the deadline established by the Bank for same-day Wire Transfers.

Company hereby acknowledges and agrees that Wire Transfers hereunder are provided as a convenience to Company and that Bank shall not have any liability or responsibility for any inaccuracy, interruption or delay in transmission or for any circumstances beyond Bank’s reasonable control.

Company agrees to assume full responsibility for any error made by Company and for all transfers made by Bank in good faith in accordance with the procedures set forth herein. Company agrees that the Bank will not be required to make Wire Transfers that exceed balances available in the Company’s Accounts as determined by Bank. The Bank will notify you of the Security Procedures applicable to Wire Transfers made through our Online Banking Services and the Security Procedures applicable to Wire Transfers made outside of such Service, such as in-person at a banking center, and may update such applicable Security Procedures from time to time. Your continued use of Wire Transfers after being notified of any changes to the applicable Security Procedures shall be deemed assent that such Security Procedures are commercially reasonable.

Company agrees that Bank may change the procedures referred to in this Addendum upon written notice to Company.

## **Addendum H**

### **ACH Positive Pay Services**

### **Terms and Conditions**

This Addendum sets forth additional terms and conditions that apply to the use of our ACH Positive Pay Services.

Unless otherwise defined herein, capitalized terms shall have the meanings provided in in the National Automated Clearing House Association (NACHA) Rules (the “Rules”) or in the Agreement.

#### **1. DEFINITIONS**

In addition to the various terms otherwise defined in the Agreement:

- A. *Pay Request* means an instruction of the Company to the Bank ordering the Bank to pay a Presented Entry.
- B. *Presented Entry Report* means a record describing Presented Entries, which is provided by the Bank to the Company under Section 2 of this Addendum.
- C. *Presented Entry* means a debit Entry against an Authorized Account and presented to the Bank for payment in electronic form through an ACH.

#### **2. REPORTING OF PRESENTED ENTRIES**

On each Business Day, the Bank:

- A. Shall make reasonable efforts to provide to the Company a Presented Entry Report that indicates whether, as of the Bank’s stated cutoff time on the preceding Business Day, the Bank had received any Presented Entries and, if so, specifies the debit account number, Originating Company, Originating Company ID, amount of Debit, effective date and the ACH entry class; and
- B. Shall transmit a Presented Entry Report to the Company over the Bank’s system or other agreed upon delivery method by the Bank’s stated delivery time on the current Business Day.

For purposes of this Addendum, the term “transmit” and any derivative thereof refers to the secure electronic transmission of files or other data over the agreed upon and acceptable secure electronic delivery system in accordance with the procedures provided from time to time by the Bank.

#### **3. PAYMENT AND RETURN OF PRESENTED ENTRIES**

The Bank shall return to the ODFI each Presented Entry unless the Company transmits a Pay Request for such Presented Entry by Bank’s stated deadline on the same Business Day that a Presented Entry Report was provided to the Company pursuant to Section 2 of this Addendum. A Pay Request shall identify the Presented Entry that the Company desires to be paid by the debit account number, Originating Company, Originating Company ID, amount of Debit, effective date and the ACH entry class and shall instruct the Bank to pay such Presented Entry. The Bank shall finally pay and charge to the Authorized Account any Presented Entry that the Company timely directs the Bank to pay as provided above. If the Company provides an on-going Pay Request for a Presented Entry, then the Company will be deemed to have given the Bank a Pay Request for each subsequent Presented Entry that matches the debit account number, maximum amount if specified, ACH transaction type, Originating Company, Originating Company ID and the expiration date of the Presented Entry for which the on-going Pay Request was provided until the specified expiration date of the on-going Pay Request or until the Company revokes the Pay Request by deletion in the Online Banking Services.

#### **4. COMPANY AND BANK COMMUNICATIONS**

- A. The Company or the Bank, at its discretion, may each submit to the other party a revision of any communication provided for under this Agreement. The revised communication must (1) identify the original communication, and (2) be sent in the format and medium, by the deadline(s), and at the place(s) established by the receiving party. A properly submitted revised communication serves to revoke the original communication.
- B. The Company shall use only Presented Entry Reports that comply with the section of this Agreement entitled Payment and Return of Presented Entries and that have not been revoked in accordance with this Section 4 of this Addendum (dealing with the proper revocation of Company and Bank communications). The Bank shall not be obligated to comply with any Pay Request received in a format or medium, after a deadline, or otherwise in any manner not permitted under this Agreement but may instead treat such a Pay Request as though it had not been received.
- C. The Bank shall only use Pay Requests that comply with Section 6 of this Addendum and have not been revoked in accordance with this Section 4 of this Addendum (dealing with the proper revocation of Company and Bank communications).
- D. The Bank is not responsible for detecting any Company error contained in any Pay Request sent by the Company to the Bank.
- E. The Bank is authorized to rely upon any information transmitted to the Bank via the agreed upon secure electronic delivery system, or any oral or other communication reasonably believed by the Bank to be received from either the Company or its representative.

#### **5. LIMITATIONS ON USE OF THE ACH POSITIVE PAY SERVICE**

The ACH Positive Pay Service is intended to control, identify, and return Presented Entries that the Customer determines are or may be unauthorized. It is not intended to be used as a “stop payment,” as a substitute for proper authorization instructions or to delay the Customer’s decisions on whether or not to pay/accept or return Presented Entries. The Bank may require the Customer to provide evidence that Presented Entries returned pursuant to the ACH Positive Pay Service were unauthorized. The Customer will defend, indemnify, protect and hold the Bank harmless from and against all liabilities, claims, damages, losses, demands, fines (including those imposed by any Federal Reserve Bank, clearing house or funds transfer system), judgments, disputes, costs, charges and expenses (including litigation expenses, other costs of investigation or defense and reasonable attorneys’ fees) relating in any way to Presented Entries the Bank returns in accordance with the Agreement, whether or not those Presented Entries were unauthorized. The ACH Positive Pay Service does not apply to Presented Entries that you have authorized the Bank to initiate and, accordingly, the Bank may pay such Presented Entries whether or not you provide the Bank a Pay Request for those Presented Entries. The Bank may also pay any Presented Entries, reversals or adjustments that it is required to accept under Applicable Laws.

#### **6. PAYMENT OR RETURN OF PRESENTED ENTRIES DEEMED CORRECT**

Each Presented Entry the Bank pays in accordance with the terms of the Agreement will, as between the Bank and the Customer, conclusively be deemed to be properly payable for all purposes. The Bank has no responsibility whatsoever for paying a Presented Entry in accordance with the terms of the Agreement, even if it is in fact unauthorized or is otherwise not properly payable. The Customer waives and releases the Bank from all claims and losses relating in any way to any assertion that such a Presented Entry was not properly payable.

Each Presented Entry the Bank returns in accordance with the Agreement will, as between the Bank and the Customer, conclusively be deemed to be not properly payable for all purposes. The Bank has no responsibility whatsoever for returning a Presented Entry in accordance with the terms of the Agreement, even if it is in fact authorized and is otherwise properly payable. The Customer waives and releases the Bank from all claims and losses relating in any way to any assertion that such a Presented Entry was properly payable or that the Bank wrongfully returned such a Presented Entry.

#### **7. SECURITY PROCEDURES**

- A. If the Customer accesses the ACH Positive Pay Services through the Online Banking Services, the Security Procedures applicable to the ACH Positive Pay Services are those that apply to the Online Banking Services.
- B. The Customer agrees that these Security Procedures are commercially reasonable for the Customer in light of the anticipated size, type and frequency of the Customer’s instructions.

# **Addendum I**

## **Escrow Account Management Services**

### **Terms and Conditions**

This Addendum sets forth additional terms and conditions that apply to the use of our Escrow Account Management Services.

#### **1. BACKGROUND**

Our Escrow Account Management Services offer an online sub-accounting platform that enables you to control and manage third-party funds or other pooled funds belonging to multiple clients of the Company.

#### **2. MASTER ACCOUNT AND SUB-ACCOUNTS**

As part of the Service, we will provide you access to Bank's online sub-accounting platform, which you may use to self-service escrow sub-accounts (each, a "Sub-Account"), including, but not limited to opening Sub-Accounts, closing Sub-Accounts and allocating and disbursing funds from Sub-Accounts. We will open one "Master Account," into which you agree to initially deposit funds from your clients. The Master Account will be titled as an escrow account held by Company for the benefit of its clients. You may then allocate the deposited funds to the appropriate Sub-Account using our Escrow Account Management Services. Each Sub-Account will be identified by the applicable Company client's name, tax identification number, and/or unique identifying number. As described below, you must deliver to the Bank a completed I.R.S. Form W-9 Certification for each Sub-Account either prior to or at the time of each Sub-Account opening.

You may use the Escrow Account Management Services to transfer funds between the Master Account and appropriate client Sub-Account(s) to facilitate withdrawals or transfers. You shall have the sole responsibility for appropriately reconciling the amounts in the Sub-Accounts, including, but not limited to, managing distributions from the Sub-Accounts that are paid out of the Master Account, and reconciling any additional deposits to a Sub-Account. Company acknowledges and agrees that Bank shall have no responsibility for reconciling activity in the Master Account or any Sub-Account(s). By using the Escrow Account Management Services, Company represents and warrants to the Bank that Company is duly authorized to hold the funds of Company's clients deposited with the Bank, and that each withdrawal or transfer from a Sub-Account (or from the Master Account) is authorized by the applicable Company client(s).

#### **3. INTEREST**

The Master Account may pay interest at a variable rate set by Bank in its discretion. You acknowledge that the Sub-Accounts will be established as interest bearing demand deposit accounts, unless indicated otherwise in a writing between the Company and Bank. You shall have the sole responsibility for the distribution and payment of the amounts of any interest credited to the Master Account or Sub-Accounts to your clients, and we shall have no responsibility to distribute interest to any of your clients.

#### **4. LIMITED DUTIES**

Company acknowledges that Bank is only acting as a depository bank and shall not be providing escrow services, acting as an agent for Company or Company's clients, or performing trust functions or otherwise acting as a trustee in connection with the Escrow Account Management Services. Bank's duties and responsibilities in connection with the Master Account and Sub-Accounts shall be purely ministerial and limited to those expressly set forth in the Agreement. Company agrees that Bank shall have no liability under and no duty to inquire as to the provisions of any agreement (e.g., between Company and its client(s) or otherwise) other than the Agreement. Company further acknowledges that Bank has no legal or contractual relationship with any of Company's clients in connection with our Escrow Account Management Services, and that Company has sole responsibility for providing escrow services to its clients. Company shall comply with all Applicable Laws and agreements between Company and its clients in connection with Company's business and escrow services (and Company's use of our Escrow Account Management Services, in general).

#### **5. INFORMATION AND DOCUMENTATION**

Upon opening each Sub-Account, Company is solely responsible for obtaining, furnishing and maintaining any and all client information required or requested by the Bank from time to time in connection with the Services. This includes, but is not limited to, an I.R.S. Form W-9 Certification for each Sub-Account and any other information or documentation required or requested by the Bank to comply with its customer identification program or other policies or procedures. Company is solely responsible for any inaccurate information that it provides to the Bank regarding Company and/or its clients, and Company's obligation to provide information and documentation to the Bank regarding Company clients will survive termination of the Escrow Account Management Services and/or the Agreement.

#### **5. CLOSING ACCOUNTS AND CONFLICTING INSTRUCTIONS.**

We reserve the right to freeze or otherwise close the Master Account and/or any Sub-Accounts in accordance with the terms of the Agreement. Without limiting the Bank's rights otherwise set forth in the Agreement, if Bank receives conflicting demands or instructions from Company and any Company client(s) (or third party) in connection with a Sub-Account, or if at any time Bank is in doubt as to the action it should take in connection with any matter relating to such Sub-Account, Bank may, in its discretion, take any or all the following actions: (a) act solely in accordance with Company's instructions; (b) take no further action except in accordance with joint instructions from the Company and its client(s) (or third party) provided to Bank, or (c) in accordance with a final non-appealable judgment of a court of

competent jurisdiction entered in a proceeding in which Company and its client(s) are named as parties, directing the disbursement of such funds by Bank. In addition, if Bank receives notice (or otherwise becomes aware) that litigation has commenced between Company and its client(s) over entitlement to funds, Bank may elect to deposit such funds with the Clerk of the Court in which such litigation is pending.

Company shall close each Sub-Account when funds are fully paid out, and in all instances close all Sub-Accounts and remove any funds prior to closing the Master Account or otherwise terminating the Escrow Account Management Services or the Agreement. In the event Company closes the Master Account or terminates or otherwise discontinues the Escrow Account Management Services prior to closing all Sub-Accounts or removing all funds from the Sub-Accounts, Company acknowledges and agrees that Bank may close all remaining Sub-Accounts holding balances and send such funds to Company (and not the client for which the Sub-Account was maintained). Any amounts distributed by Bank from the Sub-Accounts will be made payable to Company for the benefit of Company's clients.

#### 6. THIRD-PARTY RIGHTS

Unless expressly stated elsewhere in the Agreement, the Company and Bank acknowledge and agree that no third-party rights arise under this Addendum (or the Agreement) with respect to any third party or party making claim to any Master Account or Sub-Account balance. Further, the Bank shall have no responsibility to provide any Company client with notice of any amendment(s) to the Agreement, and Company agrees to promptly notify its client(s) of any such amendment(s).