

- e. A Resolution authorizing the Mayor to enter into an agreement with U.S. Bank National Association for comprehensive banking services for a term of four years at an annual cost not to exceed \$40,000.00.



**CITY OF KNOXVILLE, TENNESSEE**

**City Council**

**AGENDA INFORMATION SHEET**

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**AGENDA DATE:** March 4, 2025  
**DEPARTMENT:** Finance Department  
**DIRECTOR or DESIGNEE:** Boyce H. Evans

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**AGENDA SUMMARY**

A Resolution authorizing the Mayor to enter into an agreement with U.S. Bank National Association for comprehensive banking services for a term of 4 years at an annual cost not to exceed \$40,000.00.

**COUNCIL DISTRICT(S) AFFECTED**

All Districts

**BACKGROUND**

The City requires banking services from a reputable financial institution with the capacity and capability to manage the depth and breadth of financial services that an organization of the City's size requires. These services include maintenance of a cash concentration accounts with various controlled disbursement accounts, reconciliation services, ACH, wire and EDI services, electronic balance reporting, and procurement cards.

The City received six proposals in response to a published Request for Proposals. Of the six, the City's evaluation team identified U.S. Bank as the most responsive and responsible proposer.

The bid documents are available in the Purchasing Department for review.

**ESTIMATED PROJECT SCHEDULE**

Banking services will commence as soon as practicable following execution of the agreement.

**PRIOR ACTION/REVIEW**

N/A

**FISCAL INFORMATION**

Funding for the contract will come from the Finance Department operating accounts.

**RESOLUTION**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KNOXVILLE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH U.S. BANK NATIONAL ASSOCIATION FOR COMPREHENSIVE BANKING SERVICES FOR A TERM OF FOUR YEARS AT AN ANNUAL COST NOT TO EXCEED \$40,000.00.**

**RESOLUTION NO:** \_\_\_\_\_

**REQUESTED BY:** Finance & Accountability

**PREPARED BY:** Law

**APPROVED:** \_\_\_\_\_

**APPROVED AS AN EMERGENCY MEASURE:** \_\_\_\_\_

**MINUTE BOOK:** \_\_\_\_\_ **PAGE** \_\_\_\_\_

**WHEREAS**, the City of Knoxville’s Purchasing Department issued a Request for Proposals to provide the City with comprehensive banking services (Banking Services); and

**WHEREAS**, an evaluation committee reviewed the proposals and determined that U.S. Bank National Association was the most responsive and responsible proposer, and after negotiations, recommends the Banking Services be awarded to U.S. Bank National Association; and

**WHEREAS**, the City of Knoxville desires to enter into a four-year agreement with U.S. Bank National Association to provide Banking Services for a total annual amount not to exceed Forty Thousand and 00/100 Dollars (\$40,000.00); and

**WHEREAS,** U.S. Bank National Association has the necessary experience and qualifications to perform Banking Services.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KNOXVILLE:**

**SECTION 1:** The Mayor be, and hereby is, authorized to enter into an agreement, in substantially the same form as the one attached hereto, on behalf of the City of Knoxville with U.S. Bank National Association to provide comprehensive banking services for four years at an annual cost not to exceed Forty-Thousand and 00/100 Dollars (\$40,000.00).

**SECTION 2:** This Resolution will take effect from and after its passage, the welfare of the City requiring it.

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Presiding Officer of the Council

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Recorder



# Master Services Agreement

Customer Tax Identification Number: 62-6000326

I, Indya Kincannon, HEREBY CERTIFY that I am Mayor of the City of Knoxville ("Customer"),  
an entity organized under the laws of the State of Tennessee

I further certify that I have full power and lawful authority to execute this Master Services Agreement ("MSA") on behalf of Customer. I further certify that Customer has taken all action required by its resolutions and other organizational documents, records or agreements to authorize the individuals listed below to act on behalf of Customer in all transactions contemplated under this MSA. Customer shall not be bound by the terms and conditions for those specific services described, to the extent Customer elects not to use such service(s). Customer hereby agrees as follows:

## **DEPOSIT ACCOUNTS:**

1. U.S. Bank National Association ("Bank") is hereby designated as Customer's banking depository. Customer has received a copy of the deposit account terms and conditions and agrees that such terms shall govern the deposit account services provided by Bank. All transactions between Customer and Bank involving any of Customer's accounts at Bank will be governed by the deposit account terms and conditions, this MSA and other disclosures provided to Customer. Customer agrees to provide Bank with a copy of documents requested by Bank.
2. Any one (1) of the persons whose names and signatures appear in Appendix A (individually, an "Account Signer") are hereby authorized to open, add, modify, or close accounts in the name of Customer or its subsidiaries or affiliates, or if applicable, as an agent for another entity, and to sign, on behalf of Customer, its subsidiaries or affiliates or as an agent for another entity, checks, drafts or other orders for the payment, transfer or withdrawal of any of the funds or other property of Customer, whether signed, manually or by use of a facsimile or mechanical signature or otherwise authorized, including those payable to the individual order of the person or persons signing or otherwise authorizing the same and including also those payable to the Bank or to any other person for application, or which are actually applied to the payment of any indebtedness owing to the Bank from the person or persons who signed such checks, drafts or other withdrawal orders or otherwise authorized such withdrawals; and are also authorized to endorse for deposit, payment or collection any check, bill, draft or other instrument made, drawn or endorsed to the accounts governed by this MSA for deposit into these accounts. The authorization contained in the preceding sentence includes transfers of funds or other property of Customer to accounts outside of those accounts Customer maintains at Bank. Any one of the Contract Signers (as defined below) is also authorized to execute any documentation that Bank may require to add or delete Account Signers.
3. Unless Customer otherwise advises Bank in writing and Bank has a reasonable opportunity to act on such writing, the Account Signers listed in Appendix A will be Account Signers on any future deposit accounts that Customer maintains with Bank.
4. Customer acknowledges and agrees that Bank is not required to obtain the consent of or otherwise contact an Account Signer for transactions other than those listed in paragraph 2 above, including, but not limited to, transfers between accounts Customer maintains at Bank, advances on loans Customer has with Bank and transfers to pay down loans Customer has with Bank.

## **TREASURY MANAGEMENT SERVICES:**

5. Bank's treasury management services ("Treasury Management Service(s)") are described in the U.S. Bank Services Terms and Conditions, any supplements thereto, any implementation documents, user manuals, operating guides and other related documentation and disclosures provided by Bank, and any addendum to any of the foregoing (collectively the "Services Agreement"). Customer has received and reviewed the Services Agreement and desires to use one or more of the Treasury Management Services.
6. Any one (1) of the persons whose names and signatures appear in Appendix B (individually, a "Treasury Management Signer") are empowered in the name of and on behalf of the Customer to enter into all Treasury Management Services transactions contemplated in the Services Agreement including, but not limited to, selecting Treasury Management Services, appointing agents to act on behalf of Customer in the delivery of Treasury Management Services, signing additional documentation necessary to implement the Treasury Management Services and giving Bank instructions with regard to any Treasury Management Service, including without limitation, wire transfers, ACH transfers, and any other electronic or paper transfers from or to any account Customer may maintain with Bank. Bank may, at its discretion, require Customer to execute additional documentation to implement or amend certain Treasury Management Services. In such cases, documentation necessary to implement or amend such Services shall be signed by a Treasury Management Signer. Customer further acknowledges and agrees that Bank may implement or amend Services based on the verbal, written, facsimile, voice mail, email or other electronically communicated instructions that it believes in good faith to have been received from a Treasury Management Signer. Any one of the Contract Signers (as defined below) is also authorized to execute any documentation that Bank may require to add or delete Treasury Management Signers.

# Master Services Agreement

## **MONEY CENTER AND SAFEKEEPING SERVICES:**

7. Any one (1) of the persons referenced in Appendix M (individually, a "Money Center Signer") are each authorized and empowered in the name of and on behalf of the Customer to transact any and all depository and investment business through the Bank's Money Center division (the "Money Center") and any securities custodial business through the Bank's Safekeeping Department (the "Safekeeping Department"), which such person may at any time deem to be advisable, including, without limiting the generality of the foregoing, selecting any services that may from time to time be offered by the Money Center or the Safekeeping Department (collectively referred to herein as "Money Center Services" and "Safekeeping Services", respectively), appointing additional Money Center Signers or agents to act on behalf of Customer with respect to Money Center Services and Safekeeping Services, signing additional documentation necessary to implement the Money Center Services and Safekeeping Services and giving Bank instructions with regard to any Money Center Service and Safekeeping Service. Customer has received and reviewed the Services Agreement and may use one or more of the Money Center Services or Safekeeping Services from time to time. Bank may, at its discretion, require Customer to execute additional documentation to implement or amend certain Money Center Services or Safekeeping Services. In those cases, the required documentation shall be signed by a Money Center Signer. Customer further acknowledges and agrees that Bank may take any action with respect to any Money Center Services or Safekeeping Services requested by a Money Center Signer based on the verbal, written, facsimile, voice mail, email or other electronically communicated instructions that Bank believes in good faith to have been received from a Money Center Signer. Any one of the Money Center Signers is also authorized to execute any documentation that Bank may require to add or delete Money Center Signers.

## **FOREIGN EXCHANGE:**

8. Bank is authorized by Customer to enter into foreign exchange transactions. Customer has received a copy of the Services Agreement and agrees that the terms contained in the Services Agreement, this MSA and other disclosures provided to Customer shall govern the foreign exchange services provided by Bank. Customer agrees to provide Bank with a copy of documents requested by Bank.

## **FOREIGN CURRENCY ACCOUNTS:**

9. Bank is hereby designated as Customer's banking depository for one or more Foreign Currency Account(s) (the "Foreign Account(s)"). Any one (1) of the persons whose names and signatures appear in Appendix C (individually, a "Foreign Currency Account Signer") are hereby authorized to open, add, modify, or close any Foreign Account(s) in the name of Customer or its subsidiaries or affiliates and to make, on behalf of Customer, orders for payment or transfer of any of the funds or other property of Customer, whether signed, manually or by use of a facsimile or mechanical signature or otherwise authorized, including those payable to the individual order of the person or persons signing or otherwise authorizing the same. Customer hereby expressly authorizes and directs Bank to accept written and oral instructions any payment orders, by telephone or otherwise, consistent with the Services Agreement. Customer has received a copy of the Services Agreement and agrees that the terms contained in the Services Agreement, this MSA and other disclosures provided to Customer shall govern the Foreign Accounts. Any one of the Contract Signers (as defined below) is also authorized to execute any documentation that Bank may require to add or delete Foreign Currency Account Signers.

## **OTHER SERVICES:**

10. A Contract Signer is authorized and empowered on behalf of Customer to transact any and all other depository and investment business with and through Bank, and, in reference to any such business, to make any and all agreements and to execute and deliver to Bank any and all contracts and other writings which such person may deem to be necessary or desirable.

## **GENERAL:**

11. All Account Signers, Treasury Management Signers, Foreign Currency Account Signers and/or Money Center Signers (whether designated in this MSA or in a prior document [for example, a Certificate of Authority or a Treasury Management Services Agreement] executed by Customer) will remain in place until Bank receives written notice of any change and has a reasonable time to act upon Customer's written notice.
12. Any and all transactions by or in behalf of Customer with the Bank prior to the adoption of this MSA (whether involving deposits, withdrawals, Treasury Management Services, or otherwise) are in all respects ratified, approved and confirmed.
13. Customer agrees to furnish Bank with the names and signatures (either actual or any form or forms of facsimile or mechanical signatures adopted by the person authorized to sign) of the persons who presently are Account Signers, Treasury Management Signers, Foreign Currency Account Signers and/or Money Center Signers. Bank shall be indemnified and saved harmless by Customer from any claims, demands, expenses, loss or damage resulting from or growing out of honoring or relying on the signature or other authority (whether or not properly used and, in the case of any facsimile signature, regardless of when or by whom or by what means such signature may have been made or affixed) of any officer or person whose name and signature was so certified, or refusing to honor any signature or authority not so certified.

Each of the undersigned (individually and collectively, the "Contract Signers") certifies that, based on his or her review of Customer's books and records, Customer has, and at the time of adoption of this MSA had, full power and lawful authority to adopt the MSA and to confer the powers herein granted to the persons named, and that such persons have full power and authority to exercise the same.

Each of the Contract Signers further certifies that he or she has the full power and lawful authority to execute this MSA on behalf of Customer, its subsidiaries and affiliates, or if applicable, as an agent for another entity who has entered into an agreement with Customer authorizing Customer to act on such entity's behalf.

# Master Services Agreement

Each of the Contract Signers further certifies that the Account Signers, Treasury Management Signers, Foreign Currency Account Signers and/or Money Center Signers have been duly elected to and now hold the offices of Customer set opposite their respective names, and the signatures appearing opposite their names are the authentic, official signatures of the said signer.

Customer agrees that document electronic signatures or signatures that are transmitted by facsimile or other electronic means shall be binding as of the date signed and to the same extent as original signatures. The parties agree to accept a digital image of this Agreement, as executed, as a true and correct original and admissible as best evidence for the purpose of state law, federal or state rules of evidence, and similar statutes and regulations

All agreements by the City herein to Indemnify the Bank are subject to the limitations of the laws of the State of Tennessee and are not intended to constitute an unauthorized waiver of any such limitations. The City agrees to accept responsibility for actions of its own employees and results thereof, subject to the Tennessee Governmental Tort Liability Act at TENN.CODE ANN. § 29-20-101, et. seq. City Exhibits 1 and 2 are incorporated, herein.

The MSA shall be effective as of the last date of the undersigned Contract Signers:

Signature:	_____	Signature:	_____
Print name:	_____	Print name:	_____
Print title:	_____	Print title:	_____
Email address:	_____	Email address:	_____
Date:	_____	Date:	_____
Signature:	_____	Signature:	_____
Print name:	_____	Print name:	_____
Print title:	_____	Print title:	_____
Email address:	_____	Email address:	_____
Date:	_____	Date:	_____
Signature:	_____	Signature:	_____
Print name:	_____	Print name:	_____
Print title:	_____	Print title:	_____
Email address:	_____	Email address:	_____
Date:	_____	Date:	_____
Signature:	_____	Signature:	_____
Print name:	_____	Print name:	_____
Print title:	_____	Print title:	_____
Email address:	_____	Email address:	_____
Date:	_____	Date:	_____

For Internal Use Only:			
Review _____	Validation Method _____	TL Review _____	Imaged _____



## NASPO VALUE POINT PURCHASING ENTITY ADDENDUM

This Purchasing Entity Addendum ("**Addendum**") is entered into by I , organized under the laws of the State of Tennessee ("**Participant**") and U.S. Bank. This Addendum shall become effective upon signing by U.S. Bank.

### RECITALS

1. State of Tennessee (the "**State**") and U.S. Bank have entered into that certain NASPO Value Point Participating State Addendum, as amended, supplemented or otherwise modified (the "**Agreement**") for the purpose of providing commercial card services (the "**Program**");
2. Participant desires to participate as a "Purchasing Entity" under the Program and Agreement, with sole liability its own obligations it may incur under the Program and Agreement; and
3. U.S. Bank has agreed to allow Participant to be bound under the Agreement and participate in the Program as a "Purchasing Entity".

Now, therefore, for and in consideration of the mutual promises contained in this Addendum and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Participant and U.S. Bank agree as follows:

1. **DEFINITIONS.** Unless otherwise stated in this Addendum, all capitalized terms shall have the same meaning as set forth in the Agreement.
2. **DESIGNATION.** Participant is hereby designated as a "Purchasing Entity" under the Agreement, and upon U.S. Bank's execution of this Addendum (after completing its necessary due diligence) Participant shall be deemed a "Purchasing Entity" thereunder until Participant so elects to remove such designation or such designation is revoked as set forth in section 6 below. U.S. Bank will take direction from such Participant in the issuing of Accounts (or the suspension of Accounts issued at Participant's direction). This Addendum shall be considered a "Card User Agreement" for purposes of the Agreement.
3. **PARTICIPANT REPRESENTATIONS, WARRANTIES AND COVENANTS.** Participant
  - 3.1. Represents and warrants that it has received a copy of the Agreement;
  - 3.2. Represents that it is a valid political subdivision of the State of Tennessee;
  - 3.3. Represents and warrants that as of the date hereof that each of the representations and warranties made by the State in the Agreement to U.S. Bank can be made by Participant without breach on the date hereof;
  - 3.4. Represents and warrants that all financial and other information provided to U.S. Bank by or about Participant is true and correct;
  - 3.5. Agrees to comply with and be bound by the terms and conditions of the Agreement, including any future amendment regardless of whether Participant has received notice of such amendment;
  - 3.6. Agrees it is liable for its own performance of the terms and conditions of the Agreement (including as it may be amended from time to time) as if Participant signed the Agreement, including for all obligations incurred by it or by any party issued an Account at its direction, but shall not be liable for any obligations incurred by the State or any other participants; and
  - 3.7. Agrees that it may not assign or transfer its rights under this Addendum or the Agreement without the express consent of U.S. Bank.
4. **LIABILITY FOR PARTICIPANT'S PERFORMANCE AND OBLIGATIONS.** Participant agrees that it shall be solely liable for its performance of the terms and conditions of the Agreement and this Addendum.



The State shall have no liability for any obligations incurred under the Program by Participant and any Account holder designated by such Participant.

5. **NOTICES.** The notice address for Participant is:  
Participant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

6. **CHANGE OF CONTROL.** Participant shall immediately notify U.S. Bank in writing of the occurrence of any event concerning Participant that (i) would prevent Participant from making the representations and warranties contained in section 3 at such time or (ii) results in a change of the legal name of such Participant. Participant shall promptly provide such additional details as reasonably requested by U.S. Bank regarding such event. At the election of U.S. Bank, the rights of Participant to be designated a "Participant" under the Agreement may be revoked based upon the notification provided by pursuant to section 6(i) and this Addendum shall terminate.
7. **BINDING AGREEMENT.** The representations, warranties and covenants of Participant in this Addendum constitute valid, binding and enforceable agreements of Participant. The execution of this Addendum and the performance of the obligations hereunder are within the power of Participant, have been authorized by all necessary action and do not constitute a breach of any agreement to which Participant is a party or is bound. Participant represents and warrants that this transaction is within the scope of the normal course of business and does not require further authorization for Participant to be duly bound by this Addendum. Any breach of the terms of this Addendum by the Participant shall also be a default under the Agreement by the Participant giving rise on the part of U.S. Bank to exercise remedies based upon such default. A breach of the terms of the Addendum by Participant shall give rise to the right of U.S. Bank to terminate this Addendum and remove Participant from the Program.
8. **RATIFICATION, AMENDMENT AND TERMINATION OF AGREEMENT.** Participant acknowledges that U.S. Bank and the State may from time to time enter into amendments of the Agreement. No such amendments shall require the consent of, or notification to, Participant and Participant shall be bound by the terms contained in any such amendments. Any failure to inform Participant of any amendment shall not provide a defense to Participant against U.S. Bank's enforcement of the Agreement (as amended) or this Addendum against Participant. **In the event of a termination of the Agreement or the Master Agreement described therein, Participant acknowledges and agrees that U.S. Bank will not be required to pay Participant a rebate payment for the Quarter in which such termination occurs or any subsequent Quarter thereafter.**
9. **AUTHORIZATION AND EXECUTION.** This Addendum may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. This Addendum may be executed and delivered by the parties electronically, and fully executed electronic versions of this Addendum, or reproductions thereof, will be deemed to be original counterparts.

The signer(s) represents and warrants that (i) he or she is authorized by an applicable authority to enter into all transactions contemplated by this Addendum, and (ii) the signatures appearing on all supporting documents of authority are authentic.

<b>PARTICIPANT</b>	<b>U.S. BANK</b>
DATE: _____	DATE: _____
_____	U.S. Bank National Association
Legal Name of Participant (Political Subdivision/Participating Entity)	
_____	_____
(Signature of Authorized Individual)	
_____	_____
(Printed Name of Authorized Individual)	
_____	Vice President
(Printed Title of Authorized Individual)	



## U.S. Bank Services

## Terms and Conditions

Thank you for choosing U.S. Bank Services. This document provides product information, disclosures and descriptions of the Global Treasury Management, Foreign Exchange, Money Center and Safekeeping Services ("Services") available at U.S. Bank. Other documents may become part of our Agreement depending on the Services selected. Please read all documents carefully; they will govern the Services provided to you, the Customer.

Customer shall not be bound by the terms and conditions for specific Services to the extent Customer is not using such Service(s).

U.S. Bank National Association

Member FDIC

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## I. INTRODUCTION

### 1. Definitions.

a. "Agent" means any director, officer, employee, representative, affiliate, third-party vendor or any other person or automation acting on behalf of the Customer with the actual, implied or apparent authority of Customer. Bank may rely on any grant of authority until it receives written notice of its revocation and is given a reasonable amount of time to act upon such notice.

b. "Bank" means U.S. Bank National Association and each subsidiary or affiliate of U.S. Bank that provides Services to Customer.

c. "Business Day" means any day on which a majority of Bank's offices are open to the public for substantially all banking functions. Saturdays, Sundays, federal or state holidays or any day recognized by a Federal Reserve Bank as a holiday shall not be considered a Business Day, even if Bank's offices are open.

d. "Customer" means the business entity, and any parent company, subsidiary or affiliate, for whom Bank provides a Service.

e. "Service" or "Services" means one or more global treasury management, foreign exchange, or money center and safekeeping services offered by Bank.

f. "Written," "writing" and other like terms mean, unless otherwise provided or required by context, both paper and electronic forms of communication such as emails, faxes, digital images and copies, electronic notices capable of being stored and printed, and similar electronic versions. To the extent permitted under applicable law or regulation, signatures may be made and delivered electronically, whether digitally or otherwise, which shall have the same legal validity and enforceability as manually executed signatures and are binding on the parties. The parties may rely on electronic forms of documents subject to any applicable law, regulation, or rule.

**2. Other Agreements, Laws and Regulations.** These terms and conditions and the Master Services Agreement (or existing Treasury Management Service Agreement or equivalent document executed by Customer) are collectively referred to herein as the "Agreement". The Services are provided to Customer subject to the following other documents, laws and regulations, which are hereby incorporated into and made part of this Agreement:

a. the setup materials, user guides, and any supplement thereto required by Bank to implement a specific Service (referred to in the Agreement as the "Implementation Documents");

b. the most current fee and availability schedule and other fee disclosures provided to Customer, including account statements;

c. the provisions of the then-current deposit account agreement and accompanying disclosures, which govern deposit accounts and other depository services;

d. the Uniform Commercial Code, as enacted in the State of Minnesota;

e. any applicable automated clearinghouse operating rules, including, without limitation, the National Automated Clearing House Association Operating Rules and Guidelines (the "NACHA Rules"), the Real-Time Payments Operating Rules, and the rules promulgated by the Electronic Check Clearing House Organization (the "ECCHO Rules") and The Clearing House; and

f. federal, state and local laws and regulations applicable to Bank or Customer, including, without limitation, Regulation CC promulgated by the Board of Governors of the Federal Reserve System, 12 CFR Section 229.1, et seq. ("Regulation CC"), all Operating Circulars promulgated by the Board of Governors of the Federal Reserve System, and the regulations overseen by the Office of Foreign Assets Control ("OFAC").

**3. Change of Terms.** Bank may change the terms of this Agreement at any time upon reasonable written notice to Customer or by any other method permitted by law. Customer's continued use of the Services after the effective date of any change to the terms shall be deemed Customer's consent to the revised terms. Any other variations to this Agreement must

be in writing and executed by Bank. In the event performance of the Services in accordance with the terms of this Agreement would result in violation of any present or future statute, regulation, government policy, or relevant clearing or central bank agreements or settlement systems to which Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation, policy, agreement or systems, and Bank shall incur no liability to Customer as a result of such violation or amendment. No course of dealing between Bank and Customer will constitute a modification of this Agreement or constitute an agreement between the Bank and Customer regardless of whatever practices and procedures Bank and Customer may use.

**4. No Third-Party Beneficiaries/Third-Party Claims.** Services provided by Bank are for the sole and exclusive benefit of Customer, and no other persons or organizations shall have any of the rights and remedies arising under this Agreement. Customer agrees to indemnify, defend and hold Bank harmless from and against any and all claims, demands, expenses, losses, liabilities and damages of third parties of any nature whatsoever, including, without limitation, reasonable attorney fees and court costs at trial or appeal arising directly or indirectly from any Service delivered to Customer pursuant to this Agreement.

**5. Images.** Bank may create a microfilm, optical disk, or other electronic image of the Agreement or Implementation Document. Bank may store the electronic image of such Agreement and/or Implementation Document in its electronic form and then destroy the paper original as part of Bank's normal business practices, with the electronic image deemed to be an original.

**6. Foreign Account Tax Compliance Act.** If a payment made by either party under this Agreement is or could become subject to the U.S. Federal withholding tax imposed by Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended ("FATCA"), then (i) each party shall provide to the other party such information, and shall disclose to the applicable governmental authorities such information, as may be required in order for such party to comply with all applicable requirements of FATCA and to determine that the other party has complied with FATCA, and (ii) a party that fails to comply with FATCA shall indemnify the other party for all costs, damages, and liabilities arising out of such party's failure to comply with FATCA. Customer is responsible for providing Bank with all necessary documentation to establish that payments to Customer are exempt from FATCA withholding.

**7. Disclaimer of Warranties.** BANK MAKES NO WARRANTIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND OF MERCHANTABILITY, EITHER TO CUSTOMER OR TO ANY OTHER PARTY, WITH RESPECT TO THE SERVICES PROVIDED BY BANK OR ITS AGENTS OR WITH RESPECT TO SOFTWARE PRODUCTS PROVIDED OR MADE AVAILABLE TO THE CUSTOMER FOR ITS USE BY BANK IN CONNECTION WITH THIS AGREEMENT AND ANY SERVICE.

## II. TERMS APPLICABLE TO ALL GLOBAL TREASURY MANAGEMENT, FOREIGN EXCHANGE AND MONEY CENTER AND SAFEKEEPING SERVICES

**1. Services.** Bank may provide Services that are not specifically included in the Services section of this Agreement. By accepting and using any Service, Customer agrees that the Service will be governed by this Agreement and any other conditions communicated to Customer by Bank. Certain Services included in this Agreement may not be available or may not be provided in certain market areas.

**2. Proprietary Information.** Customer acknowledges that this Agreement, all related documentation and computer programs and systems used in providing Services, and all information related thereto constitute proprietary property of Bank that is of great commercial value. Customer agrees that it shall not acquire any proprietary interest or rights therein as a result of its use of the Services and shall keep all such proprietary information strictly confidential.

**3. Representations and Warranties.** Customer and Bank each represent and warrant to the other, as of the date this Agreement is entered into and at the time any Service is used or performed, that: (a) it is validly existing and in good standing under the laws of the jurisdiction of its organization; (b) it has all requisite power and authority to execute and deliver, and to perform its obligations under, this Agreement and each Service used or performed by it; (c) this Agreement has been duly authorized and executed by it and constitutes its legal, valid and binding obligation; (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; and (e) the Services received are for business use only and are not primarily for personal, family or household use. In addition, Customer represents and warrants to Bank that this Agreement will not violate: (i) any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on Customer; or (ii) the provisions of any agreement to which Customer is a party or is subject, or by which it, or its assets, is bound, or conflict with or constitute a default thereunder.

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

**5. Fees.** Unless otherwise agreed to by Bank in writing, Customer shall pay Bank the fees, charges and assessments set forth for the Services provided in the most current fee schedules and other fee disclosures provided to Customer (including account statements), plus additional fees and expenses for extraordinary Services. The price schedule for each Service shall be deemed accepted by Customer upon provision of the Service to Customer. In addition, Customer shall pay Bank the amount of any taxes levied or leased on fees charged pursuant to this Agreement, including, without limitation, federal, state, or local privilege excise or sales taxes based on gross revenue, any taxes or amount in lieu thereof paid or payable by Bank, excluding Bank's income taxes and any assessments charged to Bank directly as a result of providing the Services. Bank may change the amount or type of service charges from time to time. Fees for Services used by Customer may be charged in full to Customer's account(s) or may be offset through account analysis by applying earnings credit to Customer's service charges to determine a single monthly net service charge. The applicable earnings credit rate is established by the Bank and will change from time to time without advance notice to Customer. Customer's net service charge could be zero if such earnings credit exceeds total charges in a given month, however excess earnings credits are not refundable as a payment and unused earnings credits shall be forfeited according to a schedule established by Bank or agreed to by the parties. If Customer's earnings credit is insufficient to offset the amount due hereunder, Customer agrees to pay such amount to Bank upon demand. If the earnings credit rate for Customer's account(s), or the index or other referenced rate upon which the earnings credit rate is based, is at any time less than zero percent, Customer agrees to pay all

amounts of the negative earnings credit or fees imposed by Bank as compensation for the negative earnings credit rate. Customer authorizes Bank to debit Customer's account(s) with Bank for any and all fees, expenses or other charges owed by Customer to Bank under this Agreement.

**6. Deposit Accounts.** Most Services require that Customer maintain one or more deposit accounts with Bank. All checks, wire transfers, ACH payments and other items deposited into such accounts are provisionally credited and taken subject to later verification by Bank and Bank's receipt of final settlement. Deposited items that are deposited and later returned unpaid will be charged against the account without prior notice. Customer agrees to pay Bank for any overdraft or overpayment in any of Customer's accounts. If the interest rate for any of Customer's deposit accounts, or the index or other referenced rate upon which the interest rate for such accounts is based, is at any time less than zero percent, Customer agrees to pay Bank all amounts of the negative interest or fees that Bank imposes as compensation for the less-than-zero interest rate. Customer authorizes Bank to charge any account Customer maintains with Bank for any amount remaining due under this Section.

**7. Security Interest.** Customer grants to Bank a consensual possessory security interest in Customer's deposit accounts maintained with Bank and the funds held therein to secure payment of all of Customer's obligations under this Agreement.

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

**9. Authorized Signers and Users.** Customer shall appoint certain Authorized Signer(s) in the Master Services Agreement or in such other format or document as may be agreed by Bank. Customer agrees that Authorized Signers shall be authorized to act on behalf of Customer in all actions taken under this Agreement and may enter into all transactions contemplated in this Agreement, including, without limitation, selecting Services for the benefit of Customer, appointing initial system administrator(s), and signing additional documentation that may be necessary to implement Services and giving instructions with regard to any Service, including, without limitation, wire transfers, ACH transfers and other electronic or paper transfers from or to any account Customer maintains with Bank. The Authorized Signer(s) or Customer's designated system administrator(s) shall appoint Agents to access or use the Services provided for the benefit of Customer ("Authorized Users"). Authorized Users may act on behalf of Customer for a particular Service in accordance with the relevant Implementation Documents or other document(s) establishing the Authorized Users' responsibilities or in accordance with the authority granted by Customer. Customer may revoke the authority of or change the Authorized Signers at any time upon prior written notice and execution of additional documentation required by Bank. Such change or revocation shall not be binding upon Bank until it has received the required written notice and has had a reasonable opportunity to act thereon. In any event, Bank may act on instructions that it believes in good faith were provided by an Authorized Signer or Authorized User, or anyone purporting to be an Authorized Signer or Authorized User.

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

## 11. Security Procedures.

**a. Introduction.** Customer agrees that Bank may select, in its sole discretion, security procedures that must be used in connection with certain Service(s). Customer acknowledges and agrees that it has been informed of and understands Bank's security procedures, and that such security procedures are commercially reasonable. Customer agrees that its use of Bank's security procedures constitutes its agreement to such security procedures, regardless of whether Bank has communicated such security procedures to Customer. Customer represents and warrants that it will comply with Bank's security procedures. Customer agrees to be bound by any payment order, transaction or service change order that is acted upon by Bank in accordance with such security procedures. Customer understands that the security procedures are not intended for the purpose of detecting errors in the transmission or content of information controlled by Customer. If Customer selects certain security procedures to use in connection with a Service and those security procedures provide less protection against unauthorized transactions or activity than other security procedures offered by Bank in connection with such Service, the security procedures selected by Customer shall be deemed commercially reasonable to the same extent as the security procedures offered by Bank that provide greater protection. Customer acknowledges that, in order to meet the constantly evolving threat of account fraud, the Bank's security procedures also need to evolve over time. Bank reserves the right, and Customer agrees that Bank shall have the right, in its sole discretion, to issue new security procedures and/or to cancel or change any security procedures by giving verbal or written notice to Customer. The new or changed security procedures shall become effective upon notification unless Bank provides an effective date to Customer. Customer agrees that its use of such new or changed security procedures constitutes its agreement: (i) to use the new or changed security procedures, regardless of whether Bank has communicated the new or changed security procedures to Customer, and (ii) that such new or changed security procedures are commercially reasonable. Bank also reserves the right to periodically audit Customer's security procedures and information technology processes, and to mandate controls or suspend Services until Customer complies with such security procedures.

**b. Access.** Customer shall be solely responsible for designating authorized access to Services. Access to Services may be controlled through the use of user IDs, personal identification numbers, passwords, digital certificates/signatures, biometric authentication, private keys or other security devices ("Codes"). Customer is solely responsible for maintaining its own internal security and agrees to use the utmost care in selecting any company, individual or automation given access to one or more of the Services. Codes that are assigned to individual Authorized Users shall not be shared with any other person, including other Authorized Users and Customer shall not disclose any information regarding the Services that an unauthorized user would find helpful to obtain access to all or part of any Service. Customer assumes all risk of accidental disclosure or inadvertent use of any Codes, whether such disclosure or use arises out of Customer's negligent or deliberate acts or otherwise. If Customer or its Agents has reason to believe that any security procedures or Codes have or may become known by unauthorized persons (whether or not employed by Customer) or if Customer believes its network or computer systems have been compromised or its computers infected, Customer shall immediately notify Bank by telephone and confirm such verbal notification in writing to Bank within 24 hours. Bank will replace the security procedures and/or Codes in accordance with Bank's procedures. Customer shall be solely responsible for funds transfer instructions and other communications or transactions initiated before Bank received Customer's notice and had a reasonable time to act on such notice. Customer agrees to defend, indemnify and hold Bank harmless from and against any claims, losses, damages, costs, expenses, fines and other liabilities arising out of Customer's failure to maintain the security and confidentiality of the Codes or arising out of the unlawful use of any website or portal by Customer or any person or automation that obtains access to a website or portal using the Codes.

**c. Confidentiality.** Customer and Bank represent, warrant and mutually agree that all confidential information concerning the other party or parties that comes into its possession in connection with any of the Services will be maintained in strictest confidence and shall not be used or divulged to

any other party except as may be necessary or advisable for the due performance of any of the Services, as required by applicable law, or as otherwise agreed or consented to by the parties. Bank shall maintain physical, electronic, and procedural safeguards to keep Customer's confidential information secure. Customer's obligation to maintain the confidentiality of all security procedures shall survive the termination of any Service or this Agreement. Customer acknowledges that certain Services may involve the handling of confidential consumer information that may be subject to privacy laws and regulations, including unauthorized access or breach notification regulations. Customer agrees to notify Bank immediately if Customer sends or receives protected health information that requires the execution of a business associate agreement.

**d. Verbal or Written Instructions.** For some Services, Bank may choose to honor Customer's request to give Bank verbal or written instructions regarding the Services. Customer agrees that Bank may in good faith rely on such verbal or written instructions that purport to come from an authorized Agent of the Customer without independent verification by Bank.

**e. Fraud prevention measures.** Bank offers certain products, Services and security procedures, such as Positive Pay, account blocks or filters, and multi-factor authentication, that are designed to detect or deter fraud. Failure to use such products, Services or security procedures could substantially increase the likelihood of fraud. If Customer fails to implement any of these products, Services or security procedures, or if Customer fails to follow these or other precautions reasonable for its particular circumstances, Customer agrees that, except with respect to liability, loss or damage caused by Bank's own lack of good faith or failure to exercise ordinary care: (i) it will be precluded from asserting any claims against Bank for paying any unauthorized, altered, counterfeit or other fraudulent item that such product, Service, security procedure or precaution was designed to detect or deter; (ii) Bank will not be required to re-credit Customer's account or otherwise have any liability for paying such items; and (iii) Customer will pay all costs and expenses incurred by Bank for all efforts undertaken by Bank to recover any losses incurred by Customer.

**f. Waiver of Security Procedures.** Customer, after having been offered Bank's security procedures, may request that payment orders, transactions, or services orders be authenticated using a different security procedure. Bank, in its sole discretion, may elect to permit Customer to use such a security procedure. In such circumstances, Customer agrees that it shall be bound by any payment order, transaction, or service order authenticated by its selected security procedure whether or not such payment order, transaction, or service order is properly authorized.

**12. Unsecured Electronic Transmissions and Instructions.** Bank shall transmit to Customer information related to Services via secure electronic transmissions. If Customer elects to send or receive instructions or reports from Bank via unsecured electronic means, including, without limitation, facsimile transmission, voice mail, unsecured email, pager or other unsecured electronic or telephonic methods ("Electronic Transmission"), Customer acknowledges that such Electronic Transmissions are inherently insecure communication methods due to the possibility of error, delay and observation or receipt by unauthorized personnel. Bank may rely in good faith on Customer's instructions regarding how and to what number or email address Electronic Transmissions should be sent and may rely on any Electronic Transmission that it reasonably believes to have been initiated by the Customer. Should Customer elect to send or receive unsecured Electronic Transmissions to or from Bank, Customer assumes all risks, and Bank shall not be liable for any loss, that results from the nonreceipt, disclosure, alteration or unauthorized access of any such unsecured Electronic Transmission.

**13. Account Blocks and Filters.** ACH debit blocks and check blocks prevent ACH debits and checks from posting to Customer's account. ACH filters and check filters enable Customer to set various criteria to authorize certain transactions to post to Customer's account while excluding others. If an ACH debit or check filter is established by Customer, any ACH debit entry or check presented that does not specifically meet the criteria will be dishonored or sent back to the originator of the transaction. Customer acknowledges that the effectiveness of the filters is dependent on the accuracy and timeliness of the information provided by Customer. In addition, Customer acknowledges that payments to Bank and certain

Bank-approved vendors cannot be blocked and that certain ACH transactions such as returns, settlements or adjustments cannot be blocked per NACHA Rules. If Customer desires to modify a block or filter setting, Customer shall notify Bank at least 72 hours in advance of the changes taking effect.

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

**15. Transactions on Non-Business Days/Cutoff Times.** Transactions, deposits, payment orders, entries or other requests by Customer received by Bank on a non-Business Day, after established cutoff deadlines, or during a maintenance window may be treated by Bank as received on the next Business Day or may not be processed at all. Bank may change any cutoff time or other deadline at any time. Bank will make a reasonable effort to notify Customer of any changes in advance.

**16. Customer-Initiated Transactions and Instructions.** Bank will honor Customer's transactions and instructions (including adjustments, amendments and cancellations) only when Customer has complied with this Agreement and related policies and procedures. Bank will be under no obligation to honor, either in whole or in part, and may, in its sole discretion, delay, suspend or reject any transaction or instruction that:

- a. exceeds Customer's collected or available funds on deposit with Bank;
- b. Bank has reason to believe may not be authorized by Customer;
- c. involves funds subject to a hold, dispute or legal process preventing their withdrawal;
- d. violates any provision of any applicable regulation of the Federal Reserve Bank or any other federal, state or local regulatory authority;
- e. requires Customer, at Bank's sole discretion, to complete an additional security procedure due to characteristics of such transaction or instruction before processing;
- f. requires Bank to complete regulatory or legal clearance requirements, such as OFAC screening; or
- g. Bank has reasonable cause not to honor, for the protection of either Bank or Customer.

**17. Inconsistent Name and Account Number.** If Customer or third party acting on Customer's instruction initiates a fund transfer instruction or payment order ("Payment Order") to Bank that describes the person to receive the proceeds of such Payment Order (the "Beneficiary"), the Beneficiary's bank, or an intermediary bank by name and an account or other identifying number, Bank and subsequent parties to the Payment Order, including the Beneficiary's bank, may rely on and act solely on the basis of such number, even though the name and number do not agree and even though Bank and subsequent parties know or have reason to know of the inconsistency. Customer's obligation to pay the amount of the Payment Order to Bank is not excused in such circumstances. With respect to incoming Payment Orders that do not include an account number recognizable to Bank, Bank may return the Payment Order to the sending financial institution without incurring any liability to Customer.

**18. Intercompany Services/Authority to Transfer or Commingle Funds.** In the event that Customer lists entities in an appendix to the

Master Services Agreement or in any other document, or otherwise requests Bank to provide Services to a parent company, subsidiary, affiliate, or other commonly owned company, Customer agrees that it shall be jointly and severally liable for such company's obligations under this Agreement. Customer hereby represents and warrants to Bank that any and all transfers and commingling of funds required or permitted by any Service or requested by Customer, and all other aspects of the performance hereby by Bank and Customer, have been duly authorized by all necessary parties, including, without limitation, the account holder of each account, and that Customer has obtained and shall maintain in its regular business records and make available to Bank upon reasonable demand, for a period of seven (7) years after termination of the Service, adequate documentary evidence of such authorization from the account holder of each account, executed by the duly authorized officer(s) of each such account holder in accordance with that account holder's bylaws and/or board resolutions. Customer further represents and warrants that each transfer or commingling of funds authorized hereunder is not in violation of any agreement, bylaw or board resolution of Customer or any of its affiliates or subsidiaries, nor is it in violation of any applicable federal, state, local law, regulation, of any decree, judgment, order of any judicial or administrative authority. Each representation and warranty contained herein shall be continuing and shall be deemed to be repeated upon Bank's effecting each transfer and commingling of funds authorized hereunder.

**19. Customer Records.** This Agreement and the performance of Services by Bank shall not relieve Customer of any obligation imposed by law, clearinghouse rules (including the NACHA Rules and ECCHO Rules), or by contract regarding the maintenance of records, or from employing adequate audit, accounting and review practices as are customarily followed by similar businesses. In addition, Customer shall retain and provide to Bank, upon request, all information necessary to remake or reconstruct any deposit, transmission, file or entry for thirty (30) days following receipt by Bank of the deposit, file, entry, transmission or other order affecting an account.

**20. Account Communications and Review Period.** Customer agrees to regularly and promptly review and verify all statements, reports, check payment records, wire transfer instructions, confirmations, adjustments, charges, and other transactions ("Account Communications"). Customer may receive or access Account Communications electronically, including without limitation, delivery by posting to a password-protected website or database. Customer acknowledges that any Account Communication provided by Bank through electronic delivery is deemed to constitute good and effective delivery when posted by Bank, regardless of whether Customer actually or timely receives or accesses such Account Communication. Unless a different review period is specified elsewhere in this Agreement, Customer shall, within a reasonable time, which in no event shall be greater than thirty (30) calendar days following the day Bank first mails, electronically transmits or otherwise makes data available to Customer ("Review Period"), notify Bank of any error or discrepancy between Customer's records and any Bank notice or statement, or any transaction or transfer Customer believes was not authorized. If Customer fails to notify Bank of such unauthorized transaction within the Review Period, Customer agrees that the failure to report any such errors or unauthorized transactions shall relieve Bank of any liability for the unreported erroneous or unauthorized transaction. In accordance with NACHA Rules, Customer must report an unauthorized ACH debit entry to the Customer's account by the established deadline on the Business Day following the settlement date of the unauthorized entry. Otherwise, Customer's sole recourse is to the originator of the transaction.

**21. Monitoring and Recording Communications.** Customer acknowledges and agrees that Bank, or anyone acting on Bank's behalf, may monitor and/or record any communication between Customer, or its Agent, and Bank, or anyone acting on Bank's behalf, for quality control, security and other purposes. Customer also acknowledges and agrees that this monitoring or recording may be done without any further notice to Customer or its Agent. The communication that may be monitored or recorded includes telephone calls, cellular or mobile phone calls, electronic mail messages, text messages, instant or live chat, or any other communications in any form.



**22. Limitation of Bank's Liability for Services.** Customer acknowledges that Bank's fees for Services are very small in relation to the amounts of transfers initiated through these Services and consequently Bank's willingness to provide such Services is based on the liability limitations contained in this Agreement. In addition to greater limitations on Bank's liability that may be provided elsewhere in this Agreement, Bank's liability related to any Service shall be limited exclusively to actual proven damages arising directly from its own gross negligence or willful misconduct. Bank will not, under any circumstances, be liable for any special, incidental, indirect, consequential, punitive or similar losses or damages, whether or not the likelihood of such losses or damages was known by either party at the time Customer first obtains Services from Bank or at the time any instruction or order is given to Bank pursuant to any Service, and whether such losses or damages arise from tort, contract, loss of investment opportunity, lost or reduced profits, or otherwise. Bank's maximum liability for any loss of interest shall be calculated using a rate equal to the average Federal Funds rate at the Federal Reserve Bank of New York for the period involved. Notwithstanding the foregoing, Bank shall not be liable for any losses or damages caused, in whole or in part, by the action or inaction of Customer, or any Agent or employee of Customer, whether or not such action or inaction constitutes negligence or a breach of this Agreement. Bank shall not be liable for any damage, cost, loss, liability or delay caused by a force majeure event, including but not limited to, accident, strike, labor dispute, fire, flood, war, riot, terrorist act, government restrictions, exchange or market rulings, market volatility, suspension of trading, equipment breakdown, electrical, telephone, Internet or mechanical failures, acts of nature, epidemic, any cause which is attributable to a third party, or any other cause or event that was beyond Bank's reasonable control whether or not reasonably foreseeable. Customer agrees that the fees charged for the performance of the Services shall be deemed to have been established in contemplation of these liability limitations.

**23. Dispute Resolution.**

**a. Governing Law.** Except as otherwise provided herein, this Agreement shall be governed by the laws of the State of Minnesota, without regard to conflicts of law principles.

**b. Jury Trial Waiver.** To the fullest extent permitted by law, Bank and Customer hereby agree to waive trial by jury in any judicial proceeding involving, directly or indirectly, any matter (whether in tort, contract or otherwise) in any way arising out of, related to or connected with these Services or this Agreement. Bank and Customer represent and warrant to each other that this jury trial waiver is knowingly, willingly and voluntarily given.

**c. Jurisdiction and Venue.** Customer consents to the jurisdiction of the courts of the State of Minnesota, waives any argument that such venue is inconvenient and agrees to bring litigation commenced in connection with this Agreement in either the District Court of Hennepin County or the United States District Court, District of Minnesota, Fourth Division.

**d. Collection Costs.** Should Bank have to undertake any action to recover any amount due under this Agreement for the Services, including, without limitation, fees, overdrafts or overpayment, Customer will be liable to Bank for the cost of such effort, plus reasonable attorney fees.

**e. Adverse Claims.** If Bank receives an adverse claim against any account, and Bank reasonably believes that it will not be protected if the claim is ignored, Customer agrees that Bank may place a hold on the affected account. Any such hold will remain in place only so long as reasonably necessary to resolve the claim or employ legal remedies to allow a court to decide such claim. Assuming compliance with this Section, Bank shall have no liability for dishonored transactions due to the hold, and Customer agrees to reimburse Bank all costs, including reasonable attorney fees, incurred due to such adverse claim.

**24. Necessary Third-Party Service Providers.**

**a. Third-Party Networks.** Some Services are provided by Bank through access to a third-party network. Such Services are dependent upon the availability of the third-party network on conditions acceptable to Bank. Bank reserves the right to discontinue the Service or provide the Service through an alternative third-party network and shall have no liability should such network become unavailable. Bank does not warrant and shall not

be responsible for Services received by Customer from any third-party network.

**b. Third-Party Vendors.** Customer agrees that Bank may, at its sole discretion and at any time without notice to Customer, engage third-party vendors to provide a Service, or portions thereof, to Customer, or to support Bank in its provision of a Service to Customer. Customer acknowledges that Bank's third-party vendors may perform certain functions offshore. Some Services and/or computer equipment and software are provided to Customer by a third-party vendor selected by Customer who is unaffiliated with Bank. In those cases, the third-party vendor is acting as Customer's Agent rather than an agent of Bank, and Customer agrees to be bound by such third party's acts or omissions. Bank does not warrant and shall not be responsible for Services provided by unaffiliated third-party vendors. Customer authorizes Bank to disclose to any third-party vendor of Customer or Bank information concerning Customer to the extent required to deliver the requested Service.

**25. Notices.** All written notices to Bank shall be delivered or mailed to the address designated by Bank. Notices, including but not limited to, Account Communications sent to Customer shall be delivered or mailed to Customer's current lead account address or other known address if deemed more appropriate by Bank under the circumstances. Notices may be delivered to some Customers in electronic format, including posting to Bank's website, delivery via facsimile to a number on file, or delivery to an electronic mail address on file or used by an Authorized Signer or Authorized User.

**26. Severability.** To the extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision shall be held to be invalid, illegal or unenforceable, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without rendering invalid, illegal or unenforceable the remainder of any such provision or the remaining provisions of this Agreement.

**27. Waiver.** A waiver by Bank or Customer of any term or provision shall not be construed as a waiver of such term or provision at any other time, or of any other term or provision. Bank's waiver of the enforcement of any of the terms of this Agreement with respect to any transaction or series of transactions will not affect Bank's right to enforce any of its rights with respect to other Customers or to enforce any of its rights with respect to later transactions with Customer.

**28. Assignment.** In addition to Section 24 above, Bank may at any time assign or delegate its rights and duties under this Agreement. Customer may not assign or transfer its rights or obligations hereunder to any other person or entity without Bank's written consent, which consent shall not be unreasonably withheld.

**29. Termination.** Any Services may be terminated by either party upon 30 days' prior written notice to the other. Bank may also terminate or suspend any Services immediately without notice to Customer if any of the following occurs: (a) Customer becomes insolvent or files, or has filed against it, any bankruptcy or other insolvency, reorganization, liquidation or dissolution proceeding of any kind; (b) a material adverse change occurs in Customer's business or financial condition; (c) Bank has reason to believe that Customer has engaged in fraudulent or illegal activity; (d) Customer fails to maintain balances in accounts sufficient to cover overdrafts; (e) Customer violates, or is in default under, the terms of this Agreement or any other agreement with Bank; (f) Customer fails to comply with security procedures or fails to provide information reasonably requested by Bank; (g) Bank determines it is impractical or illegal to provide any Services because of changes in laws, regulations or rules; (h) Bank, in good faith, is unable to satisfy itself that any Services have been properly authorized by Customer; or (i) Bank, in good faith, deems itself insecure. Notwithstanding any termination, the terms of this Agreement shall apply to all transactions which have been initiated prior to termination.

### III. TERMS APPLICABLE TO ALL INTERNET-BASED SERVICES

**1. Introduction.** Bank offers a number of Services over the Internet. If requested by Customer and agreed to by Bank, Bank will grant Customer access to one or more of Bank's Internet Services in the manner established by Bank. Customer agrees that its use of Services from time to time offered by Bank via the Internet (collectively, the "Internet Services") shall be governed by:

- (i) this Section and all other relevant sections of this Agreement, including, without limitation, sections governing the specific Services that are offered online;
- (ii) the other agreements, laws and regulations described in Section I.2 of this Agreement; and
- (iii) the applicable Terms of Use, as defined in Section III.2 below.

**2. Terms of Use.** Bank may post terms or rules of use ("Terms of Use") governing Customer's use of the Internet Services on Bank's website(s) for accessing such Services. Such Terms of Use shall supplement and amend the terms set forth in this Section. In the event of a conflict between the Terms of Use and the rules set forth in this Agreement, the Terms of Use shall govern. Customer's initial use of an Internet Service shall constitute an acceptance of the Terms of Use posted on the website. Bank may change the Terms of Use for any Internet Service at any time by posting notice of such change via an alert or message on a broadcast or message page of the website ("Broadcast Message"). All changes shall have an effective date. Customer's use of the Internet Service after the effective date of any such change shall constitute an acceptance of the revised Terms of Use by Customer. Customer is responsible for establishing an internal procedure for reviewing the Broadcast Message page on a regular basis to obtain timely notice of changes to the Terms of Use. In the event that a specific Internet Service does not have Broadcast Message capability, Customer will be notified of any changes in accordance with Section II.25 hereof. Neither Bank nor Customer will contest the validity, enforceability, or admissibility of hard copy printouts of the Terms of Use for any website or notices of changes to such Terms of Use provided in accordance with this Section. Copies of such Terms of Use or notices, if introduced as evidence in tangible form in any judicial or administrative proceeding, will be admissible to the same extent and under the same conditions as other business records originated and maintained in documentary form.

**3. Security Procedures.** Customer agrees to use the Internet Services in accordance with the security procedures established by Bank. Bank reserves the right to reject any transaction or Service request that is not made in accordance with such procedures. Customer shall at all times use a Web browser that supports the level of encryption used by Bank as part of its security procedures. Due to emerging technologies and ensuing changes in security practices, Bank reserves the right to supplement or change its security procedures from time to time upon reasonable notice to Customer. Customer acknowledges and agrees that, notwithstanding anything to the contrary set forth in the Agreement, in matters of security, reasonable notice may be less than a day's notice or even, in some cases, notice after the fact. Customer is solely responsible for maintaining a secure work environment to ensure against the use of Internet Services by unauthorized individuals or unauthorized automated access. Security procedures to be followed by Customer include, without limitation, informing Authorized Users that any passwords should not be shared, securing physical access to the terminals used for Internet Services when an Authorized User has logged in to an application or system and, if applicable, identifying secure methods for controlling authorized automated access to an application or system.

**4. System Administrator.** Customer shall designate one or more System Administrator(s). The System Administrator shall be responsible for setting up Internet Services and for establishing internal security procedures related to such Internet Services, which may be made available through applications or systems offered by Bank, including, without limitation, accepting delivery of software, system-wide configuration of Bank accounts, appointing Authorized Users, establishing authority levels, authorization requirements and payment limits, and distributing and resetting IDs, passwords and other internal security devices related to the Internet Services. Customer represents and

warrants to Bank that any actions taken by the System Administrator in relation to the Internet Services including, without limitation, the appointment of Authorized Users and the access, automation and privileges granted to such Authorized Users, are duly authorized by Customer.

#### **5. Other Customer Responsibilities.**

**a. Equipment and Software.** Customer is responsible for obtaining (from Bank, in some instances), installing and maintaining the computer and communications equipment (including, without limitation, personal computers and modems), software, Web browsers, Internet access and communications services necessary to access and use the Internet Services in accordance with this Agreement.

**b. Use of Internet Services.** Customer shall use its access to Internet Services and websites operated by or on behalf of Bank only to conduct its business through or with Bank and agrees to limit access to those Agents who require access to Internet Services.

**c. Antivirus Protection.** Customer agrees to run antivirus software before transmitting data to or through any website. Customer may use any commercially available, industry recognized antivirus software of the type that detects and disinfects viruses automatically, without the need for the Customer to execute virus scanning for each file manually. Customer shall update its antivirus software on a regular basis and in no event less often than once every week.

**d. Anti-malware Protection.** Bank may offer complimentary anti-malware software for use with certain Services that is designed to detect, deter or destroy different types of malware. Failure to install anti-malware software offered by Bank could substantially increase the likelihood of fraud and other losses. If Customer fails to install software offered by Bank, Customer agrees that, except with respect to losses caused by Bank's own lack of good faith or failure to exercise ordinary care, it will be precluded from asserting claims against Bank for any losses caused by malware which such software would have detected, deterred or destroyed. Bank will not be required to re-credit Customer's account or otherwise have any liability for such losses.

**e. Network Security.** Customer agrees to install and utilize current industry-standard network security for its information technology systems that access Services via the Internet. Network security protection includes, but is not limited to, firewalls and intrusion detection systems. For certain Services, Bank may require Customer maintain specific network security protection in order to access the Services.

**6. Disclaimer of Warranties.** BANK PROVIDES ALL INTERNET SERVICES ON AN "AS IS," "AS AVAILABLE" BASIS AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE INTERNET SERVICES OR THE CONTENT OR SECURITY OF ANY WEBSITE. BANK DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, BANK DOES NOT WARRANT THAT THE OPERATION OF ANY WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER IS RESPONSIBLE FOR TAKING APPROPRIATE PRECAUTIONS AGAINST DAMAGE TO ITS OPERATIONS WHICH COULD BE CAUSED BY INTERRUPTIONS OR MALFUNCTIONS OF ANY WEBSITE AND ASSUMES THE RISK OF SUCH OCCURRENCES.

#### **IV. TERMS APPLICABLE TO SPECIFIC GLOBAL TREASURY MANAGEMENT SERVICES**

The following are additional terms and conditions applicable to specific Treasury Management Services offered by Bank. Bank may change the number or type of Services offered at any time. Customer shall not be bound by the terms and conditions for the specific Services described in Sections IV, V and VI of this Agreement to the extent Customer is not using such Service(s).

##### **A-1. EBILL SERVICE**

eBill allows Customer's customers ("Payers") to make convenient payments to Customer through multiple channels, including, but not limited to, the Internet, an Interactive Voice Response (IVR) system, text message, chatbots or other forms of social media, or virtual assistants. In addition, Customer may distribute electronic invoices, bills or statements to Payers who can pay such invoices, bills or statements via multiple payment channels accessible through the eBill Service.

###### **1. Internet.**

a. "Customer Payment Site" means the interactive Internet payment site hosted by U.S. Bank National Association or its third-party vendor (collectively "Bank") where Payers may make payments to Customer over the Internet. Bank will configure, implement, host and support the Customer Payment Site. If Customer provides the content for the Customer Payment Site, Customer agrees to indemnify and hold Bank harmless for any content that violates applicable law or payment network rules. Upon request Bank will provide draft terms and conditions for Customer to provide to its customers on Customer Payment Site. Such terms and conditions are provided as is, without any representations or warranties. Customer shall be solely responsible for determining the suitability of such terms and conditions for Customer's use, as well as the final form and content of any terms and conditions it elects to post (if any).

b. Customer License. Bank shall have the right and license to use or sublicense Customer's name, trademarks, service marks, copyrights and logos and other textual information in connection with the Customer Payment Site solely for the purposes contemplated herein.

c. "Administrative Payment Center Website" means the interactive Internet site hosted by Bank where Customer may access reports, initiate payments on behalf of Payers, or initiate refunds. Bank will configure, implement, host and support the Administrative Payment Center Website. Customer shall be solely responsible for setting up Authorized Users, access entitlements and internal controls within the Administrative Payment Center Website.

d. Links. If applicable, Customer shall provide and maintain a secure link on its website to the Customer Payment Site. Customer shall be responsible for ensuring that the link to the Customer Payment Site takes Payer to the appropriate area within the Customer Payment Site. Customer shall be responsible for providing the agreed-upon data concerning Payer in a manner that meets Bank's encryption or security methods during the exchange. Customer and Bank agree to use industry-standard security procedures and technology to ensure the security of the Customer's website and the Customer Payment Site and to prevent data theft or unauthorized access.

e. Payer Authentication. Depending on the applicable payment processing channel, Customer shall be responsible for verifying the identity of each Payer prior to the time Payer is linked to the Customer Payment Site. Customer agrees that Payers shall not be granted access to the Customer Payment Site link until Customer has verified the identity of each Payer using a commercially reasonable fraud detection system. For every Payer that accesses the Customer Payment System, Bank relies on Customer to have completed such verification.

**2. Compliance with laws and regulations.** Customer agrees to comply with all applicable laws, rules and regulations, including without limitation, those issued by: (i) the National Automated Clearing House Association; (ii) the Real-Time Payments (RTP) System Operating Rules; (iii) the Zelle Network Participation Rules; (iv) any governmental entity, including (without limitation) the requirements contained in the Electronic Fund Transfer Act (including without limitation Section 1005.10, Preauthorized Drafts), the Americans with Disabilities Act, the Health Insurance

Portability and Accountability Act, Regulation E, the Electronic Signatures in Global and National Commerce Act, the Controlling the Assault of Non-Solicited Pornography And Marketing (CAN-SPAM) Act, and the Telephone Consumer Protection Act; and (vi) any other entity or association that issues or sponsors a payment device, including (without limitation) the requirements of the Payment Card Industry (PCI) Data Security Standard and any credit card association, including Visa and Mastercard. Customer further agrees to comply with all payment network regulations for ATM debit networks.

**3. Payer Authentication / Authorization.** For each payment channel, Bank shall authenticate a Payer's identity in the manner specified by Customer, and agreed to by Bank, in the Implementation Documents. Customer acknowledges and agrees that the authentication of the Payer's identity in such manner shall constitute a commercially reasonable fraud detection system and Bank shall have no liability for all payments so authenticated. Bank is not responsible for errors made by Payer or Customer and may rely on the information submitted or communicated by Payer or Customer. Customer agrees to defend, indemnify and hold Bank harmless from any claims related to Customer's or Payer's submission of inaccurate or incorrect information.

**4. Payment Processing.** Payments shall be processed in the manner mutually agreed to between Bank and Customer, which may include ACH debit entries, debit cards, credit cards or other payment processing methods. Customer shall at all times be considered the originator of Payer's payment. For ACH WEB debit transactions, upon Customer's request and if agreed to by Bank, Bank will validate receiving account and account status information by use of a commercially reasonable fraud detection system selected by Bank for the first use of new account information or of a change to existing account information. By requesting that Bank perform such validation, Customer consents to Bank disclosing any information necessary to perform such validation to Bank's third-party vendor. Depending on the applicable payment processing channel, payment processing may also be subject to the terms of any other agreement between Bank and Customer and between Customer and the payment transaction processor supported by Bank. Payments may be initiated through a number of channels including, but not limited to, the Customer Payment Site, IVR system text message, chatbots or other forms of social media, or virtual assistants. Bank will notify Customer of the payments that were initiated either through the Administrative Payment Center Website or by delivering a file in the manner set forth in the Implementation Documents. Customer acknowledges that all payments are subject to adjustment, return, reversal and/or chargeback in accordance with the rules governing the applicable payment processing channel. Customer agrees to be liable to Bank for any such adjustment, return, reversal or chargeback.

**5. Recurring Payments.** The eBill Service provides Customer with the ability to offer Payers the option of making fixed or variable recurring payments. If permitted by applicable regulations, Payers have the ability to initiate a payment that recurs on a fixed schedule selected by the Payer. Payers must be enrolled in eBill in order to initiate variable recurring payments.

**6. Fees.** In addition to Bank's standard fees, Customer agrees to pay additional fees and expenses for implementation of the eBill Service or other additional Services, if any, as may from time to time be disclosed to Customer by Bank. Customer also agrees to pay the applicable fees and expenses charged by the payment transaction processor supported by Bank, as set forth in Customer's agreement with such processor.

###### **7. Convenience Fee, Service Fee and Surcharge**

a. If permitted by applicable regulations, the eBill Service offers flexible fee or surcharge options that allow Customer or Bank to define and collect fees or surcharge to be charged to Payers in connection with the payment transaction. Payers are provided with the opportunity to stop the payment process if they do not wish to pay the fee.

b. If Customer desires to collect fees, Customer shall be responsible for ensuring that fee and surcharge assessments comply with the relevant laws, rules and regulations.

c. If agreed to by Bank and Customer, Bank may collect and retain the fees. In such case, Customer agrees that Bank may, in its sole discretion, set, adjust, manage and collect the fees as a means to wholly or partially

offset Bank fees that may otherwise have been incurred by Customer. Bank's willingness to collect fees shall be based on Customer's projected payment volume, average ticket, type of transactions, or other considerations such as changes to interchange fees and assessments. Bank may, in its sole discretion, establish or modify payment caps for sums paid by Payers. If the actual payment volume, average ticket, payment types or other considerations fail to meet Customer's stated projections or do not completely offset Bank fees, Customer agrees that Bank may, in its sole discretion, require Customer to wholly or partially reimburse Bank for any resulting shortfall in Bank fees.

**8. Transaction Controls.** Customer agrees to notify Bank of any material change or anticipated material change in daily dollar activity or type of transaction processing and obtain Bank's consent to such change. Bank may, in its sole discretion, immediately upon written notice to Customer, place a maximum dollar limit on the eBill transactions or require Customer to provide reasonable security for Bank's continued handling of such transactions.

**9. Payer Communications.** Customer agrees to obtain all consents necessary from Payers for Bank to process the Payers' data and communicate with Payers (e.g., confirmation Short Message Service ("SMS") or email) in the course of performing the eBill Service.

**10. Customer Records.** This Agreement and the performance of the eBill Service by Bank shall not relieve Customer of any obligation imposed by law, clearinghouse rules, payment card industry rules, or by contract regarding the maintenance of records, or from employing adequate audit, accounting and review practices as are customarily followed by similar businesses. In addition, Customer shall retain and provide to Bank, upon request, all information necessary to remake or reconstruct any transmission, file or entry for thirty (30) days following receipt by Bank of the deposit, file, entry, transmission or other order.

**11. Bill Presentment and Distribution Service.** If selected by Customer and agreed to by Bank, Customer may distribute invoices, statements, confirmations, regulatory notices, or other electronic communications to Payers via the eBill Distribution Service. Customer represents and warrants that it will not use or include any reference to untruncated credit card, social security, or bank account numbers, or Personal Health Information (as defined in the Health Insurance Portability and Accountability Act of 1996) in any electronic communications exchanged through the eBill Distribution Service. Customer shall indemnify and hold Bank harmless from and against any and all claims, demands, damages, losses, liabilities, penalties and expenses (including, without limitation, reasonable attorney fees and court costs at trial or on appeal) arising directly or indirectly from Customer's breach of the representation or warranty contained in this paragraph. Customer acknowledges and agrees that all electronic communications exchanged through the eBill Distribution Service may be received, processed, managed, and archived by third parties unaffiliated with Bank. Bank makes no representation or warranty, and assumes no responsibility, with respect to any actions or inactions of any unaffiliated third party in connection with Customer's use of the eBill Distribution Service.

**12. Third-Party Vendor.** Customer agrees that Bank may, at its sole discretion and at any time without notice to Customer, engage a third-party vendor to provide the eBill Service, or portions thereof, to Customer, or to support Bank in its provision of the eBill Service to Customer. Customer acknowledges that Bank's third-party vendor may perform certain functions offshore. Customer authorizes Bank to disclose to any third-party vendor information concerning Customer to the extent required to deliver the eBill Service.

**13. Card Updater Service.** Bank, or Bank's third-party vendor, participates in card updater programs offered by card issuers which enable Bank to update card information for Payers with expired or expiring cards. If selected by Customer and agreed to by Bank, Bank will provide Customer with updated card information for Payers when such information is available. Customer must be approved by card issuers, or by Bank in accordance with card issuer guidelines, prior to use. Such information will only be available for Payers who have elected recurring payments or for which another legitimate business need exists. Bank is not responsible for the accuracy or completeness of any information provided by the card issuers.

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## **A-2. E-PAYMENT SERVICE**

Customer may select the E-Payment Service that would allow its customers ("Payers") to make convenient payments to Customer through the Internet, an Integrated Voice Response (IVR) system or a 'live' call center. In addition, Customer may distribute electronic invoices, bills or statements to Payers who can pay such invoices, bills or statements via multiple payment channels accessible through the E-Payment Service. Customer agrees that this Service shall be governed by this Section and all other relevant sections of this Agreement. E-Payment Service is no longer available for new customers.

### **1. Internet.**

**a. "Customer Payment Site"** means the interactive Internet payment site hosted by Bank where Payers may make payments to Customer over the Internet. Bank will configure, implement, host and support the Customer Payment Site. If Customer provides the content for the Customer Payment Site, Customer agrees to indemnify and hold Bank harmless for any content that violates applicable law or payment network rules.

**b. Customer License.** Bank shall have the right and license to use or sublicense Customer's name, trademarks, service marks, copyrights and logos and other textual information in connection with the Customer Payment Site solely for the purposes contemplated herein.

**c. "Administrative Website"** means the interactive Internet site hosted by Bank where Customer may access reports, initiate payments on behalf of Payers, or initiate refunds. Bank will configure, implement, host and support the Administrative Website. Customer shall be solely responsible for setting up Authorized Users, access entitlements and internal controls within the Administrative Website.

**d. Links.** Customer shall provide and maintain a secure link on its website to the Customer Payment Site. Customer shall be responsible for ensuring that the link to the Customer Payment Site takes Payer to the appropriate area within the Customer Payment Site. Customer shall be responsible for providing the agreed-upon data concerning Payer in a manner that meets Bank's encryption or security methods during the exchange. Customer and Bank agree to use industry-standard security procedures and technology to ensure the security of the Customer's website and the Customer Payment Site and to prevent data theft or unauthorized access.

**e. Payer Authentication.** Depending on the applicable payment processing channel, Customer shall be responsible for verifying the identity of each Payer prior to the time Payer is linked to the Customer Payment Site. Customer agrees that Payers shall not be granted access to the Customer Payment Site link until Customer has verified the identity of each Payer using a commercially reasonable fraud detection system. For every Payer that accesses the Customer Payment System, Bank may rely on Customer to have completed such verification.

**2. Compliance with laws and regulations.** Customer agrees to comply with all applicable laws, rules and regulations, including without limitation, those issued by: (i) the National Automated Clearing House Association; (ii) any governmental entity, including (without limitation) the requirements contained in the Electronic Fund Transfer Act, Regulation E, and the Electronic Signatures in Global and National Commerce Act; (iii) the American with Disabilities Act; and (iv) any other entity or association that issues or sponsors a payment device, including (without limitation) the requirements of the Payment Card Industry (PCI) Data Security Standard and any credit card association, including Visa and Mastercard. Customer further agrees to comply with all payment network regulations for ATM debit networks.

**3. Interactive Voice Response (IVR).** To make an automated payment via a touch-tone phone, Payers may access the IVR system by calling a toll-free number provided by Bank or Customer. Customer shall have previously submitted Payer registration data ("registration data") to Bank. In order to make a payment via the IVR system, Payers are required to input information that matches their user information submitted in the registration data. Unless otherwise agreed to in writing by Bank, the IVR system will no longer be available after October 31, 2022.

**4. Call Center.** If this option was selected by Customer, Payers may make a payment by phone by calling a 24-hour call center and speaking to 'live' Bank personnel. Bank shall authenticate a Payer's identity in the manner specified by Customer, and agreed to by Bank, in the Implementation Documents. Customer acknowledges and agrees that the authentication of the Payer's identity in such manner shall constitute a commercially reasonable fraud detection system and Bank shall have no liability for all payments so authenticated.

**5. Payer Authorization.** If payment is made via the Internet, Payer will be prompted to authorize the payment and print a confirmation once Payer has reviewed the payment data and input the information necessary to complete the payment. If payment is made via the IVR or call center, the confirmation number will be read to Payer. Bank is not responsible for the detection of errors made by Payer or Customer and may rely on the information submitted or communicated by Payer or Customer.

**6. Payment Processing.** Payments shall be processed in the manner mutually agreed to between Bank and Customer, which may include ACH debit entries, debit cards, credit cards or other payment processing methods. Customer shall at all times be considered the originator of Payer's payment. For ACH WEB debit transactions, upon Customer's request and if agreed to by Bank, Bank will validate receiving account and account status information by use of a commercially reasonable fraud detection system selected by Bank for the first use of new account information or of a change to existing account information. By requesting that Bank perform such validation, Customer consents to Bank disclosing any information necessary to perform such validation to Bank's third-party vendor. Depending on the applicable payment processing channel, payment processing may also be subject to the terms of any other agreement between Bank and Customer and between Customer and the payment transaction processor supported by Bank. Payments may be initiated through the Customer Payment Site, IVR system or Administrative Terminal. Bank will notify Customer of the payments that were initiated either through the Administrative Terminal or by delivering a file in the manner set forth in the Implementation Documents. Customer acknowledges that all payments are subject to adjustment, return, reversal and/or chargeback in accordance with the rules governing the applicable payment processing channel. Customer agrees to be liable to Bank for any such adjustment, return, reversal or chargeback.

**7. Recurring Payments.** The E-Payment Service provides Customer with the ability to offer Payers the option of making fixed or variable recurring payments. If permitted by applicable regulations, Payers have the ability to initiate a payment that recurs semi-weekly, weekly, semi-monthly, monthly or quarterly. Payers must be pre-registered in order to initiate variable recurring payments.

**8. Fees.** In addition to Bank's standard fees, Customer agrees to pay additional fees and expenses for implementation of the E-Payment Service or other additional Services, if any, as may from time to time be disclosed to Customer by Bank. Customer also agrees to pay the applicable fees and expenses charged by the payment transaction processor supported by Bank, as set forth in Customer's agreement with such processor.

**9. Convenience Fee.**

**a.** If permitted by applicable regulations, the E-Payment Service offers a flexible convenience fee option that allows Customer or Bank to define and collect a convenience fee to be charged to Payers in connection with the payment transaction. Payers are provided with the opportunity to stop the payment process if they do not wish to pay the convenience fee.

**b.** If Customer desires to collect the convenience fee, Customer shall be responsible for ensuring that convenience fee assessments comply with the relevant laws, rules and regulations.

**c.** If agreed to by Bank and Customer, Bank may collect and retain the convenience fee. Customer agrees that Bank may, in its sole discretion, set, adjust, manage and collect the convenience fee as a means to wholly or partially offset Bank fees that may otherwise have been incurred by Customer. Bank's willingness to collect the convenience fee shall be based on Customer's projected payment volume, average ticket, type of transactions, or other considerations such as changes to interchange fees

and assessments. Bank may, in its sole discretion, establish or modify payment caps for sums paid by Payers. If the actual payment volume, average ticket or other considerations fail to meet Customer's stated projections or do not completely offset Bank fees, Customer agrees that Bank may, in its sole discretion, require Customer to wholly or partially reimburse Bank for any resulting shortfall in Bank fees.

**10. Transaction Controls.** Customer agrees to notify Bank of any material change or anticipated material change in daily dollar activity or type of transaction processing and obtain Bank's consent to such change. Bank may, in its sole discretion, immediately upon written notice to Customer, place a maximum dollar limit on the E-Payment transactions or require Customer to provide reasonable security for Bank's continued handling of such transactions.

**11. Payer Communications.** Customer agrees to obtain all consents necessary from Payers for Bank to process the Payers' data and communicate with Payers (e.g., confirmation Short Message Service ("SMS") or email) in the course of performing the E-Payment Service. It is Customer's responsibility to ensure that its use of the E-Payment Service complies with end-user communication laws such as the Telephone Consumer Protection Act ("TCPA") and Controlling the Assault of Non-Solicited Pornography And Marketing ("CAN-SPAM") Act.

**12. Transition to eBill Services.** E-Payment Services are in the process of being phased out by Bank. Customer agrees to work in good-faith with Bank to complete the transition of Customer from E-Payment Services to eBill Services (Section IV.A-1) in accordance with the schedule agreed upon by Bank and Customer, but in any case by the final termination date (tentatively scheduled for December 31, 2022) as may later be established by Bank.

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## B. INFORMATION REPORTING AND TRANSACTION SERVICES

Information reporting and transaction Services may be provided by Bank to Customer through SinglePoint®, Global Trade or other applications or systems as may be introduced by Bank ("System(s)"). The System may also be used by Customer to automate many of the Services offered by Bank and also may provide access to other Bank systems that initiate transactions. Customer agrees that such use of the System shall be governed by this Section and all other relevant sections of this Agreement.

**1. Introduction.** If requested by Customer and agreed to by Bank, Bank will grant access to Bank's System(s) in the manner agreed to by Bank. Customer agrees to be bound by any terms of use and license agreements associated with these Systems.

**2. Information Reporting.** Bank is authorized to store, process, transmit and make available through Bank's agencies and Systems and through third-party data processing providers ("Providers") information regarding accounts designated by Customer. Bank or Providers will transmit to Customer information regarding its account(s) and/or other financial data through the System on a periodic basis. Customer may elect to receive data through one or more delivery mechanisms, including, without limitation, the Internet, Application Programming Interface (API), facsimile, CD-ROM or secure email or other data transmission options supported by Bank. Section II.12 shall apply in the event Customer elects to receive facsimile reports via an Electronic Transmission. Balance and related information for Customer's account(s) held at other financial institutions may be made available by these financial institutions or Providers that input information into Bank's System. Bank will use reasonable care in submitting data into the System but assumes no responsibility for the accuracy or timeliness of the account information and other financial data supplied by other financial institutions or Providers. Bank will make every reasonable effort to deliver information by the mutually agreed upon time but does not guarantee a specific delivery time. Accordingly, Bank's responsibility to Customer with respect to the delivery of information shall be to deliver such work as close to the agreed time as may be reasonably practicable.

**3. Transaction Services.** Customer may use SinglePoint®, Global Trade or other similar System to access treasury management or trade finance transaction Services offered by Bank for which Customer has enrolled. Depending on the type of Service or System feature offered by Bank and selected by Customer, access to the transaction Services may include, but are not limited to, ACH, cash vault, check payables, wire transfer payments, Real-Time Payments (RTP), Zelle disbursements, book transfers, positive pay services, investments, loan services, trust services, letter of credit services, adjustments, returns and exceptions management, receivables management, transaction research and annotation, and system administration. Customer agrees that use of the System for transaction Services shall be governed by this Section IV.B and all other sections of this Agreement that are applicable to the product or Service being accessed.

**4. Security Procedures/System Administrator.** Customer agrees to operate the System in accordance with Sections III.3 and III.4 of this Agreement.

**5. Manuals.** Bank will provide Customer with a manual in electronic format that will set forth the applicable System's policies and procedures with which Customer agrees to comply. Bank may, without prior notification, make amendments to any manual. Bank owns or has obtained all proprietary rights to the manuals and Customer agrees not to duplicate, distribute or otherwise copy Bank's manuals without Bank's prior written consent. Any manual will at all times remain the property of Bank and Bank reserves the right to request Customer to return all printed copies of such manual within thirty (30) days of termination of this Service.

**6. Customer Responsibilities.** Customer will purchase (from Bank, in some cases) and provide all equipment and software necessary to use the applicable System in accordance with this Agreement. Bank shall have no responsibility and makes no warranties for such equipment or software. Customer agrees to use the System solely to conduct its business with Bank and agrees to limit access to those Agents who require access to the System. Customer agrees that in addition to other limitations to Bank's

liability elsewhere in this Agreement, Bank shall not be liable for any loss or damage arising directly or indirectly from the following:

- a. any inaccuracy or incompleteness in the input of an order or instruction from the Customer;
- b. any failure by Customer to obtain a confirmation of an order or instruction; or
- c. any cancellation or attempted cancellation by Customer of an order or instruction.

**7. International Information Reporting.** If requested by Customer and agreed to by Bank, Bank may provide incoming international information reporting through Providers or via SWIFT, which shall be governed by the terms of this Section IV.B, other applicable sections of this Agreement, and other applicable agreements or law. Bank shall receive the international information reporting data through Providers or via SWIFT from Customer's account-servicing Bank ("Servicing Bank") and shall display such data to Customer using SinglePoint® or other similar System. If Customer makes a request to Bank for an off-schedule international information report from the Servicing Bank, Customer agrees that Bank shall have no liability if the Servicing Bank does not support the off-schedule request or does not respond to the request in a timely manner.

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## C. ELECTRONIC DEPOSIT SERVICES

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Electronic Deposit Services provide Customer with the option of making electronic deposits using one or more products offered by Bank. Customer agrees that the Electronic Deposit Services shall be governed by this Section and other relevant sections of this Agreement.

**1. Processing Options.** Customer shall at all times maintain an account with Bank. Customer captures checks or check information received from its Payor Customers into Check Images and transmits the same to Bank for processing and collection. Bank will seek to collect such Check Images through the check collection system by presenting or exchanging Check Images, or using Check Images to create a Substitute Check, or a Photo-In-Lieu ("PIL") for collection.

### 2. Definitions.

**a.** "Check Image" means an electronic image of the front and back of an original paper check (including a paper Demand Draft), or an electronic image of a Substitute Check that is created by Customer, Bank or another bank or depository institution in the check collection system.

**b.** "Check Image Metadata" means information about the Check Image, as well as pointers to the actual image data (also known as image tags).

**c.** "Customer System" means the computer hardware and/or software and/or Web-based applications located at Customer's site that is used by Customer to prepare Electronic Deposits and to access the Electronic Deposit Services.

**d.** "Demand Draft" or "Remotely Created Check" means a paper item, other than a Substitute Check or PIL, which (i) is drawn on a Payor Customer account, (ii) does not bear the signature of the Payor Customer, and (iii) is authorized by the Payor Customer to be issued in the amount for which the item is drawn.

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

**f.** "Electronic Deposit Services" means an array of products and services that allow organizations that receive check payments and/or remittance payments to deposit all payments electronically at Bank, as further described in the applicable User Manual.

**g.** "Electronic Deposit System" means Bank's computer systems or databases that Customer may access in order to obtain Electronic Deposit Services.

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

**i.** "Payor Customers" means clients and/or customers of Customer that submit original paper checks or check information to Customer for payment obligations owed to Customer.

**j.** "Photo-In-Lieu" or "PIL" means a photocopy of the front of an original paper check created from a Check Image.

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

**3. Customer Authorizations and Notifications.** Customers shall adhere to any and all applicable laws, regulations and clearinghouse rules, including but not limited to, obtaining all necessary consents and authorizations from, and/or providing all necessary disclosures to its Payor Customers concerning the creation of Demand Drafts. Customer is solely responsible for ascertaining the content, method, and frequency of any required authorizations and notifications.

### 4. Determination of Items Eligible for Electronic Deposit.

Only a paper item, payable on demand, and drawn on or payable through or at an office of a bank, is eligible for deposit as a Check Image. Unless

permitted by applicable law, Customer represents and warrants to Bank that Customer shall not use the Electronic Deposit Services to transmit Electronically Created Items (as defined in Federal Reserve's Regulation CC). Without limiting the generality of the preceding sentence, the following items are not eligible for deposit as Check Images or an Electronic Deposit under the Electronic Deposit Services, and Customer must deposit these original paper items with Bank: (i) checks, including travelers checks, that are drawn on banks located outside of the United States; (ii) checks payable in a medium other than U.S. dollars; (iii) non-cash items (as defined under Section 229.2(u) of Federal Reserve's Regulation CC); (iv) promissory notes and similar obligations, such as savings bonds (unless explicitly permitted as an Electronic Deposit in the applicable User Manual); (v) checks issued by and drawn on Customer or an affiliate of Customer; and (vi) any other class of checks or drafts as identified by Bank to Customer from time to time in the User Manual.

### 5. Capture of Checks and Check Information.

**a.** For certain Electronic Deposit Services, Customer shall use scanning hardware and/or software that meets Bank's specifications. Depending on the type of Electronic Deposit Service or processing option(s) selected by Customer, in the event the condition of a paper check precludes a complete automated read, Customer shall be responsible for visually inspecting the Check Image. Customer shall be responsible for the repair of any MICR Data (if applicable) and for ensuring that any and all information on the front and back of a paper check is accurately captured and legible in the resulting Check Image, that the resulting Check Image contains an accurate record of all MICR Data required for a substitute check, and that the Check Image otherwise complies with any Check Image or MICR Data quality standards and guidelines that may be established by the American National Standards Institute (ANSI), ECCHO Rules, the Federal Reserve, other applicable regulatory agency or clearinghouse, or which Bank may provide to Customer from time to time. Customer acknowledges that current image technology may not capture all security features (e.g., watermarks) contained in the original paper checks and agrees to assume any and all losses resulting from claims based on security features that do not survive the image process.

**b.** Customer further acknowledges that Bank does not verify the accuracy, legibility or quality of the Check Image prior to processing an Electronic Deposit. Bank may, in its sole discretion, reject, repair, alter, amend, re-format or convert the Check Image Metadata or MICR Data submitted in an Electronic Deposit in accordance with general check collection practices and industry presentment standards, but Bank shall have no obligation to reject, repair, alter, amend, re-format or convert the Check Image Metadata or MICR Data. If Bank requires that Customer comply with certain formatting standards or other guidelines outlined in the applicable User Manual when submitting Electronic Deposits (for example, requiring use of the external processing code for identifying Remotely Created Checks) and Customer declines to implement, or comply with, such standards or guidelines, Customer acknowledges that Bank shall not be liable for any error or loss that results from Bank processing such Electronic Deposit or from Bank's re-formatting or conversion of the Electronic Deposit prior to processing.

**c.** Bank shall not be liable to Customer for failure to process an Electronic Deposit, or any error that results in processing or collecting an Electronic Deposit: (i) for which Customer has not provided Bank an accurate, complete and legible image of, or information from, the original paper check; (ii) for which Customer has failed to comply with formatting standards or other guidelines required by Bank; or (iii) which would violate this Agreement, the User Manual or any other agreement between Customer and Bank.

**d.** If Customer desires to make an Electronic Deposit outside of the contiguous United States, Customer shall seek Bank's prior approval. Bank may reject a deposit transaction or terminate the Electronic Deposit Services immediately if Customer fails to obtain Bank's prior approval. If Customer chooses to access Electronic Deposit Services from locations outside the contiguous United States, Customer is responsible for compliance with local laws. Customer agrees not to use the Electronic Deposit Services in any country that is subject to geographically-based restrictions imposed by OFAC.

## 6. Upload of Electronic Deposit to Bank.

a. Customer shall upload the Electronic Deposit transmission (containing one or more Electronic Deposits) to Bank prior to the daily cut-off time established by Bank from time to time for the receipt of Electronic Deposits. Any Electronic Deposit transmission received by Bank after its daily cut-off time shall be deemed to have been received by Bank at the opening of its next Business Day. Performance of the Electronic Deposit Services may be affected by external factors such as communication network latency. Customer is responsible for the transmission of the Electronic Deposit until the Electronic Deposit System reports a successful acknowledgement of receipt of the transmission.

b. An Electronic Deposit is received when the entire Electronic Deposit transmission in which that Electronic Deposit is contained is received by Bank in accordance with Section IV.C.6.a above. If only a portion of that Electronic Deposit transmission is received by Bank for any reason, including without limitation, a failure during the transmission to Bank, the Electronic Deposit transmission is deemed to have been not received by Bank with respect to any Electronic Deposit contained in that Electronic Deposit transmission (including any Check Image contained in the portion of that Electronic Deposit transmission that was received).

c. Bank will process Electronic Deposit transmission received from Customer either via Check Image or Substitute Check collection in accordance with the processing options selected by Customer. For each Check Image sent to Bank in an Electronic Deposit transmission, Customer agrees not to deposit or cash the original paper check nor re-deposit the Check Image at Bank or any other financial institution or other business.

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

**7. Funds Availability.** Customer agrees that the transmission of Check Images using Electronic Deposit Services is not subject to the funds availability requirements of Regulation CC. Bank may, at any time, and in its sole discretion, provide a one-time notification to Customer if Bank intends to delay funds availability beyond ordinary Regulation CC funds availability time frames for items submitted by Customer using Electronic Deposit Services. In such instance, funds deposited will be available for withdrawal 3 business days after electronic transmission to Bank, subject to any holds placed on the account as permitted under this Agreement. Bank may, but is not required to, make such funds available sooner.

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

**9. Storage of Check Images.** Bank shall store Check Images and other check information on the Electronic Deposit System in accordance with Bank's record retention schedule and shall make such information available to Customer according to the applicable User Manuals and fee schedule. If the Electronic Deposit Services are terminated, Customer may obtain Check Images or check information at the price outlined in the fee schedule.

**10. Franking, Endorsement, Retention and Destruction of Original Paper Checks.** Depending on the requirements outlined in the applicable User Manual, Bank may require, or strongly recommend, that Customer frank or mark the face of each original check after successfully capturing each Check Image to help ensure that an item is not deposited more than once either as a Check Image or physical check. Bank may require

Customer to restrictively endorse each check prior to capturing each Check Image. Customer shall destroy the original paper check based on guidelines identified in the applicable User Manual and shall employ commercially reasonable methods to securely store the original paper check until destruction. At Bank's request, Customer shall provide the original paper check to Bank if the original paper check has not been destroyed by Customer and Bank needs the original paper check to process a payment or resolve a dispute arising from an Electronic Deposit.

**11. Representations and Warranties.** With respect to each Check Image or Electronic Deposit that Customer transmits to Bank, Customer is deemed to make any representation or warranty that would have applied had Customer deposited the original paper check, including without limitation, that no party will receive a presentment or otherwise be charged for a paper check, whether presented in paper or electronic form, which Customer has converted to a Check Image such that such party is asked to make payment of a check which has already been paid. In addition Customer is deemed to make to Bank any representation, warranty or indemnification that Bank makes, under applicable law, clearinghouse rule, Federal Reserve Operating Circular, Federal Reserve Regulation (including without limitation Regulation CC), bi-lateral agreement or otherwise, to any person (including without limitation a collecting bank, a Federal Reserve Bank, a Receiving Depository Financial Institution, a paying bank, a returning bank, a depository bank in possession of the original paper check, the drawee, the drawer, any endorser, or any other transferee) when Bank transfers, presents or originates a Check Image, Substitute Check or PIL created from the Electronic Deposit.

**12. Customer Responsibility.** With respect to each Check Image, Electronic Deposit or other image that Customer transmits to Bank, Customer agrees to defend, indemnify and hold Bank harmless from and against any and all claims, demands, damages, losses, liabilities, penalties and expenses (including, without limitation, reasonable attorney fees and court costs at trial or on appeal) arising directly or indirectly: (a) from Customer's breach of a representation or warranty as set forth in Section IV.C.11 above; (b) as a result of any act or omission of Customer in the capturing, creation or transmission of the Check Image or Electronic Deposit, including without limitation, the encoding of the MICR Data from the original paper check; (c) from any duplicate, fraudulent or unauthorized check, Check Image, Substitute Check or PIL; (d) for any loss caused by Bank's acceptance of a Check Image, or creation of a Substitute Check or PIL instead of presentment of the original paper check; (e) out of Customer's deposit of an Electronically Created Item; or (f) from any other act or omission arising out of Bank's action or inaction taken pursuant to any request by Customer or pursuant to this Agreement. This Section IV.C.12 shall survive termination of the Agreement.

**13. User Manual.** Bank will provide Customer with one or more user guides ("User Manual") in paper or electronic format that will set forth the policies and procedures for the relevant Electronic Deposit Services product with which Customer agrees to comply. Bank may, without prior notification, make amendments to any User Manual. Bank may require that certain employees of Customer attend periodic training as a condition to using the Electronic Deposit Services.

**14. Security Procedures and Right to Audit.** Customer shall comply with all security procedures for the Electronic Deposit Services that are established by Bank or set forth in the applicable User Manual. Customer is solely responsible for (i) maintaining its own internal security procedures; (ii) safeguarding the security and confidentiality of any information that is obtained from Payor Customers' checks, Check Images and other information that is either printed from, stored on, or downloaded to, the Customer System, Electronic Deposit System, or Customer's other computer/data systems or portable media; and (iii) preventing errors or unauthorized access to the Customer System or the Electronic Deposit System. Bank reserves the right to periodically audit Customer's security procedures and information technology processes and to mandate controls.

**15. Mobile Remote Deposit Services ("Mobile Services").** Depending on the type of Electronic Deposit Service selected by Customer, Mobile Services is an optional add-on service that will allow Customer to make remote check deposits and obtain check deposit history made through the Mobile Services using a supported mobile device. If Customer selects



Mobile Services, Customer will need to download and install a Mobile Service application on compatible and supported mobile phones, tablets or other devices (collectively, "Devices").

**a. Description of Mobile Services.** Mobile Services allow Customer to use a Device to take photographs of the front and back of the check and to transmit the Check Image to Bank in a secure data encrypted format using Customer's mobile service provider's cellular network or the Internet (collectively, "Network"). Certain Mobile Services may allow Customer to use a Device to enter remittance data and to take photographs of the front and back of remittance and general documents associated with the Check Image for reporting and research purposes.

**b. Use of Mobile Services.** Customer agrees to use Mobile Services in accordance with this Agreement, other user requirements provided in the User Manual and the downloaded mobile application. Bank reserves the right to modify the scope of Mobile Services at any time or change or upgrade Mobile Services from time to time, including the right to cease offering the Service on a previously supported Device. Bank also reserves the right to refuse any Electronic Deposit requested through the Service because a Check Image fails image quality standards, is detected as a duplicate item, or for any other reason in Bank's sole discretion. Customer understands and agrees that Mobile Services may not be accessible at all times due to Network connectivity or may have limited utility over some Networks, such as while roaming. Customer acknowledges and agrees that Bank may use geolocation technology to track that Mobile Services activity occurs within the contiguous United States.

**c. Software.** Customer agrees not to use Mobile Services or the content or information delivered through Mobile Services in any way that would infringe upon any third-party copyright, patent, trademark, trade secret, or other proprietary rights or rights of publicity or privacy, including any rights in the Mobile Services software. In the event Mobile Services is terminated or Customer's software license is revoked for any reason, Customer agrees to promptly delete the Mobile Services application from its Devices.

**d. Service Limitations.**

- i. Neither Bank nor Customer's mobile service providers can always foresee or anticipate technical or other difficulties related to Mobile Services, which may result in loss of data, personalization settings or other interruptions. Bank assumes no responsibility for the timeliness of any Mobile Services transmissions or communications, or the loss or failure to store any user data, communications or personalization settings in connection with a Device and Customer's use of Mobile Services.
- ii. Bank shall not be responsible for the operation, security, functionality or availability of any Device or Network that Customer utilizes to access Mobile Services. Transmission of a Check Image shall not be deemed received unless the Device reports a successful acknowledgement of receipt of the transmission. Customer agrees to exercise caution when utilizing Mobile Services on Devices and to train its Authorized Users to exercise good judgment and discretion when accessing or transmitting information.
- iii. Information about activity is synchronized between the Mobile Services software and Bank's Electronic Deposit System, however, deposit information available via the Mobile Services application may differ from the information that is available directly through the Electronic Deposit System. Information and features available directly through the Electronic Deposit System may not be available via the Mobile Services application and may be described using different terminology. The method of entering information via the Mobile Services application may also differ from the method of entering instructions through the Electronic Deposit System. Customer agrees that Bank shall not be liable for any errors or delays in the content as a result of Customer's use of the Mobile Services software.
- iv. Customer acknowledges that its mobile service carrier or provider may provide for fees, limitations and restrictions such as data usage charges or data throttling which may have an impact on Customer's

use of or interaction with Mobile Services. Customer agrees to be solely responsible for all such fees, limitations and restrictions.

**e. Security.**

- i. If Customer permits its employees or agents to use their own personal mobile devices to access Mobile Services, Customer assumes any and all risks associated with the use of personal mobile devices, including but not limited to, any risk that compromises the integrity of Customer's corporate network or sensitive business data. Customer is solely responsible for implementing policies that will help mitigate the risk of allowing employees to use personally-owned mobile devices, which may include but are not limited to, requiring that Devices are configured and managed with information assurance controls commensurate with the sensitivity of the underlying data and employing Mobile Device Management (MDM) software or other software that secures, monitors, manages and supports mobile devices deployed across operators, service providers and enterprises.
- ii. Customer shall ensure that its employees or agents exercise appropriate precautions surrounding the use and safeguarding of the Devices at all times. Customer agrees not to leave Devices unattended when logged into Mobile Services and to log off immediately at the completion of each access. Customer agrees that either a username and password or biometric verification are the agreed-upon security procedures and that such security procedures are commercially reasonable. If these security procedures are used to access Mobile Services, Customer agrees that any transactions using Mobile Services are hereby authorized. If Customer permits other persons to use a Device, login information or any other means to access Mobile Services, Customer will be responsible for the resulting transactions, and Bank shall have no liability for any damages Customer may incur.
- iii. Devices with internet capabilities are susceptible to viruses. Customer is responsible for ensuring that each Device is protected from and free from viruses, malicious software ("malware") and other harmful components which could result in damage to programs, files, or the Device, or could result in information being intercepted by a third party. Bank shall have no liability for any damages which may result from such viruses, malware or other harmful components.

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## D. ACH SERVICES

**1. Introduction.** If requested by Customer and agreed to by Bank, Customer or its Agent may initiate credit or debit Automated Clearing House ("ACH") transactions ("Entries") for payments ("Credit Entries") and/or collections ("Debit Entries") on Business Days to its accounts or the accounts of others ("Receivers") in accordance with Bank's security procedures and this Agreement. Bank will act as an Originating Depository Financial Institution ("ODFI") with respect to such Entries. Bank may process Entries directly, through one or more clearinghouses, or through the mechanism selected by Bank. Customer's rights and obligations with respect to such Entries are governed by applicable law and the NACHA Rules, as amended from time to time. Customer acknowledges that it shall be bound by the then-current version of the NACHA Rules and agrees not to initiate any Entry in violation of the NACHA Rules or applicable federal, state or international law, regulation or clearinghouse rules, including, without limitation, Regulation E of the Board of Governors of the Federal Reserve System, regulations promulgated by the Office of Foreign Assets Control, FinCEN, rules governing the Canadian, Mexican and European payments systems and Operating Circular 4 of the Federal Reserve Bank (collectively referred to herein as the "Rules"). Customer acknowledges and agrees that Bank shall have the right to examine Customer's books, records and systems to ensure Customer's compliance with the Rules and this Section IV.D and that Bank shall further have the right to suspend Services if Bank determines, in its sole and absolute discretion, that Customer is not complying with the Rules and/or this Section IV.D. Customer acknowledges that a copy of the NACHA Rules is available through NACHA at current NACHA prices. Bank shall have the right, in its sole discretion, to terminate or suspend ACH Services immediately if Bank is legally or contractually required to place a hold on funds or a portion of the funds in Customer's account(s). Bank may also, in its sole discretion, delay, suspend or reject an ACH file or Entry if the Bank has a reasonable basis to suspect the ACH file or Entry may be unauthorized or fraudulent. Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in the NACHA Rules.

**2. Entry Origination/Processing Dates/Deadlines.** Customer may initiate Entries in the manner and format agreed to by Bank. ACH files transmitted to Bank shall be in an unbalanced file format unless otherwise agreed to by Bank. Bank has the right to restrict the standard entry class ("SEC") codes utilized by Customer. If notified by Bank of such restriction, Customer must cease use of the SEC code and the underlying transaction type. Customer agrees that all Entries (regardless of SEC Code) that involve the storage, exchange or transmission of banking information via unsecured electronic networks shall be encrypted or transmitted via a secure session, using a commercially reasonable security technology that complies with regulatory guidelines. Bank will establish a deadline for the receipt of Entries from Customer ("Deadline"). Bank may establish different Deadlines for Entries depending on the method of delivery employed by Customer and all such Deadlines are subject to change. Bank must receive Customer's Entries at or prior to the Deadline for the Entries to be processed on the Business Day of receipt. Entries received after the Deadline, Entries that contain an Effective Entry Date that is invalid or stale, or Entries that are ineligible for Same Day ACH, will be processed on the next Deadline, which may be the next Business Day. Entries with settlement dates of more than thirty (30) calendar days from receipt will not be processed unless prior arrangements have been made. If Customer has opted-in for Same Day ACH, Customer acknowledges that any Entry using the current day's date as the Effective Entry Date that is submitted to the ACH Operator prior to the Deadline shall carry the Same Day ACH fee. If Customer has not opted-in for Same Day ACH and submits an Entry prior to the Deadline using the current day's date as the Effective Entry Date, Customer acknowledges that such Entry shall be processed on the next Business Day.

**3. Content and Secondary Authorization.** In submitting any Entry, Customer shall be responsible for providing all information required by Bank. Customer bears sole and exclusive responsibility to verify that the information set forth in Entries submitted to Bank is authentic, accurate and conforms to the Rules. The Services hereunder are only designed to respond to information provided by Customer. Accordingly, any inaccuracy in any information provided by Customer may result in unintended processing by Bank. Bank bears no responsibility for detecting

or reporting any error in data supplied by Customer and shall not be liable to Customer for any information provided by Customer with respect to an Entry which is inaccurate, incomplete or otherwise incorrect. Bank strongly recommends that Customer utilize a second individual to review and approve ACH files prior to submission to Bank. Customer acknowledges and agrees that such a security procedure is commercially reasonable and that Customer's failure to use this procedure substantially increases Customer's risk of an unauthorized ACH file.

**4. Entry Limits and Payment.** Customer agrees to comply with any applicable per transaction or aggregate Entry limits established by the Rules. Customer shall at all times maintain a settlement account with Bank for the purpose of funding Customer's Entries ("Account"). The total dollar amount of Entries initiated by Customer through Bank under all ACH Services and pending on a given day shall not exceed the lesser of collected or available balances in the Account or an exposure limit should one be established by Bank ("Exposure Limit"). Establishment of an Exposure Limit should not be interpreted or construed by Customer as a commitment or agreement to provide any credit or loans to a Customer and is subject to modification or termination at any time by Bank. Customer shall pay Bank for all Entries and authorizes Bank to charge its Account or any other account with Bank in the amount of such Entries. Bank shall have the right in its sole discretion to reject any or all Entries initiated by Customer without notice if Bank has reason to believe that there will be insufficient available funds on the relevant settlement date, even if Bank may have previously accepted Entries for processing with insufficient available funds in the Account. Customer will receive funds for any Debit Entry on the ACH settlement date. Bank shall credit the Account in any amount payable to the Customer, subject to Bank's right to make adjustments in accordance with this Agreement. Bank may establish, monitor and periodically review Customer's Exposure Limit and Customer's compliance thereof, and may, in Bank's sole discretion, cease processing Entries based on such review.

**5. Prenotification.** To the extent permitted by the Rules, Customer may elect to send a prenotification that it intends to initiate an Entry to a particular account in accordance with the procedures set forth in the Rules or by Bank. The prenotification can be returned or result in a Notification of Change ("NOC"). If the prenotification is returned, Customer shall research the problem and make any necessary corrections before transmitting another Entry. If the prenotification results in a NOC, Customer shall make the required change prior to initiating another Entry or issue a Refused NOC. Bank offers an optional Service that allows Bank to track Customer's NOC on Customer's behalf. If Customer selects this option, Bank shall only manage the changes to the routing numbers, account numbers and transaction codes.

**6. Notification of Change ("NOC").** A NOC is created by the Receiving Depository Financial Institution ("RDFI") to notify Customer (via Bank) that previously valid information contained in a posted Entry is outdated, or information contained in a prenotification or live transaction is erroneous or improperly formatted and should be corrected. Bank offers NOC Manager, which is a Service that allows Bank to track Customer's NOC on Customer's behalf. NOC Manager only manages the changes to routing numbers, account numbers and transaction codes. Bank, in its sole discretion, may require that Customer enroll in NOC Manager as part of ACH Services provided to Customer.

**7. Data Breach Notification.** Customer may have gathered personal or financial information of its customers for the purpose of initiating ACH transactions. Such information may include, without limitation, the customer's bank account number together with the bank routing number, or the customer's name together with the customer's social security number or tax identification number. Customer agrees to immediately report to Bank any loss, theft or unauthorized access of such information ("data breach") by or from Customer, its Agent, or third-party service provider, if circumstances indicate that the misuse of such information has occurred or is reasonably possible. Customer acknowledges that Bank may have an obligation to report any data breaches to NACHA and other affected parties, and agrees to establish appropriate procedures to prevent, detect, investigate and report data breaches. If applicable to Customer, Customer agrees to render electronically stored account numbers used in the initiation of Entries unreadable in accordance with the requirements and effective dates specified by NACHA.

**8. ACH Secured Funds Entries.** Bank may, at any time, and in its sole discretion, require Customer to prefund some or all Credit Entries that Customer desires to initiate. Customer acknowledges and agrees that such funds are held solely for the benefit of Bank and that Customer will not be entitled to earn any interest thereon. Upon initiation of such Credit Entries, Bank is authorized to immediately charge the Account (in the total amount of such Entries). If ACH Secured Funds is used to initiate Debit Entries, funds will be credited to the Account on the settlement date of the transaction. However, such funds shall not be available for withdrawal from the Account for two Business Days, or such other period as determined by Bank, after the settlement date.

**9. File Confirmation System.** Customer shall at all times comply with applicable file confirmation procedures and any security procedures established by Bank. Such procedures are solely for the purpose of verifying the origination of Entries by Customer or Bank's receipt of the ACH file and/or batch (but not for errors in transmission or content).

**a. Control Totals.** If Customer elects to provide Bank with the total dollar value of Entries and any other necessary information ("Control Totals"), Customer must telephone Bank's Interactive Voice Response system or input Control Totals through SinglePoint each time it originates Entries. After Bank receives Customer's ACH file, Bank will compare the information in the ACH file to the Control Totals. If the information matches the Control Totals, Bank will process the ACH file. Bank will notify Customer if the Control Totals do not match the information in the ACH file, or if Bank receives an ACH file without receiving Control Totals or vice versa. Bank will not process an ACH file unless it receives conforming Control Totals before established Deadlines.

**b. Confirmation of Receipt.** If Customer elects not to provide Bank with Control Totals but elects to receive a confirmation report or file, Bank shall provide Customer with a confirmation that Bank received Customer's ACH file and/or batch. After Customer receives the confirmation report or file, Customer will compare the confirmation information to Customer's ACH transmission information. If the information does not match, Customer shall notify Bank before Bank's established deadline, failing which, Bank shall process Customer's ACH file and/or batch. Customer acknowledges that the confirmation report or file is for the sole purpose of verifying Bank's receipt of the file and does not signify any validation of data. Customer bears sole responsibility for any inaccurate or incomplete information provided to Bank if Customer fails to notify Bank prior to Bank's processing of Customer's file.

**10. Rejected and Returned Entries, Unauthorized Entries.** Bank may reject any Entry that is not initiated in accordance with this Agreement. In the event that an Entry is rejected, or returned by an ACH processor, for any reason whatsoever, it shall be Customer's responsibility to reinitiate the Entry. Bank will give Customer or its designated Agent notice of any rejected or returned Entry in the manner agreed to by the parties. Bank is authorized to debit/credit the Account for Entries that are returned to Bank. Unless the return is caused by Bank's failure to properly execute an Entry, Bank has no obligation to pay Customer interest on the amount of any returned Entry debited from the Account. A Receiver may, in some cases, have the right to have an unauthorized or erroneous Debit Entry credited to its account. Customer agrees that Bank may deduct the amount owing to the Receiver from Customer's Account upon Bank's receipt of proper notice from the Receiver's bank. Bank may charge back against Customer any Debit Entry that is returned or reversed by the RDFI. Bank may, in its sole discretion, suspend Customer's use of ACH Services due to excessive return activity.

**11. ACH Redeposit Service.** If requested by Customer and agreed to by Bank, Bank will reinitiate (maximum of two times) each Debit Entry returned for insufficient or uncollected funds.

**12. Amendment of Entries.** Customer does not have the right to delete, reverse or amend any Entry (each, an "Adjustment Request") after it has been received by Bank. If Customer sends Bank an Adjustment Request via internet, secure email, or fax in accordance with the terms of this Agreement, Bank will make reasonable efforts to act on the Adjustment Request. All Adjustment Requests must be received by Bank prior to the established deadlines, and even if the Adjustment Request is made in a timely manner, Customer acknowledges that an Adjustment Request may

prove unsuccessful (for example, if it is returned by the RDFI for non-sufficient funds). Customer agrees to indemnify Bank in connection with any Adjustment Request in accordance with applicable law.

**a. Internet Option.** If Customer has selected the Internet Option, Customer may use SinglePoint® to transmit information to Bank for the purpose of amending ACH files. Customer agrees to comply with any applicable software agreement, user guide and any established security procedures.

**b. Secure Email Option.** If Customer has selected the Secure Email Option, Customer may send an Adjustment Request to a designated shared mailbox at Bank.

**c. Fax Option.** If Customer has selected the Fax Option, Customer may transmit an Adjustment Request to Bank via facsimile to a designated facsimile number. Customer acknowledges that the Internet and Secure Email Options are substantially more secure than the Fax Option. Customer agrees to be bound by any instructions submitted via the Fax Option, whether or not authorized, issued in its name and accepted by Bank in accordance with the agreed procedures.

**13. Customer Representations/Indemnity.** Customer represents and warrants to Bank that each Entry: (i) complies with the terms of this Agreement and the Rules; (ii) does not breach any warranty of Customer or Bank contained in this Agreement and the Rules; (iii) complies with applicable state, federal and international laws and rules, including, without limitation, the Electronic Funds Transfer Act, Regulation E and regulations overseen by the Office of Foreign Assets Control; (iv) is accurate, timely, and authorized; and (v) that any Debit Entry is for a sum that on its settlement date is due and owing from the Receiver to Customer or is a correction of a previously transmitted erroneous Credit Entry. For all WEB Debit transactions, Customer further represents and warrants that it will validate account information by use of a commercially reasonable fraud detection system (i) for the first use of new account information; and (ii) when the Receiver makes a change to its account. With respect to each ACH Entry (regardless of SEC Code), Customer is deemed to make to Bank any representation or warranty that Bank makes, under applicable law and the Rules to any person, RDFI, or any other transferee. Receiver authorizations shall expressly authorize Bank to transmit corrective entries to the Receiver's accounts to correct a prior Entry and shall authorize Customer to release to Bank all information concerning its Receivers that is required by Bank to recover such Entries. Customer shall immediately cease initiating Entries upon receiving actual or constructive notice of the termination or revocation of the Receiver's authorization. Customer will retain each authorization received by Customer for such period of time as may be required by the Rules or applicable law and shall provide Bank with copies of such authorizations upon request. Customer will indemnify, defend and hold Bank harmless from and against any and all claims, demands, expenses, losses, liabilities, and damages, including without limitation, NACHA fines, reasonable attorney fees and court costs at trial or on appeal that arise directly or indirectly out of any Entry initiated by Customer in violation of this Agreement and the Rules.

**14. Re-presented Check Entries.** NACHA Rules allow Customer to initiate an Entry to collect certain checks that have been returned unpaid for insufficient or uncollected funds ("RCK Entry"). In the event that Customer initiates an RCK Entry to Bank for check collection purposes, Customer agrees that such RCK Entry will comply with all provisions of this Agreement and applicable Rules and makes the following additional representations and warranties regardless of which entity initiates the RCK Entry on its behalf:

**a.** Each check is eligible under NACHA Rules to be collected via an RCK Entry.

**b.** Customer has no knowledge of any insolvency and it has good legal title to the returned item.

**c.** All signatures on the returned item are authentic and authorized, and the returned item is without alteration, not subject to claims or defenses, and will not be presented to the paying bank.

**d.** The RCK Entry accurately reflects the item and any information encoded after issue in magnetic ink is correct. (RCK Entries cannot be used for collection fees.)

e. Any restrictive endorsement placed on the item is void or ineffective.

f. Customer has provided clear and conspicuous notice of its electronic check representment policy in advance of receiving the item to which the RCK Entry relates.

g. The Customer will provide to Bank immediately upon request a copy of the front and back of the returned item, provided that the request is made within seven (7) years of the settlement date of the RCK Entry.

**15. Internet-Initiated Entries.** NACHA Rules allow Customer to initiate a Debit Entry to a consumer Receiver's account pursuant to an authorization obtained from the Receiver via the Internet ("WEB Entry"). In the event that Customer initiates a WEB Entry to Bank, Customer agrees that such WEB Entry will comply with all provisions of this Agreement and applicable Rules and makes the following additional representations and warranties regardless of which entity initiates the WEB Entry on its behalf:

a. Customer has employed a commercially reasonable fraudulent transaction detection system to screen each WEB Entry. As of the effective date specified by NACHA, a commercially reasonable fraudulent transaction detection system must include, at a minimum, validation of the account number to be debited for each Web Debit Entry. This validation must be completed for the first use of such account number as well as each time there is a change in such account number.

b. Customer has employed commercially reasonable methods of authentication to verify the identity of the Receiver.

c. Customer has taken commercially reasonable steps to verify that routing numbers are valid.

d. Customer has established a commercially reasonable secure Internet session prior to the key entry by the Receiver of any banking information and through the transmission of the data to Customer. If regulatory requirements or technological advancements drive the commercially reasonable standard to change, Customer agrees to comply with the new standard.

e. Customer has and will conduct an annual audit to ensure that the financial information that Customer obtains from its Receivers is protected by security practices that include adequate levels of: (1) physical security to protect against theft, tampering, or damage, (2) personnel and access controls to protect against unauthorized access and use, and (3) network security to ensure secure capture, storage and distribution of financial information. Customer will provide proof of Customer's security audits to Bank upon request. Any such information provided to Bank shall be kept confidential except as required to be disclosed by applicable law, rule or regulation. Bank may cease processing Entries for Customer if Bank in its sole discretion determines that Customer's security procedures are inadequate.

**16. Telephone-Initiated Entries.** NACHA Rules allow Customer to initiate a Debit Entry to a consumer Receiver's account pursuant to the Receiver's oral authorization and banking information obtained via the telephone ("TEL Entry"). In the event that Customer initiates a TEL Entry to Bank, Customer agrees that such TEL Entry will comply with all provisions of this Agreement and applicable Rules and makes the following additional representations and warranties regardless of which entity initiates the TEL Entry on its behalf:

a. Receiver Authorization. Customer shall obtain the Receiver's explicit authorization prior to initiating a Debit Entry to the Receiver's account. In the event that Customer obtains the Receiver's authorization verbally, Customer will either tape record the Receiver's oral authorization or provide, in advance of the settlement date of the Entry, written notice to the Receiver that confirms the oral authorization. Customer agrees that, at a minimum, the following specific information is disclosed to, and acknowledged by, the Receiver during the telephone call:

- (i) the date on or after which the Receiver's account will be debited;
- (ii) the amount of the Debit Entry to the Receiver's account;
- (iii) the Receiver's name;
- (iv) the account to be debited;

(v) a telephone number that is available to the Receiver and answered during normal business hours for customer inquiries;

(vi) the date of the Receiver's oral authorization;

(vii) a statement that the authorization obtained from the Receiver will be used to originate an ACH debit to the Receiver's account;

(viii) for recurring TEL entries, the amount of recurring transactions; and

(ix) for recurring TEL entries, the timing (including the start date), number, and/or frequency of the electronic fund transfers.

Customer shall retain either the original or a duplicate tape recording of the Receiver's oral authorization or a copy of the written notice confirming the Receiver's oral authorization for two years from the date of the authorization and shall immediately provide same to Bank upon request.

If Customer chooses to provide the Receiver with written notice confirming the Receiver's oral authorization, Customer will disclose to the Receiver during the telephone call the method by which such notice will be provided.

b. Security Procedures. In addition to all other representations and warranties contained in this Agreement and the Rules, Customer also represents and warrants the following each time it delivers a TEL Entry to the Bank that it has (a) utilized a commercially reasonable security procedure to verify the identity of the Receiver, including name, address and telephone number; and (b) further that Customer has established commercially reasonable procedures to verify the accuracy of the RDFI's ABA routing and transit number.

**17. Accounts Receivable and Back Office Conversion Entries.** NACHA Rules allow Customer to utilize ACH to collect consumer check payments received via U.S. mail or at a dropbox location ("ARC Entry"). NACHA Rules also enable Customer to convert during back office processing checks presented either at the point of purchase or a manned bill payment location ("BOC Entry"). In the event that Customer initiates an ARC or BOC Entry to Bank, Customer agrees that such ARC or BOC Entry will comply with all provisions of this Agreement and applicable Rules and makes the following additional representations and warranties regardless of which entity initiates the ARC or BOC Entry on its behalf:

a. Prior to the receipt of each check, Customer has provided clear and conspicuous notice to the Receiver: (i) that receipt of the check is authorization for a payment as a check transaction or for a one-time ACH debit to the Receiver's account; and (ii) of Customer's phone number for inquiries regarding BOC Entries.

b. Customer shall provide a copy of the notice to the Receiver at the time of the transaction if the Receiver presents the check in-person.

c. Each check is eligible as a source document under NACHA Rules to be collected via an ARC or BOC Entry.

d. Customer shall use a reading device to capture the Receiver's routing number, account number, and check serial number from the source document (unless Bank has agreed to do so on Customer's behalf for retail lockbox services).

e. The amount of the entry, the routing number, the account number, and the check serial number are in accordance with the source document.

f. The source document to which the ARC or BOC Entry relates will not be presented for payment.

g. Customer has established policies and procedures to destroy the source document as soon as is reasonable and shall use commercially reasonable methods to securely store the source document until such destruction.

h. Customer shall use commercially reasonable methods to securely store all banking information relating to the ARC or BOC Entry.

i. Customer shall retain a reproducible and legible image, microfilm or copy of the front of the Receiver's source document for two years from the settlement date of each ARC or BOC Entry, and shall immediately provide same to Bank upon request.

j. For BOC Entries, Customer has employed commercially reasonable procedures to verify the identity of each Receiver of BOC Entries.

k. For BOC Entries, Customer maintains a working telephone number that is answered during Customer's normal business hours for Receiver inquiries regarding BOC transactions.

**18. Point of Purchase (POP) Entries.** NACHA Rules allow Customer to initiate a Debit Entry to a Receiver's account for in-person purchases made by check at the point-of-purchase ("POP Entry"). In the event that Customer initiates a POP Entry to Bank, Customer agrees that such POP Entry will comply with all provisions of this Agreement and applicable Rules and makes the following additional representations and warranties regardless of which entity initiates the POP Entry on its behalf:

a. Customer has posted a notice in a prominent and conspicuous location at the point-of-purchase and provided the Receiver with a written notice of same: (i) that when a check is provided as payment, it is authorization for payment as a check transaction or for a one-time ACH debit to the Receiver's account; and (ii) that funds may be withdrawn from the Receiver's account the same day payment is made.

b. Each check is eligible under NACHA Rules to be collected via a POP Entry and the Receiver has not opted out of check conversion

c. Customer has used a reading device to capture the Receiver's routing number, account number, and check serial number from the source document.

d. Customer has provided a receipt to the Receiver containing the Originator name, telephone number, date of transaction, transaction amount, check serial number of the source document, merchant number, terminal city and state; and Customer has not included the Receiver's complete account number or complete identification number on such receipt.

e. Customer has returned the voided source document to the Receiver after capturing the necessary check information and the source document was not previously negotiated, voided, or provided by the Receiver for use in any prior POP Entry.

f. Customer has obtained the Receiver's authorization and provided a copy of same to the Receiver, which: (i) is in writing and signed or similarly authenticated by the Receiver; (ii) is readily identifiable as an ACH debit authorization; (iii) clearly and conspicuously states its terms; and (iv) states that the check will not be processed.

**19. International ACH Transactions (IAT) Entries.** NACHA Rules allow Customer to initiate or receive international payment transactions transmitted via the ACH network.

a. In the event any part of an Entry originates from, or is transmitted to, a financial agency office located outside the territorial jurisdiction of the United States that handles the payment transaction ("IAT Entry"), Customer agrees that such IAT Entry will comply with all provisions of this Agreement and applicable Rules. Customer acknowledges that an IAT Entry is ineligible for Same Day ACH. Customer also makes the following additional representations and warranties regardless of which entity initiates the IAT Entry on its behalf:

- (i) Customer is in compliance with U.S. law, including, but not limited to, Customer's obligations under programs administered by OFAC and FinCEN.
- (ii) The origination of an outbound IAT Entry is in compliance with the laws and payment system rules of the receiving country.
- (iii) In the case of an IAT Entry to a non-consumer account, Customer has an agreement with the Receiver whereby the Receiver has agreed to be bound by the Rules.

IAT Entries may be processed by Bank through a correspondent bank. Bank assumes no liability for delays, non-delivery, late returns or other events resulting from processing delays by the correspondent bank or for other causes beyond Bank's control. Cancellation or amendment of an IAT Entry involving non-U.S. dollar currency is subject to any rate exchange loss as determined by Bank. Customer agrees to sell any

canceled or amended Entry to Bank at the then current applicable foreign currency buy rate.

**b. Remittance Transfer Provider.** If Customer is at any time classified as a Remittance Transfer Provider under Regulation E, Customer represents, warrants and agrees that:

- (i) Customer shall be responsible for performing and complying with the requirements of 12 CFR Part 1005, including, but not limited to, providing disclosures to the consumer (sender), the error resolution procedures, the provision of any remedies to the consumer, and the cancellation and refund of remittance transfers;
- (ii) Bank is acting as an agent and not as a Remittance Transfer Provider when performing activities on behalf of Customer; and
- (iii) Even if Bank is deemed a Remittance Transfer Provider under applicable law, Customer shall take all actions necessary to comply with the obligations of a Remittance Transfer Provider.

Customer agrees to indemnify and hold Bank harmless from and against any and all loss, liability, damage, costs and expenses (including attorneys' fees) that Bank may sustain in reliance on Customer's representations and warranties set forth in this Agreement or the Rules.

**20. Third-Party Vendors.** If Customer initiates Entries through a third-party vendor or processor ("Vendor"), Vendor is the agent of Customer and not of Bank. If Customer uses a Vendor, Customer shall be deemed to have authorized Bank to follow the instructions of such Vendor to the same extent and under the same conditions as would apply if the instructions came direct from Customer and Customer shall be responsible for insuring that such Vendor fully complies with the Rules and this Agreement. Bank is not responsible for the acts or omissions of Vendor and Customer agrees to be liable for and hold Bank harmless from, any losses caused by the acts or omissions of Customer's Vendor.

**21. Third-Party Sender.** If Customer is transmitting Entries as a third-party vendor or processor on behalf of originators ("Third-Party Sender"), Customer agrees to be bound by the applicable terms provided in this Agreement and the Rules. Customer warrants to Bank that the originator has agreed to assume the responsibilities of an Originator under NACHA Rules and that ACH Entries shall not be initiated in violation of laws of the United States. Customer represents that it has executed an ACH agreement with each Originator and that the agreement binds the Originator to the NACHA Rules. Customer shall provide Bank with the list of Originators, copies of the agreements, and other information deemed reasonably necessary to identify the Originators within two (2) Business Days of Bank's request. Bank reserves the right to review the list of Originators for which Customer is transmitting the Entries and to reject any in Bank's sole discretion. As Third-Party Sender, Customer agrees to indemnify, defend and hold Bank harmless from and against any and all claims, demands, expenses, losses, liabilities, and damages, including reasonable attorney fees and court costs at trial or on appeal that arise directly or indirectly from the failure of the Originator to perform its obligations as an Originator under NACHA Rules. Customer further agrees to assume all applicable responsibilities, warranties and liabilities of the ODFI, as specified in the NACHA Rules. Customer shall cooperate fully and respond within two (2) Business Days to any inquiry from Bank relating to potential NACHA Rule inquiries or violations.

**22. Cash Concentration/Deposit Reporting Services.** Customer may request Bank to provide deposit reporting Services based on information provided by the Customer or its designated Agent. Information will be delivered to Bank at the time and location established by Bank. Bank has no responsibility for the accuracy of any information provided by Customer. Customer may authorize Bank to initiate Credit or Debit Entries to accounts designated by Customer at other financial institutions. Bank will initiate such Entries in accordance with agreed procedures. Customer agrees to authorize RDFIs to honor such transactions.

**23. ACH Positive Pay Service.** ACH Positive Pay Service assists Customer in detecting fraud by electronically matching incoming ACH transactions to authorizations that Customer can create and manage online. If ACH Positive Pay Service is selected by Customer, Customer shall designate the account(s) maintained at Bank that are to be used with the ACH Positive Pay Service ("ACH Positive Pay Account"). Customer

shall create authorizations for incoming ACH Credit and/or Debit Entries that it desires to post to the ACH Positive Pay Account. Customer shall be responsible for the accuracy and completeness of all information provided to Bank. Bank will allow incoming Entries that match Customer's authorizations to post to Customer's ACH Positive Pay Account. Incoming ACH transactions that do not match Customer's authorizations will be treated as exception items, and Customer agrees to monitor, review and make payment decisions on the exception items prior to Bank's established deadline. Bank is authorized to return all exception items unless Customer instructs bank to pay one or more exception items prior to the established deadline. Bank shall have no responsibility for any liability, loss or damage resulting from the return of any exception item to the Originator in accordance with this Section or Customer's failure to meet Bank's established deadlines, except with respect to losses caused by Bank's own lack of good faith or failure to exercise ordinary care. Bank's failure to report a discrepancy will not discharge Customer's obligation with regard to any item and shall not obligate Bank to return any item if it is otherwise authorized.

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## **E. WIRE TRANSFER SERVICES**

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### **1. Introduction.**

**a. Governing Law.** Bank sends outgoing and receives incoming wire transfers through Fedwire (the funds transfer system owned and operated by the Federal Reserve Banks or other provider in accordance with Section II.24.A). All funds transfers are governed by this Agreement, Subpart B of Regulation J of the Federal Reserve Board, OFAC regulations, and all other applicable international, federal, state and local laws and regulations. Customer agrees not to initiate or receive a wire transfer payment order in violation of applicable federal, state or local law.

**b. Authorized Users.** Customer will designate to Bank in the form required by Bank those individuals authorized to instruct Bank regarding wire transfer Services including without limitation, individuals authorized to initiate payment orders and select advice methods, confirmation methods, and any or all authorizations and instructions that may be requested by Bank. Bank may rely on any such authorization until it has been revoked in writing by Customer. Bank shall have a reasonable time to process any revocation received pursuant to this Section.

**2. Routing/Time Deadlines.** Bank may use any means of transmission, funds transfer system, intermediary bank, clearinghouse or route that Bank reasonably believes is suitable for each outgoing wire transfer. Bank will establish from time to time one or more deadlines after which Bank will not accept an incoming payment order to be processed on the day of receipt. Payment orders received after Bank's established deadline, during a maintenance window, or on any non-Business Day, including any Saturday, Sunday, holiday or any day that Bank's wire department is not open will be rejected. Payment orders received during a maintenance window, including the end-of-day maintenance window, will not receive a notice of rejection.

### **3. Payment Orders.**

**a. Communication.** Customer may communicate a payment order to Bank by the means and manner agreed to between the parties.

**b. Content of Payment Orders.** Customer will supply to Bank any information Bank may reasonably request regarding any payment order initiated by Customer, including, without limitation, money amounts, affected accounts, dates of transfer, the beneficiary's name and account number, the name and routing number or bank identifier code of the beneficiary's financial institution, such additional information as Bank may reasonably request and, if necessary, further evidence of any Agent's authority to transfer funds or to do any other act contemplated by this Service. Bank strongly recommends that Customer utilize a second individual to review and approve payment orders prior to submission to Bank. Customer acknowledges that failure to use this commercially reasonable security procedure substantially increases Customer's risk of an unauthorized payment order.

**c. Execution of Payment Orders.** Customer authorizes Bank to execute and charge Customer's account(s) with Bank for payment orders delivered to Bank in accordance with this Agreement. Bank has no obligation to execute a payment order if Customer's account to be charged has insufficient collected and available funds to cover the order.

**d. Processing Payment Orders.** The order in which Bank processes wire transfer payment orders is determined solely by Bank. Customer does not have the right to reverse, adjust or revoke any payment order after it has been received by Bank, provided, however, that Bank will make a reasonable effort to act on such a request by Customer. With respect to a payment order already transmitted to the beneficiary's financial institution, Bank shall, at Customer's request, request the financial institution to return funds previously transferred. Customer understands that the receiving institution is under no legal obligation to comply with this request.

**e. Rejection of Payment Orders.** Bank may reject a payment order from Customer if such payment order is not initiated in accordance with the applicable security procedure, if there is any inconsistency between a payment order and information previously supplied to Bank, if Bank is unable to obtain confirmation of such payment order satisfactory to Bank, if there are insufficient collected funds in Customer's specified account to

fund the payment order, if Bank has a reasonable basis to suspect the payment order may be unauthorized or fraudulent, or if Bank has other reasonable grounds not to honor the payment order. Bank will notify Customer by telephone that it has rejected a payment order. Bank may also reject an incoming payment order if it has reasonable grounds to do so.

**f. Standing Payment Orders.** If requested by Customer and agreed to by Bank, Customer may initiate a standing payment order, which is one where the Customer pre-programs the beneficiary, the beneficiary's financial institution, and the accounts to be debited and credited and such information remains constant for subsequent payment orders. Customer shall provide Bank with the necessary information to execute the standing payment order, including, without limitation, the dollar amount to be transferred or the desired peg balance, the frequency of the order and the day of week or month when the payment order is to be executed. Customer may terminate a standing payment order at any time upon receipt by Bank of a written notice. Bank shall have a reasonable time to act on such notice.

**g. Batch Wire; Direct Wire Interface.**

- (i) Service Specifications.** If requested by Customer and agreed to by Bank, the Batch Wire service and Direct Wire Interface service allows Customer to initiate payment orders from its computer to Bank's computer, subject to the provisions of this Agreement. In addition, the Direct Wire Interface service allows Customer to receive reports of incoming wire activity. Customer will comply with the relevant interface specifications established by Bank for these services, including, without limitation, file formats, means of data transmission, or establishing a secure connection (the "Specifications"). Bank may furnish Customer with modifications to the Specifications and Customer shall implement such modifications as soon as reasonably practicable.
- (ii) Wire Transfer Software, Confidentiality.** Customer or its Agent shall be solely responsible for creating the computer programs to implement the Specifications ("Wire Transfer Software"). Customer shall maintain the confidentiality of the Specifications and the Wire Transfer Software and permit access solely to those responsible for supporting the Wire Transfer Software or authorized to initiate payment orders. Customer shall implement passwords and other security devices commensurate with the highest level of security afforded by Customer to other computer programs and confidential information of Customer.

**4. Confirmation of Outgoing Wire Transfers.**

**a. Confirmation Method.** Customer and Bank shall agree to the method of confirming payment orders received from Customer. Customer shall designate Authorized Users to confirm payment orders. Bank recommends a minimum of three potential Authorized Users to confirm payment orders and that Authorized Users serve as an initiator or a confirmer, but not both. Notwithstanding Bank's recommendation, if Customer permits an Authorized User to act as both initiator and confirmer, Customer hereby authorizes Bank to process a wire initiated and confirmed by such Authorized User. Customer may add, change or delete the Authorized Users in accordance with Section II.9 of this Agreement. In the event the designated Authorized Users with authority to confirm are not available to confirm a payment order, Customer agrees that Bank may, at its discretion, elect to process the payment order initiated by an Authorized User. Customer agrees to be bound by any such payment order processed by Bank.

**b. Waiver of Confirmation.** Bank advises Customer not to waive confirmation. If Customer, however, chooses to waive confirmation, Customer agrees to be liable for all outgoing payment orders, except those payment orders where (1) Customer is able to conclusively prove that the unauthorized transfer could not have been prevented by the use of confirmation procedures; (2) Bank is unable to produce any evidence that the unauthorized transfer could have been prevented by the use of confirmation procedures; and (3) Customer is not otherwise liable for the transfer under this Agreement or applicable law. Customer acknowledges that not using confirmation procedures substantially increases Customer's risk of liability for an unauthorized wire transfer.

**c. Confirmation of Wire Transfers Initiated through SinglePoint®, Batch Wire, or Direct Wire Interface (collectively, the "Customer Initiation Methods").** Customer represents and warrants that the confirmation of payment orders initiated through any of the Customer Initiation Methods shall be verified, initiated and confirmed by Customer prior to receipt by Bank. All payment orders shall be initiated and confirmed in accordance with the security procedures established for the relevant Customer Initiation Method.

**5. Advices.**

**a. Advice Method.** Customer will select the type of advice it wishes to receive after Bank receives an incoming wire transfer. If Customer selects telephonic advices, Customer may designate person(s) to be contacted and telephone numbers to be used for advice purposes. Bank shall not be required to make more than one attempt to reach Customer's designated location by telephone. If Bank is able to reach the Customer's designated location, but not Customer's designated Agent, Bank may leave a message containing the information to be conveyed.

**b. Advices by Facsimile.** If Customer selects advices by facsimile ("fax"), Customer shall exercise extreme care in maintaining its own security in the receipt of fax advices. Customer acknowledges that the information to be received by fax may include confidential information, including, without limitation, names, amounts, phone numbers, originating account information and the text of incoming wires. Customer further acknowledges that it alone assumes full responsibility for maintenance of its internal security procedures to keep such information confidential. Customer agrees to indemnify, defend and hold Bank harmless against any and all claims, demands, expenses, liabilities and damages, including attorney fees at trial and on any appeal or petition for review, incurred by Bank arising directly or indirectly from the transmission by fax of an incoming wire transfer advice.

**c. Waiver of Advice.** Customer may waive its right under the Uniform Commercial Code to receive advices by so indicating on the applicable Implementation Documents.

**6. International Wire Transfers.**

**a. General.** Wire Transfers across country borders are customarily done by Bank through a correspondent bank. Outgoing U.S. dollar payment orders may be converted by the correspondent bank or beneficiary bank to the local beneficiary's currency at the applicable rate in effect at any point in the processing chain. Though in some cases Bank may receive compensation from the correspondent bank in accordance with such conversion, the conversion is executed by the correspondent bank in accordance with the policies and procedures of such correspondent bank at an exchange rate set by that correspondent bank in its sole discretion and subject to any applicable regulations. Any fee, commission or charges assessed by Bank, the correspondent bank, any subsequent intermediary bank, or the beneficiary bank may be passed on to the Customer or deducted from the wire transfer amount. Bank assumes no liability for delays, non-delivery, market risk or other events resulting from causes beyond Bank's control. In refunding unexecuted payment orders, Bank shall be liable to Customer only to the extent it receives payment from the correspondent bank processing the transfer. Cancellation or rejection of a transfer involving non-U.S. dollar currency is subject to any rate exchange loss as determined by Bank. Customer agrees to sell any canceled or rejected payment order to Bank at the then-current applicable foreign currency buy rate.

**b. Remittance Transfer Provider.** If Customer is at any time classified as a Remittance Transfer Provider under Regulation E, Customer represents, warrants and agrees that:

- (i)** Customer shall be responsible for performing and complying with the requirements of 12 CFR Part 1005, including, but not limited to, providing disclosures to the consumer (sender), the error resolution procedures, the provision of any remedies to the consumer, and the cancellation and refund of remittance transfers;
- (ii)** Bank is acting as an agent and not as a Remittance Transfer Provider when performing activities on behalf of Customer; and

- (iii) Even if Bank is deemed a Remittance Transfer Provider under applicable law, Customer shall take all actions necessary to comply with the obligations of a Remittance Transfer Provider.

Customer agrees to indemnify and hold Bank harmless from and against any and all loss, liability, damage, costs and expenses (including attorneys' fees) that Bank may sustain in reliance on Customer's representations and warranties set forth in this Agreement.

#### **7. Reverse Wire Transfers.**

**a. Authorized Debits.** If requested by Customer and agreed to by Bank, Customer authorizes Bank to debit Customer's account(s) with Bank upon receipt of a Fedwire drawdown request, and to send funds to the requesting bank. Each transfer will be done on the Business Day Bank receives the incoming request from the requesting bank if the request is received within a reasonable time to determine whether Customer's Account has sufficient available funds and to obtain access to the Federal Reserve network prior to the close of business.

**b. Reverse Wire Funding.** Customer acknowledges and agrees that Bank may reject any reverse wire request in excess of the collected and available balance. Requesting bank will be notified if the request is rejected by Bank.

**c. Wire Transfer Numbers.** Customer's obligation to pay Bank the amount of the funds transfer in the event that the Fedwire message does not identify the same account or financial institution is not excused in such circumstances. When names and numbers are inconsistent, the numbers shall control. With respect to incoming wire transfers that do not indicate an account number recognizable to Bank, Bank may return the wire transfer to the sending financial institution without incurring any liability. Customer does not have the right to reverse, adjust or revoke any Fedwire message after it is received by Bank; however, Bank will use reasonable efforts to act on such a request by Customer to reverse, adjust or revoke such message before Bank has sent the outgoing wire transfer. With respect to an outgoing wire transfer already transmitted by Bank, Bank shall, at Customer's request, request the receiving financial institution to return funds previously transferred. Customer understands and agrees that the receiving financial institution may or may not comply with any such request.

**d. Authorizations.** Customer's authorization for reverse wire requests shall remain in effect until Customer gives written notice to Bank. Bank will have a reasonable time to act on any written notice received from Customer.

**e. Limitation on Bank's Liability.** In consideration of Bank's compliance with this authorization, Customer agrees that Bank's treatment of any authorized debit, and Bank's rights with respect to it, shall be the same as if the entry were initiated personally by Customer. Bank shall have no liability if any authorized debit is dishonored.

**8. Additional Limits on Bank's Liability.** Bank is responsible only for performing the Services described in this Section. Bank shall not be responsible for the acts or omission of Customer, any Federal Reserve Bank or other financial institution, any transmission or communication or any other person, and no such person shall be deemed to be Bank's agent under this Agreement.

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#### **F. DATA TRANSLATION SERVICES**

**1. Introduction.** Bank may provide electronic data integration, custom formatting, or data translation ("Data Translation Services") to electronically streamline the exchange of payments, remittance and other information between Customer and Bank and between Customer and its trading partners. If requested by Customer and agreed to by Bank, Bank will provide Data Translation Services in accordance with this Agreement and other procedures provided to the Customer. Customer agrees that Data Translation Services shall be governed by this Section and all other relevant sections of this Agreement.

**2. Scope of Services.** Data Translation Services may be used by Customer to initiate and receive payments using multiple payment channels or networks, which may include, but are not limited to, checks, wire transfers, ACH, virtual card, SWIFT, Real-Time Payments (RTP), Zelle, Visa or Mastercard, and to provide and receive business communications such as remittance data, payment data, invoices, confirmations, orders, or other information in Customer's preferred format. In order to obtain Data Translation Services, Customer must maintain an analyzed demand deposit account with Bank.

**3. Entry Origination/Processing Dates/Deadlines.** Customer may from time to time deliver to Bank requests to format information for payments and/or other data translation via the agreed upon means (collectively, "Data Translation Request(s)"). All Data Translation Requests shall conform to the content, format, deadlines and other specifications that may be established by Bank or a third-party software program approved by Bank for use with the Service. Bank may establish different deadlines for Data Translation Requests depending on the method of delivery employed by Customer and all such deadlines are subject to change. Bank must receive Customer's Data Translation Requests at or prior to the deadline established for processing on the Business Day of receipt. Data Translation Requests received after the deadline will be processed on the next Business Day. Customer will be notified if a Data Translation Request is rejected in accordance with procedures established by Bank. Customer represents and warrants that all information in each Data Translation Request delivered to Bank by Customer shall be accurate, timely, authorized and will otherwise comply with all applicable laws, rules and regulations.

**4. Content and Transmission of Information.** Data Translation Requests are only designed to respond to information provided by Customer. Accordingly, any inaccuracy in any information provided by Customer may result in unintended processing by Bank. Bank bears no responsibility for detecting or reporting any error in data supplied by Customer and shall not be liable to Customer for any information provided by Customer with respect to a Data Translation Request which is inaccurate, incomplete, duplicative or otherwise incorrect. Customer shall retain data on file adequate to permit Customer to remake each request for at least ten (10) Business Days following the date a file is sent to Bank and shall provide such data to Bank on request. Customer acknowledges that Bank has no obligation to maintain back-up copies of requests or other information delivered by Customer to Bank. Customer acknowledges that Data Translation Services may involve the transmission of confidential consumer information that may be subject to privacy laws and regulations, including breach notification regulations. Customer agrees to notify Bank if Customer sends or receives protected health information as part of Data Translation Services. If Customer is the recipient of misdirected information, Customer shall immediately notify Bank and return the information to Bank. Customer agrees not to retain, use, copy, distribute or otherwise disclose the information in any manner.

**5. Payment Requests.** Customer agrees that its requests to initiate payments utilizing Data Translation Services shall be governed by this Section, the sections of this Agreement governing the applicable payment mechanism, and all other applicable laws, rules and regulations governing the relevant payment mechanism. Customer authorizes Bank to execute all electronic and check payment requests ("Payment Requests"), and settle to the Customer's account all Payment Requests, delivered to Bank in compliance with the terms of this Agreement, including the security procedures. Customer is solely responsible for initiating the Payment Requests sufficiently in advance to meet Customer's contractual obligations to its vendors and/or its customers. Bank shall not be responsible for any late payment or finance charges that may result from Customer's failure to allow sufficient lead-time.



**a. Electronic Payment Requests.** Depending on the scope of the Data Translation Services solution offered by Bank, Customer may from time to time request that Bank initiate electronic payments using the ACH, card, SWIFT and Zelle networks, The Clearing House system, the wire transfer system or other electronic funds transfer system ("Electronic Payment Requests"). Except as may be provided elsewhere, Customer may not amend or revoke Electronic Payment Requests after they have been received by Bank. Customer acknowledges that the rules of NACHA and other electronic funds transfer systems may make any credit provisional until the financial institution crediting the account of the beneficiary specified in an Electronic Payment Request receives final settlement and that if the financial institution does not receive final settlement, it is entitled to a refund and Customer shall be deemed not to have paid the beneficiary. Electronic Payment Requests with settlement dates of more than thirty (30) calendar days from receipt will not be processed unless prior arrangements have been made. Customer authorizes Bank to use whatever means Bank, in good faith, deems reasonable under the circumstances to execute each Electronic Payment Request, including selection of a funds transfer system, routing and means of transmission.

**b. Check Payment Requests.** Customer may from time to time request that Bank print checks and related remittance information ("Check Payment Request(s)") and issue and distribute such checks and information. Customer shall designate the account(s) from which Bank is to make payment ("Payment Account") and shall maintain a sufficient balance in the Payment Account to fund its Check Payment Requests. To mitigate against fraud, Bank requires that Customer utilize Bank's Positive Pay Services in conjunction with the Payment Account. Customer agrees that checks drawn in a manner consistent with a Check Payment Request shall be duly authorized to the same extent as a check drawn and signed by Customer and is properly payable by Bank. Customer authorizes Bank to deduct the Payment Account in the amount of the Check Payment Request. If there are insufficient funds in the Payment Account to make a Check Payment Request, Bank may in its sole discretion either refuse to make the payment or make the payment and overdraw the Payment Account. In either event, Customer shall incur fees as disclosed by Bank in the account agreement and related fee schedules and other disclosures. Customer has no right to reverse, adjust or revoke any Check Payment Request after it has been received by Bank. Bank will, however, make reasonable efforts to act on such a request by Customer. If Check Payment Requests relate to printing checks drawn on another financial institution's account ("Off-Us Checks"), Customer acknowledges that Bank shall not be liable for any fraudulent or unauthorized activity that may arise from the use of such Off-Us Checks. If Check Payment Requests relate to printing payroll checks, Customer acknowledges that Bank shall only print payroll checks and shall not be responsible for any other aspect of payroll processing, including, but not limited to, producing IRS Form W-2s, 1099s or other payroll-related tax documents. In addition, Customer represents and warrants that it shall not include any social security numbers in the Check Payment Requests for payroll checks and agrees to indemnify and hold Bank harmless if the checks or check stubs are printed with social security numbers.

**6. Security Procedures.** Customer shall comply with all security procedures established by Bank for Data Translation Services. Customer agrees that all Data Translation Requests that involve the exchange or transmission of banking information shall only use secure transmission options supported by Bank. For some Services, such as ACH, Customer and Bank may establish alternative, comparable security procedures for accessing such Services when Data Translation Services are utilized. Customer is solely responsible for maintaining its own internal security procedures to prevent errors or unauthorized access to Customer's computer systems by unauthorized employees, vendors or customers. Bank has no responsibility for the security procedures employed by Customer's trading partners.

**7. File Confirmation Procedures.** Customer shall at all times comply with the applicable file confirmation procedures established by Bank. File confirmation procedures utilizing Data Translation Services are solely for the purpose of verifying Bank's receipt of the Payment Requests but not for identifying errors in transmission or content.

**a. Control Totals.** Control Totals are an elective option that allows Customer to confirm file totals of Payment Requests transmitted to Bank. If the Control Totals option is selected by Customer, Customer shall call

Bank's Audio Response Unit ("ARU") or send a data file to Bank providing the total items and dollar value of the Payment Requests and any other necessary information ("Control Totals"). After Bank receives Customer's Payment Requests, Bank will compare the Payment Requests to the Control Totals. If the Control Totals match the Payment Requests, Bank will process the Payment Requests. Bank will not process the Payment Requests if Bank does not receive conforming Control Totals on or before the established delivery deadline. Bank will notify Customer if the Control Totals do not match the Payment Requests, or if Bank receives Payment Requests without receiving Control Totals or vice versa.

If the Control Totals option is not selected by Customer, upon Bank's receipt of Customer's electronic payments via a data file, Bank shall send an acknowledgement to Customer confirming receipt and acceptance of Customer's Payment Requests. If Customer identifies errors in the content or transmission of Customer's Payment Requests, or if Customer does not receive an acknowledgement from Bank, Customer agrees to notify Bank immediately. Depending on the payment deadlines, Bank may be able to delete or reverse processing of Payment Requests.

**b. Payables File Manager.** Payables File Manager is an elective Service that allows Customer to confirm that Bank has received Customer's files. Using SinglePoint® or other applications or systems as may be introduced by Bank, Customer may view the status of Data Translation files sent by Customer to Bank. If Customer selects this Service, Customer agrees to promptly and regularly review the status of all files displayed in the Payables File Manager and to notify Bank immediately if any files sent by Customer were not received by Bank. Depending on the payment deadlines, Bank may be able to delete or reverse processing of Payment Requests. Customer bears sole responsibility for any inaccurate or incomplete information sent to Bank if Customer fails to notify Bank prior to Bank's processing of Customer's files.

**8. Supplier Prefer Pay.** If selected by Customer and agreed to by Bank, the Supplier Prefer Pay Service provides an electronic payment enrollment and storage solution, which also allows use of the stored data for payment origination.

Customer's suppliers or trading partners ("Suppliers") may elect to enroll in a program to receive payment from Customer via ACH or alternative payment methods that may include, but are not limited to, virtual cards (account without the issuance of a physical credit card) and checks. As part of this Service, Bank will: (i) provide online enrollment for Suppliers to register to receive payment from Customer, including the option for Supplier to provide a preferred email address to receive remittance information; (ii) contact Suppliers (with contact information provided solely by Customer) via telephone, email or regular mail to describe the supplier enrollment service and solicit their participation; (iii) support Supplier enrollment; and (iv) at Customer's election, securely store Supplier's banking information. Customer will designate one or more System Administrator(s) responsible for establishing internal security procedures, including, without limitation, setting up and maintaining access to the Service. Customer shall be solely responsible for conducting the necessary due diligence to vet Customer's Suppliers and to ensure that only legitimate Suppliers of Customer enroll in the Service. Bank recommends that Customer establish and utilize robust security procedures in accordance with the guidelines provided by Bank in the Implementation Documents. If Customer declines Bank's recommendation, Customer agrees it will be precluded from asserting any claims against Bank for unauthorized payments, except with respect to claims caused by Bank's own lack of good faith or failure to exercise ordinary care.

Customer acknowledges and agrees that use of the Service may be affected by external factors beyond Bank's control. Interruption of the Service or performance hereunder for any reason shall not relieve Customer of its obligation to make timely payment to Suppliers, and Bank shall not incur any liability to Customer for Customer's failure to timely make any such payment to Suppliers. Customer agrees to indemnify, defend and hold Bank harmless from and against any and all claims, demands, expenses, losses, liabilities, and damages, including reasonable attorney fees and court costs at trial or on appeal that arise directly or indirectly out of any payments made by Customer using the enrollment information furnished by Customer, Suppliers or any other party on behalf of Supplier.

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## G. CASH VAULT SERVICES

**1. Introduction.** The Terms "cash", "coin" and "currency" as used herein shall refer to coin and currency of the United States and certain foreign currencies accepted by Bank.

**2. Foreign currency.** Customer shall not deposit any foreign currency unless Customer has obtained Bank's prior approval. Bank reserves the right, in its sole discretion, to impose restrictions on, or discontinue acceptance of, foreign currency deposits. Section IV.G.5 below does not apply to foreign currency processing. Foreign coin shall not be accepted for deposit by Bank under any circumstances.

**3. Account.** All deposits of coin, currency and checks will be credited to, and all withdrawals of coin, currency and checks will be debited against, Customer's deposit account at Bank (the "Account") which Customer has designated as being covered by the Services described herein. Customer agrees that it shall not deposit any items, instructions or objects other than coin, currency and checks as outlined in this Agreement and agrees to assume any and all risk of loss associated with tendering items not specified herein.

### 4. Deposits.

a. Customer shall supply and maintain tamper-evident disposable plastic bags used for deposits. Plastic bags shall be sealed according to manufacturers' instructions and addressed to the appropriate secured facility specified by Bank. Customer will prepare deposits as follows: (i) currency will be batched separately from checks with each currency and check batch accompanied by a deposit ticket fully completed by Customer; (ii) currency will be banded with 100 notes of the same denomination whenever possible; (iii) deposits will be delivered by Customer's approved carrier to the secured facility specified by Bank; and (iv) to receive same-day credit, deposits must be made prior to the daily deadline established by Bank from time to time, and any deposits received by Bank after its deadline may be considered to have been received on the next Business Day. Foreign currency deposits do not qualify for same-day credit and are subject to Bank's prevailing exchange rates.

b. Bank will process Customer's deposits as follows: (i) deposits will be receipted and conditional (subject to verification) credit assigned based on the amount identified on the deposit ticket; (ii) deposit tickets that are missing, blank or do not contain legible "declared balances" are subject to delayed ledger credit of one Business Day; and (iii) coins and currency will be counted and Bank's count will be the valid and controlling count.

c. For U.S. currency, if there is a coin and currency variance of more than USD 10 from the declared balance on Customer's deposit ticket, Bank shall adjust Customer's coin and currency deposits through a separate debit or credit to Customer's account. Any such adjustment shall not be reflected on Customer's deposit ticket. Deposit tickets containing a declared total that includes check deposits may require a separate and additional adjustment for any variances to Customer's check deposits. If there is a coin and currency variance of USD 10 or less from the declared balance on Customer's deposit ticket, Bank shall not make any adjustment to Customer's currency and coin deposits and shall credit Customer's account based on Customer's declared balance. Upon request, Bank will provide Customer with any available information that may assist Customer in reconciliation of the difference.

d. Deposited items are deemed received on the day of delivery if Bank receives the deposit prior to Bank's established deadlines. Deposits will be processed in accordance with normal Bank procedure and any applicable availability schedules. All deposits made by Customer shall be subject to verification and adjustment by Bank. Bank's verification shall be deemed correct and binding upon Customer for all purposes, absent manifest error.

e. If Customer chooses to pre-encode its checks or other items for deposit, Customer agrees to comply with the pre-encoded deposit procedures and specifications as may be established and revised by Bank. Customer shall be responsible for any of its encoding errors. Bank may treat certain deposits as unencoded deposits if there is an unacceptable rate of encoding errors.

## 5. Withdrawals.

a. Bank may provide Customer with U.S. currency and coin in designated denominations from time to time as requested by Customer through the Bank's automated ordering system ("Cash Orders"). Customer must comply with all of Bank's policies and procedures regarding the placement and delivery of Cash Orders, including, without limitation, the maintenance of a designated password. Customer shall be responsible for maintaining the confidentiality of Customer's password and restricting access to the system to authorized Agents. All Cash Orders will be charged to the account designated by Customer and must be picked up by Customer's Agent or sent by registered mail to a street address. Only approved carriers may pick up Cash Orders directly from a cash vault operated by Bank. Bank may release any Cash Order to any individual that Bank reasonably believes to be Customer's Agent. Customer shall be responsible for any Cash Order after receipt thereof by the Agent. Bank may specify a daily Cash Order limit and Customer agrees that it will not initiate a Cash Order in excess of the designated limit. In no event shall Customer initiate a Cash Order in excess of the immediately available funds in the designated account.

b. Customer may order currency and coin from Bank as follows:

- (i) The preferred order for currency is in standard full strap (100 banknotes) quantities only.
- (ii) Coin may be ordered in standard full box units (50 rolls), individual rolls or loose standard bags only.
- (iii) A charge for the face value of the monies ordered will be made to the Account on the day the order is processed by Bank.
- (iv) Orders for coin and currency must be placed no later than the deadline established by Bank from time to time for release to Customer's Agent on the same or next Business Day. Depending on Customer's location, select cash vault sites may require a multiple-day lead time or more for coin and currency orders.
- (v) Bank must be notified of any discrepancies pertaining to coin or currency orders within two Business Days of receipt by Customer of such coin or currency. Customer must return documentation to back-up outages such as plastic change order bag, currency strap, coin wrapper and/or box.

**6. Processing.** Bank will provide processing on all Business Days. Cash Vault Services using third-party applications with time-stamp data are for informational purposes only and may not reflect actual timing of receipt, posting or verification of Customer's deposits by Bank. Bank shall not be liable for any inaccurate or incomplete information with respect to such time-stamp data provided to Customer.

**7. Carrier Service.** Any carrier service utilized to deliver or obtain coin, currency or other property to or from Bank, including, without limitation, a common carrier, will act as the agent of Customer and not of Bank. Customer and carrier shall agree upon the pickup and delivery days and times. Customer will bear the entire risk of loss of coins, currency, checks or other property of Customer when in the custody or control of Customer's carrier service.

**8. Cash Shipping Solution.** If this Service is selected by Customer and agreed to by Bank, Bank may rent a caller box at the United States Postal Service (USPS) post office and, on Customer's behalf, engage an armored carrier, each of which shall be deemed Customer's Agent, to retrieve Customer's deposits from the caller box for delivery to Bank and to deliver Customer's coin and currency orders to the USPS. Customer agrees to implement and properly use any and all security procedures prescribed or recommended by USPS and Bank and agrees to hold Bank harmless from any claims or losses arising from Customer's failure to implement and properly use any such prescribed or recommended security procedures. Bank recommends that Customer limits its deposits and orders to \$2500 per mailer, but regardless Customer bears the entire risk of loss of coins, currency, checks or other property of Customer until received at, or upon pick up from, Bank's cash vault. Customer shall be solely responsible for any investigation of a loss suffered prior to delivery to, or after pickup from, Bank's cash vault and Bank shall have no obligation to participate in such investigation.

**9. Representations.** Customer represents and warrants to Bank that (a) all funds deposited with Bank will be the proceeds of, and all funds ordered and withdrawn from Bank will be intended for use in, Customer's lawful activities and (b) all of Customer's transactions hereunder will be conducted solely on Customer's behalf and not on behalf of any other person or entity.

**10. Regulatory Compliance.** Upon request, Customer shall immediately provide Bank with any information and shall otherwise cooperate with Bank in every way necessary in order to enable Bank to fulfill its obligations with respect to the reporting of transactions in coin and currency or any other regulatory requirement.

**11. Use of and Access to Cash Vault Services.** Customer acknowledges and agrees that Cash Vault Services are to be used exclusively for its benefit and, absent prior written approval by Bank, Customer will not permit third parties, including non-Customers or other Agents of Customer (excluding approved carriers or agents making cash deposits into a Customer's account at Bank and agents ordering cash on behalf of a Customer), from accessing or otherwise using any Cash Vault Services offered by Bank.

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## **H. U.S. BANK EASYTAX<sup>SM</sup> SERVICES**

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**1. Authorization; Enrollment.** If the EasyTax Service is requested by Customer and agreed to by Bank, Bank will electronically enroll Customer in the Electronic Federal Tax Payment System (EFTPS) if Customer desires to make federal tax payments via EFTPS. Electronic enrollment will allow Bank to process Customer's tax payments in compliance with EFTPS through Bank's tax payment system only. If Customer chooses to pay federal taxes by any other means, payments may not be EFTPS compliant. Customer understands that Bank's EFTPS enrollment form 8655 does not replace the EFTPS form 9779, which is sent to mandated companies by the Internal Revenue Service. Customer may also use the EasyTax Service to make state and/or local municipality tax payments in jurisdictions that support such payments. Customer agrees that the EasyTax Service shall be governed by this Section and all other relevant sections of this Agreement.

**2. Submission of Information.** Customer shall furnish Bank with complete and accurate master file information which shall enable Bank to file tax deposits via ACH with the appropriate tax authorities in a timely manner. The Service provided by Bank hereunder shall be based solely upon the information furnished by Customer to Bank. Accordingly, any inaccuracy in any information provided by Customer may result in unintended processing by Bank. Customer bears sole and exclusive responsibility to verify that the information provided to Bank is complete and accurate. Bank bears no responsibility for detecting or reporting any error in data supplied by Customer and shall not be liable to Customer for any information provided by Customer with respect to information that is inaccurate, incomplete or otherwise incorrect. The Service provided hereunder does not relieve Customer of any duty imposed on Customer by law to maintain records or from verifying and, if necessary, immediately correcting in writing all data received from Bank relating to the Service. Customer agrees to be bound by any instructions, whether or not authorized, issued in its name and accepted by Bank in accordance with the agreed procedures. Customer shall indemnify and hold Bank harmless from and against all liability, loss and damage (including attorneys' fees and other costs incurred in connection therewith) arising out of the use of information provided by Customer.

**3. Requests for Payment.** Requests for payment to tax authorities must be made in accordance with instructions which Bank shall provide Customer, which may be amended by Bank from time to time at its discretion, and will be considered complete only if actually received by Bank. All tax deposits must be initiated at least one Business Day in advance of the due date, otherwise deposits may be subject to federal or state penalties. Any request by Customer to make tax deposits hereunder shall be submitted to Bank prior to the daily cut-off time established by Bank from time to time. Any such request received by Bank after its daily cut-off time may be processed on the next Business Day. In the event that an ACH Entry is rejected or returned by an ACH processor for any reason whatsoever, Bank will give Customer notice of any rejected or returned ACH Entry in the usual manner agreed to by the parties. Bank shall have no liability for any delay caused by strikes, telephone failure, equipment or electrical failure, or any other condition beyond the reasonable control of Bank.

**4. Receipt of Funds.** Funds received by Bank from Customer shall be held as a deposit liability of Bank to Customer until such time as such funds are due and paid to the appropriate tax authorities. Customer is not entitled to interest on such funds and Bank may invest such funds solely for Bank's benefit.

**5. Account.** Customer shall maintain with Bank a commercial demand deposit account in which Customer shall maintain immediately available funds in an amount sufficient to cover all tax deposits and fees charged by Bank for the Service hereunder. Failure by Customer to maintain such funds shall relieve Bank from providing such Service, notwithstanding any request by Customer to provide the Service.

**6. Liability.** Bank shall not be liable for any penalties assessed by reason of failure of Customer to make any tax payments. Interruption of the Service or performance hereunder for any reason shall not relieve Customer of its obligation to make any required tax deposits, and Bank shall not incur any liability to Customer for Customer's failure to make any such deposit. If Customer elects to make a tax deposit by any means

other than through Bank, Bank shall not be liable for any penalties or interest arising from any error in due date or other calculations for deposits made within the period in which such other deposit was made. Bank may choose to provide its EasyTax Service through a third-party vendor. Bank and its third-party vendor's liability to Customer is limited to correcting any error made by the Bank or third-party vendor. The sole and exclusive remedy, at law or in equity, against Bank or third-party vendor is limited to money damages in an amount not to exceed the total amount paid to Bank for EasyTax fees during the twelve (12) months preceding the event giving rise to the liability. Neither Bank nor third-party vendor will be liable for special, incidental, indirect, punitive or consequential damages. Customer acknowledges that the EasyTax Service would not be available or would be available at substantially increased rates without the liability and remedy limitations set forth in this Agreement.

**7. Codes.** Customer shall keep confidential the access and PIN codes issued to Customer in connection with the Service, and only Customer shall use such codes. If Customer suspects that any such codes have become known or otherwise accessed by unauthorized persons, Customer shall notify Bank immediately and follow up such notice with written confirmation. The occurrence of unauthorized access will not affect any deposits made in good faith by Bank before Bank has received such notification and had a reasonable time to act to prevent any unauthorized deposits.

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## **I. PAPER-BASED DISBURSEMENT SERVICES**

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### **1. Controlled Disbursement.**

**a. Disbursement Account.** If requested by Customer and agreed to by Bank, Customer will open and maintain a demand deposit account ("Disbursement Account") and a primary funding account ("Funding Account") at Bank. The disbursing bank may be a financial institution that is a subsidiary or affiliate of Bank or Bank itself. Customer agrees to use Bank's Positive Pay Services in conjunction with the use of Disbursement Account(s). Should Customer decline to use Bank's Positive Pay Services in conjunction with the use of Disbursement Account(s), Customer agrees that, except with respect to liability, loss or damage caused by Bank's own lack of good faith or failure to exercise ordinary care, it will be precluded from asserting any claims against Bank for paying any unauthorized, altered, counterfeit or other fraudulent item that Bank's Positive Pay Service was designed to detect or deter. Bank also reserves the right to require Customer to execute a separate indemnity agreement related to its use of Disbursement Account(s). Customer hereby authorizes and directs Bank to act on its behalf and as its agent, as Bank in its sole discretion deems necessary or advisable, in performing any of the Controlled Disbursement Services and related Services.

**b. Funding Procedures.** On each Business Day, Bank shall electronically provide Customer with a report of the total aggregate amount of all presented disbursement checks and ACH transactions posted in the early morning ACH window, net of the prior day adjustment and other charges to the Disbursement Account (the "Total Clearings"). Customer agrees to maintain sufficient collected balances in the Funding Account by the established deadline to fund the Total Clearings. Bank is hereby authorized to debit the Funding Account in an amount equal to the actual or estimated Total Clearings and to transfer funds in said amount for credit to the Disbursement Account. Bank reserves the right to convert the Disbursement Account into a standard prepaid checking account at any time upon notice to Customer.

**c. Adjustments.** Bank will compare the report of electronic presentments to the checks presented against the Disbursement Account. If the total dollar amount of checks electronically reported is less than the total dollar amount of checks presented, Bank will credit the Disbursement Account for the difference. Bank will add this difference to Customer's Total Clearings the next Business Day.

**d. Daily Dollar Limit.** A daily dollar limit (the "Dollar Limit") may be established from time to time by Bank with respect to the Disbursement Account in Bank's sole discretion. Bank shall have no obligation to pay disbursement checks and ACH transactions (collectively, "Disbursement Items") in excess of the Dollar Limit. Bank may, at any time, either verbally or in writing (but shall not be deemed obligated to) notify Customer of any change made by Bank in the Dollar Limit. Establishment of the Dollar Limit should not be interpreted or construed by Customer as any commitment or agreement by Bank to provide any credit or loans to Customer, nor as an agreement or commitment to debit the Funding Account when doing so would create a negative balance therein.

**e. Special Circumstances.** Customer acknowledges that Bank, under some circumstances beyond its control, may at times be unable to provide a report of the total amount of its Total Clearings early enough for Customer to make a complete and acceptable funding of the accounts. Customer nevertheless agrees to fund the Funding Account completely by using an estimate of the Total Clearings.

**f. Action Affecting Accounts.** Should Bank receive any process, summons, order, injunction, execution, levy, lien, garnishment, or adverse claim notice (either by a governmental authority or third party) (hereinafter referred to as "Process"), which Bank reasonably believes will adversely affect the Funding Account or the Disbursement Account, Bank may, at its option and without liability, refuse to honor orders to pay or withdraw sums from any Disbursement Account and may either hold the Funding Account balance herein until such Process is disposed of to the satisfaction of Bank or pay the balance over to the source of the Process in accordance with applicable law.

**g. Return of Disbursement Items Unpaid.** Bank reserves the right, in Bank's sole discretion, to return unpaid any or all Disbursement Items presented for payment against the Disbursement Account in the event that:

- (i) there are insufficient collected and available balances on deposit in the Funding Account by the established deadline to fund the Total Clearings;
- (ii) debits cannot be posted because the Disbursement Account or Funding Account is frozen, blocked, closed or because of any other condition; or
- (iii) any communications failure or other condition prevents Bank from monitoring Customer's Dollar Limit and/or the Disbursement Items presented for payment.

**h. Stop Payment Orders.** Customer may issue stop payment orders on Disbursement Items drawn on the Disbursement Account in accordance with Bank's procedures.

## **2. Warrant Services.**

**a. Warrant Account.** If requested by Customer and agreed to by Bank, Customer shall open and maintain a demand deposit account upon which warrants shall be drawn and will be charged (the "Warrant Account"). Customer shall maintain on deposit sufficient collected and available balances to cover items drawn on the Warrant Account.

**b. Warrant Format.** All warrants shall contain on the face of the item the words "warrant" and "payable through U.S. Bank." Customer will also encode all warrants in accordance with Bank specifications. Customer agrees to immediately make any changes to the format of the warrants or encoding when requested to do so by Bank and will be solely responsible for its failure or refusal to comply with Bank's specifications. Any warrant drawn by Customer on the Warrant Account shall be treated by Bank as a warrant regardless of what appears on the face of the warrant and Customer shall hold Bank harmless as a result of so handling any such item.

**c. Presentment and Return.** Bank shall make warrants presented to Bank available to Customer via electronic presentment. Bank shall notify Customer by electronic means of the account number, warrant number and dollar amount of all presented warrants and provide Customer with a front and back image of each warrant received by Bank. Bank's delivery of the images shall constitute an electronic presentment under the Uniform Commercial Code, Federal Regulation CC and other applicable laws. Warrant Services are additionally subject to the Reverse Positive Pay terms contained elsewhere in this Agreement. Customer shall notify Bank of each warrant that should be returned in the form agreed to by Bank and Customer. If Customer does not specifically decline payment of a warrant by the deadline established by Bank, such warrant will be finally paid by Bank. Customer acknowledges that warrants payable through Bank are considered to be drawn on Bank for purposes of the expeditious return and notice-of-nonpayment requirements of subpart C of Regulation CC of the Federal Reserve Board. If Bank agrees to return a warrant following Bank's deadline, Customer agrees to be responsible for Bank's failure to return the warrant in an expeditious manner as prescribed in Regulation CC. Bank shall be deemed to have made timely presentment to Customer with respect to any warrants that Bank receives at a time when it is prevented from making presentment to Customer as a result of any force majeure event illustrated in Section II.22.

**d. Examination of Warrants.** Bank shall have no responsibility to examine warrants prior to presentment to Customer for its payment decision. Bank will take ordinary care to see that the amount of each warrant as drawn is accurately posted to Customer's account. Bank will not make any attempt to verify signatures, endorsements or restrictive clauses on warrants. Bank will not examine the dates on which warrants have been drawn for undated, stale or post-dated items. Bank shall have no responsibility for any liability, loss or damage resulting from (i) a payment in accordance with this Section of any warrant that is altered or unsigned or that bears the forged or unauthorized signature of Customer or (ii) return of any check to the depository bank in accordance with this Section.

**e. Encashment of Warrants.** Unless otherwise instructed by Customer, Bank is authorized to pay warrants issued by Customer that are presented for encashment by payees. Bank will not be liable for the encashment of any warrant which contains, or is purported to contain, a forged signature of a maker or endorser, or any other unauthorized modification, as long as Bank exercises ordinary care in cashing the warrant.

## **J. POSITIVE PAY SERVICES**

**1. Introduction.** Positive Pay Services are offered by Bank as the most effective way to minimize loss from fraudulent check issuance or payment. If Positive Pay Services are requested by Customer and agreed to by Bank, Customer and Bank agree that in the event of an inconsistency between this Agreement and applicable law, the provisions of this Agreement shall prevail to the extent permitted. Nothing in this Agreement is intended to limit Bank's right to return an item unpaid if there are insufficient available funds in the designated account.

**2. Format Specifications.** Customer shall comply at all times with Bank's format and data transmission standards for the Positive Pay Service. Customer agrees to issue checks, warrants, drafts or other items (collectively, "Items") in accordance with Bank's specifications and will change the Item format when requested to do so by Bank. Bank shall not be responsible for correcting or resolving processing problems caused by substandard quality magnetic encoding.

## **3. Positive Pay.**

**a. Customer Responsibilities.** Customer shall designate to Bank all account(s) that are to be used with the Positive Pay Service ("Positive Pay Account(s)"). Customer will provide Bank with a file of all outstanding Items prior to activation of this Service. On each day that an Item is written against the Positive Pay Account, Customer shall supply Bank with all required Item issue information prior to the deadline established by Bank. Such information shall include, without limitation, the account number, the issue date, the Item number and the dollar amount. Customer shall be responsible for the accuracy and completeness of all information provided to Bank. Customer agrees to review all Positive Pay Exception Items (as defined below) each Business Day.

**b. Bank's Responsibilities.** In reliance on the information provided by Customer, Bank shall create a master issue file for each designated Positive Pay Account ("Issue File"). If ARP File Confirmation Service is selected by Customer, Bank shall process the Issue File and provide a confirmation to Customer that the Issue File was received and processed. Excluding valid stop payment orders and issue records voided by Customer request, all Items, including those that have been electronically converted, that match by Item number and dollar amount to Bank's Issue File will be deemed properly payable and Bank is authorized to pay all such Items.

**c. Positive Pay Exceptions.** Each Business Day, Bank shall make reasonable efforts to report to Customer any Item that does not match the Issue File (each, a "Positive Pay Exception") and, if requested and available, provide the front and back images of those Items for that day's presentment; provided, however, no images shall be provided in the case of electronically converted Items. Customer agrees to review and make payment decisions on the Positive Pay Exception Items prior to Bank's established deadline each Business Day. If Customer selects the Positive Pay Same Day service for controlled disbursement accounts, Customer shall receive and may make payment decisions on Positive Pay Exception Items prior to the Items posting to the controlled disbursement accounts or defer payment decisions until the established deadline on the next Business Day. As the most effective fraud-protection setup, "return all" shall be the initial default setup for all Positive Pay Exception Items. Under the "return all" setup, Bank is authorized to return any Positive Pay Exception Item unless Customer instructs Bank to pay a Positive Pay Exception Item prior to the established deadline. As an alternative to the "return all" setup, Customer may select "pay all" as its default setup for Positive Pay Exception Items, in which case Bank is authorized to finally pay any Positive Pay Exception Item unless Customer has instructed Bank to return the Positive Pay Exception Item prior to the established deadline. If Customer selects "pay all" as its default setup, Customer agrees to execute any further documentation required by Bank. Customer shall indemnify and hold Bank harmless from and against any and all claims, demands, damages, losses, liabilities, penalties and expenses (including, without limitation, reasonable attorney fees and court costs at trial or on appeal) arising directly or indirectly from Customer's selection of "pay all" as its default setup. Bank may rely on any instructions received from Customer that Bank reasonably believes to be genuine. Except with respect to liability, loss or damage caused by Bank's own lack of good faith

or failure to exercise ordinary care, Bank shall have no responsibility for any liability, loss or damage resulting from:

- (i) payment in accordance with this Section of any Positive Pay Exception Item that is altered or unsigned or which bears the forged or unauthorized signature of Customer;
- (ii) the return of any Positive Pay Exception Item to the depository bank in accordance with this Section; or
- (iii) Customer's failure to meet Bank's established deadlines. Customer may be required to place a stop payment order on any returned Positive Pay Exception Item, which shall be subject to Bank's customary stop payment fee. Bank's failure to report a discrepancy will not discharge Customer's obligation with regard to any Item and shall not obligate Bank to return any Item if it is otherwise properly payable.

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

**e. Teller Payee Positive Pay.** If Customer selects the Teller Payee Positive Pay service, payee name(s), in addition to the Issue File information, will be verified at Bank's teller lines. Customer shall include in the Issue File the payee name(s) for each Item issued by Customer. Customer shall be responsible for the accuracy and completeness of the payee information provided to Bank. In reliance on the payee information provided by Customer, Bank will compare the payee information on the Item presented for encashment at a Bank teller line with Customer's Issue File. Customer acknowledges that Bank will not be able to validate payee information if payee information is not provided for a particular Item or for electronically converted Items presented to Bank for payment. Customer acknowledges that, under some circumstances, issuance information submitted by Customer may not be reflected in Customer's Issue File until the opening of the following Business Day. Customer agrees to follow Bank's established procedures should it need to manually add an Item to the Issue File. Bank will make reasonable efforts to assist Customer, but Customer acknowledges that Bank may be unable to process such requests on a same-day basis. If a special handling process for teller-cashed items is selected by Customer and agreed to by Bank, Bank shall attempt to contact Customer for approval prior to the encashment of any item that does not appear in the Issue File. Customer agrees that Bank, in its sole discretion, may refuse to cash any Positive Pay Exception Item, including where the payee name is not an exact match and such refusal will not be deemed to be a wrongful dishonor. In the event of dishonor, Bank will refer the presenter to Customer.

**f. Payee Positive Pay.** If Customer selects this option, which is available only through SinglePoint®, Customer's Item stock may first be tested to ensure it meets Bank's payee name readability rate. Customer shall designate to Bank all Positive Pay Accounts that shall use Payee Positive Pay. In addition to the Issue File information provided by Customer for the Positive Pay Service, Customer shall include in the Issue File the payee name(s) for each Item issued by Customer. Customer shall be responsible for the accuracy and completeness of the payee information provided to Bank. In reliance on the payee information provided by

Customer, Bank will compare the payee information on the Item with Customer's Issue File for Items presented or deposited at Bank. Customer acknowledges that Bank will not be able to validate payee information for electronically converted Items presented to Bank for payment. Bank may, in its sole discretion, impose variable parameters for which the payee information will not be reviewed for certain Items processed through the back office. If such parameters are imposed, Bank agrees to assume the risk of loss for an Item that would have been identified as a Positive Pay Exception solely on the basis of the payee information.

#### **4. Reverse Positive Pay.**

**a. The Paid File.** Customer shall identify all accounts subject to Reverse Positive Pay ("Reverse Positive Pay Account"). When an Item is presented for payment against an identified Reverse Positive Pay Account, Bank shall notify Customer prior to the designated time, and in no case later than the Business Day following the day of presentment, of the Reverse Positive Pay Account number, Item number and amount of the presented Item (the "Paid File") and, if requested and available, shall provide Customer with the front and back images of the Items. By electing Reverse Positive Pay, Customer assumes all fraudulent and other risks associated with teller-cashed Items, except as may be caused by Bank's own lack of good faith or failure to exercise ordinary care, unless Customer provides standing instructions to Bank to disallow encashment at the teller line.

**b. Payment Instructions.** Customer shall compare the information provided by Bank with Customer's Item issuance records. Customer shall notify Bank prior to the deadline established by Bank of Customer's decision on any reported Items that should be dishonored. Bank may rely on any instructions received from Customer that it reasonably believes to be genuine. Bank is authorized to finally pay any Item listed on the Paid File unless the Customer instructs Bank to return the Item prior to the established deadline. Except with respect to liability, loss or damage caused by Bank's own lack of good faith or failure to exercise ordinary care, Bank shall have no responsibility for any liability, loss or damage resulting from (i) a payment in accordance with this Section of any Item that is altered or unsigned or which bears the forged or unauthorized signature of Customer or (ii) return of any Item to the depository bank in accordance with this Section. Bank reserves the right to require Customer to place a stop payment order on any Item to be returned. Any such orders will be subject to Bank's customary stop payment fee. Customer shall notify Bank by the designated deadline if the Paid File has not been received from Bank. Bank will make reasonable efforts to provide the Paid File to Customer and honor Customer's instructions. Bank's failure to provide a Paid File will not discharge Customer's obligation with regard to any Item that was otherwise properly payable at the time of presentment.

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## K. LOCKBOX SERVICES

**1. Lockbox Service Requirements.** Bank provides wholesale, scannable wholesale and property management Lockbox Services, as well as E-Lockbox Services to assist customers in expediting receipt of their remittances. Customer will have its customers forward their payments to the location designated by Bank ("Lockbox"). Prior to initiation of any Lockbox Service, Customer must maintain a demand deposit account with Bank associated with the Lockbox Service ("Lockbox Account").

**2. Testing; Remittances and Envelopes.** Customer shall provide Bank samples of remittances and envelopes for testing and approval prior to using such remittances and envelopes in production. After implementation of Lockbox Services, if there are proposed changes to remittances and envelopes, Customer shall review the proposed changes with Bank and obtain Bank's approval prior to use. Bank may adjust the price for processing Customer's payments if changes are made to Customer's remittances and/or envelopes (including remittance scan line configuration) without such prior approval. Bank may request changes in Customer's remittances or envelopes due to changes in law or regulation, or as reasonably necessary due to equipment or processing improvements. If Customer fails to implement such changes, Bank may adjust the price for payment processing or cease processing Customer's payments as necessary to comply with law or regulation, as reasonably determined by Bank. Customer agrees not to provide any form of prepaid business reply mail envelopes for use with the Lockbox Services.

**3. Access to Mail.** Customer authorizes Bank or its agent to pick up mail at the appropriate postal facility, to have custody of the keys or combinations and unrestricted and exclusive access to such box, and to collect the mail therein to be processed by Bank as agreed by the parties. Bank shall process remittances in accordance with its standard procedures or in accordance with prior instructions received from Customer and agreed to by Bank. Upon termination of Customer's Lockbox Service, mail received shall be forwarded for ninety (90) days following termination.

**4. Proprietary Rights.** Bank possesses all proprietary rights to written material, including, without limitation, all computer programs written for Bank's Lockbox processing system, portable media, listings and other documentation originated and prepared by Bank. Customer shall not duplicate, sell or use in any manner such programs or documentation without the prior written consent of Bank.

**5. Collections/Availability.** Unless otherwise agreed, while Customer receives Lockbox Services, all collected funds held in the Lockbox Account shall be deemed to be Customer's funds for all purposes, including adjustment, attachment, execution, garnishment and other forms of legal process. The crediting and collection of items will be handled under the same agreement as applied to other commercial deposits and shall be subject to Bank's then current funds availability schedule.

**6. Transmission of Information.** Bank may transmit to Customer remittance information or other information received at the lockbox ("Lockbox Information") via secure electronic transmission. Customer further acknowledges that Bank has a duty to protect Lockbox Information and ensure that it is safely delivered to Customer and that Bank has deemed secure electronic transmissions to be the safest mechanism for delivery. If Customer elects to receive the Lockbox Information using other delivery means including paper remittance forwarding or Internet delivery, Customer acknowledges that such delivery means are inherently more insecure and agrees to assume all risk, and hold Bank harmless from, any obligations, liability or losses that result from the nonreceipt, disclosure, dissemination, alteration or unauthorized access of the Lockbox Information. If Customer is the recipient of misdirected Lockbox Information, Customer shall immediately notify Bank and return the information to Bank. Customer agrees not to retain, use, copy, distribute or otherwise disclose the information in any manner.

**7. Image Delivery Services.** Bank shall electronically store check images, check information, remittance information or other information received at the Lockbox in accordance with Bank's record retention schedule. Customer may obtain such images or information via Internet access, CDs (physical or virtual), DVDs (physical or virtual) or file

transmission, if available, at the price outlined in the fee schedule. If the images or information are sent via CD or DVD, Customer agrees to verify the contents of the CD or DVD upon receipt and request a replacement, if necessary, within 10 days of receipt. Customer is solely responsible for safeguarding the security and confidentiality of all images and information that is stored on Customer's computer systems, or printed or downloaded from the Internet, CDs, DVDs, or file transmissions.

**8. Credit/Debit Card Processing.** If Customer desires to provide its customers with the option of making their payments via credit card or non-PIN based debit card, Customer shall first secure approval from a payment transaction processor that Bank is able to support. Credit/debit card processing shall be subject to applicable laws, rules and regulations, and the terms of any other agreement between Customer and the payment transaction processor. Customer acknowledges that Bank is acting on behalf of Customer to merely initiate the authorization of payments at the Lockbox site, and that Bank shall have no responsibility for chargebacks, processing fees, payment disputes or other matters related to the credit/debit card transaction. Bank shall enter the credit/debit card information using its best efforts and if adjustments are subsequently required, Customer shall be responsible for handling all adjustments. In accordance with the requirements of the Payment Card Industry (PCI) Data Security Standard, Customer shall not request CVV or Card Verification Code or Value information (for example: CID, CVC2, CVV2 or CAV2) on remittance documents. Storage of this information is prohibited by the PCI Data Security Standard.

**9. Foreign currency-denominated items and items drawn on foreign banks.** If Customer desires to have non-U.S. dollar items processed by Bank, or items denominated in U.S. dollars but drawn on a foreign bank, Bank shall handle the items within parameters established by Bank based on amount, the type of currency and other considerations outlined in the Implementation Documents. If the item does not fall within Bank's parameters for processing, Bank shall return the item unprocessed to Customer or forward the item for handling as a foreign cash letter collection. If Bank provides Customer with credit at the U.S. dollar conversion rate in effect, and if the item is subsequently returned by the drawee Bank, Bank shall charge Customer's account for the prevailing exchange rate in effect at the time of the chargeback.

**10. Compliance with Applicable Law.** If specific lockbox handling requirements are required in order for Customer to comply with law or regulations applicable to Customer (for example, Regulation Z), Customer agrees to immediately notify Bank of any such requirements. If Bank is unable to accommodate Customer's specific requirements, Bank or Customer may immediately terminate the Lockbox Services.

**11. Customer Responsibility.** With respect to each item received at the Lockbox, Customer shall indemnify and hold Bank harmless from and against any and all claims, demands, damages, losses, liabilities, penalties and expenses (including, without limitation, reasonable attorney fees and court costs at trial or on appeal) arising directly or indirectly: (i) from Customer's breach of a representation or warranty under applicable law, clearinghouse rule, Federal Reserve Operating Circular, or other similar rules or regulations; or (ii) from any other act or omission arising out of Bank's action or inaction taken pursuant to any request by Customer or pursuant to this Agreement. This Section IV.K.11 shall survive termination of the Agreement.

**12. Wholesale Lockbox Processing.** Bank offers Wholesale Lockbox Processing services which allows for the processing of primarily business-to-business payments. Bank is authorized to remove and examine the contents of each envelope in accordance with Bank's wholesale lockbox servicing guidelines and shall observe the following guidelines provided in this Section. Bank shall capture, format and send remittance data to Customer via information reporting or data transmission in accordance with the Implementation Documents.

**a. Check Date.** Bank will not examine any checks or other items with respect to check dates.

**b. Check Amount.** If Bank is unable to determine the amount of a check, such check will be forwarded unprocessed to Customer as an exception.

**c. Payee.** Checks made payable to the Acceptable Payees listed in the Implementation Documents or any reasonable derivation thereof are acceptable for deposit. Checks made payable to others may be returned by Bank as exceptions. Customer warrants that each Acceptable Payee is either Customer, its affiliate, or an entity that has authorized Customer to act on its behalf for the Services provided herein. If the Acceptable Payee is an affiliate of Customer or an entity which authorized Customer to act on such entity's behalf, Customer represents and warrants that such affiliate or entity has authorized checks payable to it to be credited to the Lockbox Account. Bank may require written authorization from any Acceptable Payee or written evidence that an Acceptable Payee has authorized Customer to act on its behalf. If Customer designates 'Accept All Payees' in the Implementation Documents and Bank accepts such designation, Bank shall process all checks for credit to the Lockbox Account regardless of the payee name on the check. Such designation may be subject to additional Bank fees. Customer agrees to indemnify and hold Bank harmless for any claims, fines, expenses, and damages that arise out of Bank's processing of checks based on Customer's "Accept All Payees" designation.

**d. Missing Signature.** In the absence of a signature, Bank will process the check. Customer agrees to reimburse Bank if the check is subsequently returned.

**e. Exceptions.** If a check is treated as an exception, it will be forwarded by Bank to Customer with the remittance data, and not deposited or otherwise reflected in the account of Customer.

**f. Correspondence.** Any correspondence, invoices and miscellaneous enclosures which are included with a payment, as well as any envelope that does not contain a check, will be imaged and destroyed unless Customer specifies different instructions in the Implementation Documents.

**g. Notation.** Customer agrees that Bank shall disregard any notation on a check containing "paid in full", "lien waiver" or other restrictive notation, whether preprinted or handwritten, and treat any such check as though such notation did not appear thereon. If Customer instructs Bank not to process checks with restrictive notations and Bank agrees to do so, Bank will use its best efforts to detect checks bearing such notations, but Bank shall not be liable to Customer for failure to detect any such notation.

**h. Document Order.** Bank shall use its best efforts to process documents that are not in logical order, are difficult to identify, or which are received in unorganized large packages.

**i. Remittance Document Forwarding.** If remittance document or correspondence-only document forwarding is requested by the Customer and agreed to by Bank, Bank shall forward all remittance documents stacked in the order processed. If Customer requests forwarding of check photocopies, and Banks agrees to do so, the check photocopies will be stacked in the order processed on top of the remittance documents. Document forwarding has limited availability and is not available for all lockboxes.

**13. Lockbox Remote Capture Services.** Lockbox Remote Capture Services is an optional add-on service to the Wholesale Lockbox Processing service which provides eligible customers the ability to scan and transmit to Bank lockbox payments received at office locations. If Customer is approved for Lockbox Remote Capture Services, Customer agrees that Bank's Lockbox Remote Capture Services shall be governed by this this Section IV.K (Lockbox Services) and other relevant sections of this Agreement, including but not limited to, the Electronic Deposit Services section.

**14. Scannable Wholesale Lockbox Processing/Property Management Lockbox Processing.** Bank offers Scannable Wholesale Lockbox Processing services and Property Management Lockbox Processing services which allow for the automated processing of consumer-oriented payments. Bank is authorized to open each envelope and remove the contents, disregarding all notations and other marks on the envelopes. Bank shall not examine checks or other items with respect to payee names, check dates and check signatures. Bank is not required to retain remittance envelopes or forward them to Customer. Bank will disregard any restrictive notation on any check, including but not limited to "paid in

full", whether preprinted or handwritten, and shall treat any such check as though such language did not appear thereon. Bank will process, endorse and deposit remittances in accordance with its standard procedures. If Bank is unable to determine the amount of a check, such check will be forwarded to Customer as unprocessable. Bank will deliver miscellaneous enclosures, unprocessable transactions and remittance data in accordance with the Implementation Documents.

**15. E-Lockbox.** E-Lockbox provides Customer with the ability to receive consumer payments electronically that are initiated via the consumers' home banking portal or through other payment channels offered by third-party bill consolidators, including consumer credit counseling agencies.

**a. Network.** "Network" means the Mastercard Remote Payment and Presentment Service ("RPPS"), a division of Mastercard International, Inc., or other originators of consumer-initiated bill payments. Bank receives payments and remittance data via the Network. Bank will credit payments to Customer's account and electronically transmit the remittance data in Bank's standard or other mutually acceptable format for loading to Customer's accounts receivable system.

**b. Customer's Responsibilities.** Customer shall provide Bank with all data and specifications necessary for the Network to process payments and for Bank to transmit the remittance data to Customer. Customer agrees to conduct tests that Bank may deem necessary to ensure Customer and Bank are able to process the remittance data. The purchase, installation, testing and maintenance of any and all equipment used to receive and process information from Bank is the responsibility of Customer. As soon as possible, and in any event, no later than 48 hours after Bank transmits the remittance data to Customer, Customer agrees to process all such data and to inform Bank of any incorrect, unidentifiable or unprocessable information (collectively, "Returns").

**c. Bank's Responsibilities.** Bank shall develop a program to process and transmit remittance data received from the Network in Customer's preferred file format. Bank shall transmit Returns to the Network when Customer provides Bank with the Return information. Bank will credit Customer's account in an amount equal to the payments received and debit Customer's account in an amount equal to any Returns and, if applicable, any Reversals (defined below).

**d. Reliance on Network.** Customer acknowledges that Bank's ability to process payments and remittances are dependent upon the continued use and support of the Network and third-party computers housing the Network and its associated communications network. In the event that access to the Network or its computer communications system is terminated or suspended for any reason, Bank shall not be liable to Customer for any disruptions or failure to provide any part of this Service. Bank assumes no responsibility for the accuracy, timeliness or the completeness of data delivered from the Network to Bank.

**e. Optional Reversal Transactions.** Reversals are Network-initiated debit messages from payment originators informing of the cancellation of previous transactions. Customer may set debit caps on Reversals to limit the daily debit amount a payment originator may send through the Network. If Customer instructs Bank to accept Reversals, Customer hereby authorizes Bank to debit Customer's account for the amount of the Reversals.

**f. Optional Biller Stop Payment.** Biller Stop Payment allows Customer to provide Bank with instructions regarding payments that Customer does not want posted to its account. If Customer instructs Bank to stop a payment from posting to its account, Customer hereby authorizes Bank to return the payment through the Network. Payments that are stopped will not be included in Customer's settlement transaction or the remittance data provided to Customer.



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## L. HEALTHCARE PAYMENT CONSOLIDATOR

U.S. Bank Healthcare Payment Consolidator is a Service that enables Customers to electronically receive, post and reconcile healthcare payments and remittances received from health plans and/or other Agents. The Service accepts images of check payments, remittances and correspondence received by Bank or its vendors in paper form via lockbox, as well as electronically via Automated Clearinghouse (ACH). Electronic remittance files are delivered from the Service to Customer at an agreed upon schedule. Images are made available via website or file transmission. Customer agrees that the Service shall be governed by this Section and all other relevant sections of this Agreement.

**1. Introduction.** If Customer selects the Service, the Service may include, but is not limited to, lockbox, ACH, image viewing, data translation and file transmission services to assist Customer in expediting and automating receipt of their remittances. Prior to implementation of the Service, Customer must maintain a demand deposit account with Bank.

**2. Processing, Collections and Availability.** The Service is available where hardware and software have been configured by Bank to accommodate processing. Bank is authorized to examine the checks and remittances received at Customer's designated lockbox in accordance with Bank's lockbox servicing terms and guidelines. The crediting and collection of items will be handled in accordance with other commercial deposits processed by Bank and shall be subject to Bank's then current funds availability schedule.

**3. Image Viewing and Storage.** The Service processes and stores images of paper checks, explanation of benefits statements, correspondence or other enclosures, as well as images of electronic remittance advices and electronic funds transfers. Images are available to Customer for web viewing or via secure transmission as selected by Customer in the Implementation Documents. Original paper documents will be securely destroyed on a periodic basis.

**4. File Transmission and Data Reporting.** The Service will transmit to Customer remittance data according to the agreed upon schedule. Customer may elect to receive data through one or more delivery mechanisms as specified in the Implementation Documents. If the Service is terminated, Customer may obtain an FTP transmission or other available format of image information processed at the price outlined in the fee schedule.

**5. Accuracy and Timeliness of Information.** Performance of the Service may be affected by external factors such as communication network latency, mail delays and other factors beyond Bank's control. Information with respect to all transactions is provided solely for Customer's convenience, and Customer shall have no recourse to Bank with respect to the use of such information.

**6. Customer Authorizations, Notifications and Responsibility.** Customer authorizes Bank to disclose Customer information to Bank's vendors to the extent required to deliver the Service, and to debit or credit Customer's accounts in performance of the Service hereunder. Customer shall provide Bank or its vendors with all data and specifications necessary for processing. Customer shall conduct tests that Bank or its vendors may deem necessary to ensure that files may be exchanged and the Service implemented. Customer shall adhere to any and all applicable clearinghouse, local, state, or federal laws, rules or regulations.

**7. Security Procedures.** Customer will use the Service in accordance with the procedures established by Bank and its vendors. Customer will designate one or more System Administrator(s) responsible for establishing internal security procedures, including, without limitation, setting up and maintaining access available through the Service. Customer is solely responsible for maintaining a secure work environment to ensure against unauthorized access to the Service.

**8. Proprietary Rights.** Bank, or its vendors, possess all proprietary rights to written material including without limitation, all computer programs written for the Service, websites and other product documentation provided by Bank or its vendors. Customer shall not duplicate, sell or use in any manner such programs or documentation without the prior written consent of the applicable party. Customer will be bound by any terms of use and any license agreements associated with the Service.

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## M. COMMERCIAL SWEEP ACCOUNTS – LOAN OPTION

**THIS NOTICE IS GIVEN PURSUANT TO APPLICABLE LAW: IN THE UNLIKELY EVENT OF THE BANK FAILURE, THE FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC") WILL ALLOW THE LOAN SWEEP TRANSFER OF EXCESS BALANCES IN CUSTOMER'S DEPOSIT ACCOUNT, ABOVE A PRE-ESTABLISHED THRESHOLD, OUT OF THE DEPOSIT ACCOUNT TO PAY DOWN THE LOAN AT BANK ON THE DAY OF FAILURE. THE REMAINING FUNDS IN THE DEPOSIT ACCOUNT WILL BE DEEMED DEPOSITS UNDER FDIC RULES AND WILL BE INSURED UP TO THE APPLICABLE FDIC LIMITS.**

### 1. Definitions.

a. "Account" means Customer's deposit account at Bank which Customer has designated as being covered by the Services described herein.

b. "Available Funds" means the total of the collected funds in the Account as of the close of business on any Business Day, determined in accordance with the manner in which Bank generally provides credit for deposited checks.

c. "Business Day" means any day on which a majority of Bank's offices are open to the public for substantially all banking functions. Saturdays, Sundays, federal or state holidays or any day recognized by a Federal Reserve Bank as a holiday shall not be considered a Business Day, even if Bank's offices are open.

d. "Credit" means any loan arrangement which is designated as a line of credit where Bank has agreed will be subject to the Services described herein.

e. "Credit Agreement" means any loan agreement, promissory note, guaranty or other agreement, instrument or document which evidences, secures or guarantees the Credit.

f. "Deficiency Amount" means the amount by which the Target Balance exceeds the amount of Available Funds as of the close of business on any Business Day.

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

h. "Excess Funds" means the amount of Available Funds as of the close of business on any Business Day which exceeds the Target Balance.

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

j. "Target Balance" means that amount of funds which Customer desires to maintain in the Account and which is mutually agreeable to Bank and Customer from time to time.

k. "Transaction" means either a Loan Transaction or a Repayment Transaction.

### 2. Initiation of Transactions.

a. As of the close of business on each Business Day, Bank will determine the amount of Excess Funds, if any. If Bank determines that there are Excess Funds, Bank will debit the Account and credit the Credit in an amount equal to the lesser of (i) the amount of Excess Funds or (ii) the outstanding principal balance of the Credit plus all interest, fees and charges then outstanding under the Credit (a "Repayment Transaction"); provided, however, that Bank will not be required to initiate any Repayment Transaction in an amount less than a minimum sum mutually agreeable to Bank and Customer. Customer grants Bank a security interest in, and right of set-off to, the Account for purposes of effecting Repayment Transactions.

b. As of the close of business on each Business Day, Bank will determine the Deficiency Amount, if any. If Bank determines that there is a Deficiency Amount, Bank will charge the Credit in an amount equal to the lesser of (i) the amount by which such available balance is less than the Target Balance or (ii) the amount which is available to be borrowed under the Credit (the lesser of such amounts being referred to as the "Loan Amount"), plus the amount of any fees and charges under the Credit, and credit the Account in an amount equal to the Loan Amount (a "Loan Transaction"); provided, however, that Bank will not be required to initiate any Loan Transaction in an amount less than a minimum sum established by Bank, and Bank will not be required to initiate any Loan Transaction if any default exists under any Credit Agreement or this Agreement or Bank is otherwise excused or prohibited under any Credit Agreement or applicable law from making an advance to Customer. In addition, Bank will not be required to initiate any Loan Transaction, and the Services hereunder shall immediately and automatically terminate without notice, if: (A) the Credit has matured or been terminated; (B) Customer has cancelled the Credit; (C) an Event of Insolvency has occurred; or (D) Bank has demanded payment under the Credit.

c. If Bank has agreed to provide any other service to Customer pursuant to which Bank is authorized to transfer Excess Funds from the Account, (i) this Agreement shall prevail over the terms and conditions of such other service, (ii) Bank may initiate a Repayment Transaction or Loan Transaction under this Agreement in lieu of or prior to initiating the transfer of Excess Funds under such other service, and (iii) Bank shall not be in default as to such other service solely by reason of not initiating the transfer of Excess Funds under such other service.

**3. Overdrafts.** Bank may debit the Account as set forth in Section IV.M.1.a above, even though, subsequent to such debit, and as a result of additional transfers or withdrawals from the Account, the return of checks unpaid, or any other cause, the Account becomes overdrawn. In such event, Customer will be assessed Bank's then prevailing charges for overdrafts.

**4. Ordinary Course.** Customer and Bank intend that each Repayment Transaction hereunder be (a) in the ordinary course of business or financial affairs of Customer and Bank, and (b) made according to ordinary business terms.

**5. Asset-Based Loan Sweep Advance.** For each asset-based loan sweep transfer or loan sweep advance (each an "Asset Based Transfer"), Customer certifies to Bank that (i) the Asset Based Transfer is being made in accordance with the certain agreements between Bank and Customer (the "Asset Based Documents"); (ii) the Asset Based Transfer is not revocable by Customer; (iii) the representations and warranties set forth in the Asset Based Documents are true and correct as of the date of each Asset Based Transfer; and (iv) no default or event of default, however denominated, has occurred or is continuing under the Asset Based Documents or will result following the Asset Based Transfer.

**6. Termination.** In addition to the termination rights described elsewhere in the Agreement, Bank may terminate this Service immediately without notice to Customer if the index or other referenced rate upon which the interest rate for this Service is based is at any time less than zero percent.

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## **N. COMMERCIAL SWEEP ACCOUNTS – INVESTMENT OPTION**

**NOTICE: INVESTMENT PRODUCTS, INCLUDING MONEY MARKET MUTUAL FUNDS, ARE NOT DEPOSITS OR OBLIGATIONS OF, OR GUARANTEED BY BANK OR ANY OF ITS AFFILIATES, NOR ARE THEY INSURED BY THE FDIC, OR ANY OTHER GOVERNMENT AGENCY. THE INVESTMENT OPTIONS OFFERED BY BANK UNDER THE COMMERCIAL SWEEP ACCOUNT ARE SUBJECT TO INVESTMENT RISKS, INCLUDING LOSS OF PRINCIPAL OF THE AMOUNT INVESTED.**

### **1. General Terms Applicable to All Investment Options.**

a. If a Commercial Sweep Account Investment Option has been requested and agreed to by Bank, Customer authorizes Bank to transfer funds on a manual or automated basis to and from the demand deposit account ("DDA") and Investment Option selected by Customer. Funds will be transferred between the accounts so that: (a) to the extent funds are available in either account, Customer's DDA maintains an average collected balance equal to a pre-established balance ("Peg Balance"); and (b) any collected funds in the DDA that exceed the Peg Balance ("Excess Funds") are invested by Bank as directed by Customer in accordance with this Agreement. Amounts invested in money market mutual funds, including investment income, will be redeemed and credited back to the DDA as needed so that the collected balance of Customer's DDA equals the Peg Balance. Amounts invested in other investment options, including interest or other investment income, will be credited back to the DDA each Business Day upon maturity. Bank may limit the amount of Excess Funds that it will invest on behalf of Customer on any particular Business Day. Bank may also impose a maximum redemption amount to bring the DDA to the Peg Balance on a particular Business Day. If Customer's Investment Option is not available on a given Business Day, then all Excess Funds will remain in the DDA until the next Business Day.

b. Bank is authorized to accept verbal instructions, including telephone instructions, from Customer representatives for the transfer of funds between Bank and Customer and between Customer's accounts. Bank may rely on any instructions received from Customer that it reasonably believes to be genuine.

c. Bank is authorized to execute as agent for Customer all certificates of ownership and other instruments required by law or by contract. Bank shall not be accountable for errors in judgment but only for gross negligence or willful misconduct. Bank shall not be required to comply with any direction of Customer which in Bank's judgment, may subject it to liability or to defend or prosecute any suit or action unless indemnified in a manner and amount satisfactory to it.

d. Customer may, by written instrument executed by Customer and delivered to Bank, terminate this Service and withdraw from the account the principal and accumulated income upon paying all sums due to Bank and indemnifying Bank to its satisfaction against liabilities incurred in the administration of the account.

e. Bank will act as agent to invest on the order and for the benefit of Customer. The Services described herein are provided by Bank to Customer solely as bona fide treasury management Services. Bank does not undertake any fiduciary obligation to Customer with respect to these Services. Bank's duties to act for Customer hereunder are solely mechanical and administrative in nature.

f. In addition to the termination rights described elsewhere in the Agreement, Bank may terminate this Service immediately without notice to Customer if the index or other referenced rate upon which the interest rate for this Service is based is at any time less than zero percent.

### **2. Investment Options.**

#### **a. Repurchase Agreements.**

(i) Terms. If Customer chooses to invest Excess Funds in repurchase agreements, Customer and Bank agree to be bound by the Master Repurchase Agreement with Bank. If Customer's investments in repurchase agreements exceed its typical investment amount by \$10 million or more on a given Business Day, Customer agrees to notify Bank by providing sufficient advance notice to allow Bank to adequately collateralize the investments. Bank will exercise reasonable efforts to invest the entire amount but cannot guarantee full investment under these circumstances. If Customer fails to notify

Bank in advance or if Bank is unable to invest any or all of the additional funds in repurchase agreements, Customer agrees that Bank may be required to withhold or withdraw any interest that may have been previously paid.

- (ii) **Confirmations.** After each repurchase transaction, Bank will deliver to Customer via mail, fax, email, or other electronic means, including without limitation, posting to a password-protected website) a confirmation ("Confirmation") describing any information required by applicable law and any other terms and information which Bank may include at its discretion. The information contained in the Confirmation shall be considered true and correct and conclusively binding unless Customer notifies Bank of any error therein within three (3) Business Days after the date the Confirmation is mailed, faxed, emailed, personally delivered to Customer or sent via other electronic means, including without limitation, posting to a password-protected website. If Customer elects to receive Confirmations electronically, Customer acknowledges and agrees that Customer will no longer receive Confirmations by mail. If Customer desires to discontinue receiving Confirmations electronically, Customer shall provide written notice to Bank, whereupon Bank shall resume delivering mailed Confirmations.

**b. Eurodollar Investments.**

- (i) **Terms.** If Customer chooses to invest Excess Funds in Eurodollars, Bank is authorized to sweep Excess Funds from Customer's DDA into overnight Eurodollar time deposits at the Cayman Islands branch of Bank. The minimum amount that may be swept pursuant to this option is \$1,000. Excess Funds less than \$1,000 on a given Business Day will not be invested. The minimum amount may be increased if requested by Customer and agreed to by Bank. Customer's Eurodollar investments may be registered in the name of Bank's nominee or nominees. Earnings in Eurodollar investments shall be credited to Customer's DDA on a daily basis. CUSTOMER ASSUMES ALL RISK OF LOSS ARISING FROM ANY ACTION TAKEN WITH RESPECT TO THE CAYMAN DEPOSIT BY THE GOVERNMENT OF THE CAYMAN ISLANDS OR ANY SOVEREIGN OR MILITARY POWER (DE FACTO OR DE JURE).
- (ii) **THIS NOTICE IS GIVEN PURSUANT TO APPLICABLE LAW: IN THE UNLIKELY EVENT OF BANK FAILURE, THE BALANCES RESIDING IN CUSTOMER'S EURODOLLAR SWEEP ACCOUNT AT BANK WILL NOT BE DEEMED "DEPOSITS" UNDER RULES PROMULGATED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC") AND WILL NOT BE INSURED BY THE FDIC. IN THE UNLIKELY EVENT OF BANK FAILURE, CUSTOMER'S CLAIM FOR FUNDS THAT WERE SWEEPED INTO THE EURODOLLAR SWEEP ACCOUNT WILL BE TREATED AS UNSECURED GENERAL CREDITOR CLAIMS.**

**c. Money Market Mutual Funds ("Money Fund").**

- (i) **Terms.** If Customer chooses the Money Fund sweep option, Excess Funds will be invested in the First American Money Market Fund offered for this Service. Excess Funds will be swept from the DDA to a pooled deposit account held in Bank's name. On the next Business Day, the Excess Funds from the pooled Deposit Account will be swept to the Money Fund to purchase shares. Customer's shares in the Money Fund will be held in Bank's name in an omnibus investment account, as agent on behalf of all Bank customers invested in the Money Fund. Customer grants to Bank a consensual possessory security interest in the omnibus investment account and all accounts maintained with Bank to secure payment of all of Customer's obligations under this Service. Customer will accrue dividends beginning on the Business Day the shares are purchased. Dividends accrue daily and are paid monthly on the last Business Day of the month. No dividends will accrue on the Business Day the shares are sold. If, for any reason, Money Fund shares are not available on any given Business Day, all Excess Funds will not be swept to the Money Fund and no dividends will accrue until shares become available for purchase. Funds in the DDA and in the pooled deposit account held at Bank will be treated as deposits and will be insured up to the applicable FDIC insurance limits. The Money Fund sweep option is only available to entities having a presence in the
- United States, which may be demonstrated by a U.S. mailing address and U.S. taxpayer identification number in Bank's records.
- (ii) **Customer Acknowledgments.** BY ACCEPTING THIS SERVICE, CUSTOMER HEREBY ACKNOWLEDGES THAT IT HAS RECEIVED A COPY OF THE PROSPECTUS OF THE DESIGNATED FUND. THIS PROSPECTUS FORMS PART OF THE IMPLEMENTATION DOCUMENTS AND WILL CONTROL OVER THE IMPLEMENTATION DOCUMENTS WITH RESPECT TO MONEY FUND SHARES. CUSTOMER FURTHER ACKNOWLEDGES THAT BANK IS NOT PROVIDING ANY INVESTMENT ADVICE HEREIN TO CUSTOMER AND MAKES NO REPRESENTATION OR WARRANTY AS TO THE SUITABILITY OR SAFETY OF THE INVESTMENTS IN ANY FUND OFFERED UNDER THIS SERVICE.
- (iii) **Money Fund Disclosures.** BANK AFFILIATES SERVE AS INVESTMENT ADVISOR, ADMINISTRATOR, CUSTODIAN, DISTRIBUTOR, TRANSFER AGENT, AND SECURITIES LENDING AGENT AND RECEIVE COMPENSATION FOR SUCH SERVICES AS DISCLOSED IN THE PROSPECTUS FOR THE DESIGNATED FUND. ALTHOUGH MONEY FUNDS SEEK TO PRESERVE THE VALUE OF CUSTOMER'S INVESTMENT AT \$1.00 PER SHARE, IT IS POSSIBLE TO LOSE MONEY BY INVESTING IN A MONEY FUND.
- (iv) **THIS NOTICE IS GIVEN PURSUANT TO APPLICABLE LAW: IN THE UNLIKELY EVENT OF BANK FAILURE, CUSTOMER WILL MAINTAIN ITS INTEREST IN THE MONEY FUND SHARES FOLLOWING A COMPLETED MONEY FUND SWEEP. THE VALUE OF THE SHARES IN THE MONEY FUND OMNIBUS INVESTMENT ACCOUNT WILL NOT BE DEEMED "DEPOSITS" UNDER RULES PROMULGATED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC") AND WILL NOT BE INSURED BY THE FDIC. ON THE DAY OF FAILURE, HOWEVER, THE FDIC MAY DISALLOW THAT DAY'S SWEEP TO OCCUR. IF THE SWEEP IS DISALLOWED, ANY EXCESS FUNDS THAT WOULD HAVE NORMALLY SWEEPED ON THAT BUSINESS DAY WILL REMAIN IN THE DDA AND WILL BE TREATED AS DEPOSITS. THOSE DEPOSITS WILL BE INSURED UP TO THE APPLICABLE FDIC INSURANCE LIMITS.**

**d. Commercial Paper.**

- (i) **Terms.** If Customer chooses the Commercial Paper sweep option, Excess Funds shall be invested in an unsecured short-term promissory note issued by U.S. Bank National Association, and held in book entry. At the end of each Business Day, Excess Funds are automatically transferred from Customers' DDA into a sweep account that invests overnight in U.S. Bank National Association Commercial Paper. The minimum amount that may be swept pursuant to this option is \$1,000. Excess Funds less than \$1,000 on a given Business Day will not be invested. The minimum amount may be increased if requested by Customer and agreed to by Bank.
- (ii) **THIS NOTICE IS GIVEN PURSUANT TO APPLICABLE LAW: IN THE UNLIKELY EVENT OF BANK FAILURE, THE BALANCES RESIDING IN CUSTOMER'S COMMERCIAL PAPER SWEEP ACCOUNT AT BANK WILL NOT BE DEEMED "DEPOSITS" UNDER RULES PROMULGATED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC") AND WILL NOT BE INSURED BY THE FDIC. IN THE UNLIKELY EVENT OF BANK FAILURE, CUSTOMER'S CLAIM FOR FUNDS THAT WERE SWEEPED INTO THE COMMERCIAL PAPER SWEEP ACCOUNT WILL BE TREATED AS UNSECURED GENERAL CREDITOR CLAIMS.**

**e. Business Savings Sweep.** If Customer chooses the Business Savings Sweep option, collected funds with a minimum of \$500 in excess of a Peg Balance shall be swept from Customer's DDA into a Business Savings Sweep Account (the "Savings Account"). The Peg Balance shall be set at a minimum of \$10,000 unless otherwise agreed to by Bank. Funds remain in the Savings Account until Customer's DDA reaches a negative balance, whereupon available funds are swept back into Customer's DDA in an amount necessary to return the DDA balance to the Peg Balance.

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## O. MASTER REPURCHASE AGREEMENT (MRA)

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**THIS NOTICE IS GIVEN PURSUANT TO APPLICABLE LAW: ALL FUNDS IN THE REPURCHASE AGREEMENT SWEEP WILL NOT BE DEEMED "DEPOSITS" AND WILL NOT BE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC"). IN THE UNLIKELY EVENT OF BANK FAILURE, CUSTOMER WILL MAINTAIN ITS OWNERSHIP OR SECURITY INTEREST IN THE SECURITIES THAT ARE SUBJECT TO THE REPURCHASE AGREEMENT AND, UPON LIQUIDATION, WILL RECEIVE THE VALUE OF THE SECURITIES UP TO THE AMOUNT OF FUNDS SWEEPED FROM THE ACCOUNT.**

**1. Applicability.** From time to time the parties hereto may enter into transactions in which one party ("Seller") agrees to transfer to the other ("Buyer") securities or other assets ("Securities") against the transfer of funds by Buyer, with a simultaneous agreement by Buyer to transfer to Seller such Securities at a date certain or on demand, against the transfer of funds by Seller. Each such transaction shall be referred to herein as a "Transaction" and, unless otherwise agreed in writing, shall be governed by this MRA and if applicable, Annex III and the Amendment to Annex III (International Transactions) of the SIFMA Master Repurchase Agreement (1996 version).

### 2. Definitions.

**a.** "Act of Insolvency", with respect to any party, (i) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (ii) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (A) is consented to or not timely contested by such party, (B) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (C) is not dismissed within 15 days, (iii) the making by such party of a general assignment for the benefit of creditors, or (iv) the admission in writing by such party of such party's inability to pay such party's debts as they become due;

**b.** "Additional Purchased Securities", Securities provided by Seller to Buyer pursuant to Paragraph 4(a) hereof;

**c.** "Buyer's Margin Amount", with respect to any Transaction as of any date, the amount obtained by application of the Buyer's Margin Percentage to the Repurchase Price for such Transaction as of such date;

**d.** "Buyer's Margin Percentage", with respect to any Transaction as of any date, a percentage (which may be equal to the Seller's Margin Percentage) agreed to by Buyer and Seller or, in the absence of any such agreement, the percentage obtained by dividing the Market Value of the Purchased Securities on the Purchase Date by the Purchase Price on the Purchase Date for such Transaction;

**e.** "Confirmation", the meaning specified in Paragraph 3(b) hereof;

**f.** "Income", with respect to any Security at any time, any principal thereof and all interest, dividends or other distributions thereon;

**g.** "Margin Deficit", the meaning specified in Paragraph 4(a) hereof;

**h.** "Margin Excess", the meaning specified in Paragraph 4(b) hereof;

**i.** "Margin Notice Deadline", the time agreed to by the parties in the relevant Confirmation, or otherwise as the deadline for giving notice requiring same day satisfaction of margin maintenance obligations as provided in Paragraph 4 hereof (or, in the absence of any such agreement, the deadline for such purposes established in accordance with market practice);

**j.** "Market Value", with respect to any Securities as of any date, the price for such Securities on such date obtained from a generally recognized

source agreed to by the parties or the most recent closing bid quotation from such a source, plus accrued Income to the extent not included therein (other than any Income credited or transferred to, or applied to the obligations of, Seller pursuant to Paragraph 5 hereof) as of such date (unless contrary to market practice for such Securities);

**k.** "Price Differential", with respect to any Transaction as of any date, the aggregate amount obtained by daily application of the Pricing Rate for such Transaction to the Purchase Price for such Transaction on a 360-day-per-year basis for the actual number of days during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) the date of determination (reduced by any amount of such Price Differential previously paid by Seller to Buyer with respect to such Transaction);

**l.** "Pricing Rate", the per annum percentage rate for determination of the Price Differential;

**m.** "Prime Rate", the prime rate of U.S. commercial banks as published in The Wall Street Journal (or, if more than one such rate is published, the average of such rates);

**n.** "Purchase Date", the date on which Purchased Securities are to be transferred by Seller to Buyer;

**o.** "Purchase Price", (i) on the Purchase Date, the price at which Purchased Securities are transferred by Seller to Buyer, and (ii) thereafter, except where Buyer and Seller agree otherwise, such price increased by the amount of any cash transferred by Buyer to Seller pursuant to Paragraph 4(b) hereof and decreased by the amount of any cash transferred by Seller to Buyer pursuant to Paragraph 4(a) hereof or applied to reduce Seller's obligations under clause (ii) of Paragraph 5 hereof;

**p.** "Purchased Securities", the Securities transferred by Seller to Buyer in a Transaction hereunder. The term "Purchased Securities" with respect to any Transaction at any time also shall include Additional Purchased Securities delivered pursuant to Paragraph 4(a) hereof and shall exclude Securities returned pursuant to Paragraph 4(b) hereof;

**q.** "Repurchase Date", the date on which Seller is to repurchase the Purchased Securities from Buyer, including any date determined by application of the provisions of Paragraph 3(c) or 11 hereof;

**r.** "Repurchase Price", the price at which Purchased Securities are to be transferred from Buyer to Seller upon termination of a Transaction, which will be determined in each case (including Transactions terminable upon demand) as the sum of the Purchase Price and the Price Differential as of the date of such determination;

**s.** "Seller's Margin Amount", with respect to any Transaction as of any date, the amount obtained by application of the Seller's Margin Percentage to the Repurchase Price for such Transaction as of such date;

**t.** "Seller's Margin Percentage", with respect to any Transaction as of any date, a percentage (which may be equal to the Buyer's Margin Percentage) agreed to by Buyer and Seller or, in the absence of any such agreement, the percentage obtained by dividing the Market Value of the Purchased Securities on the Purchase Date by the Purchase Price on the Purchase Date for such Transaction.

### 3. Initiation; Confirmation; Termination.

**a.** An agreement to enter into a Transaction may be made orally or in writing at the initiation of either Buyer or Seller. On the Purchase Date for the Transaction, the Purchased Securities shall be transferred to Buyer or its agent against the transfer of the Purchase Price to an account of Seller.

**b.** Upon agreeing to enter into a Transaction hereunder, Buyer or Seller (or both), as shall be agreed, shall promptly deliver to the other party a written confirmation of each Transaction (a "Confirmation"). The Confirmation shall describe the Purchased Securities (including CUSIP number, if any), identify Buyer and Seller and set forth (i) the Purchase Date, (ii) the Purchase Price, (iii) the Repurchase Date, unless the Transaction is to be terminable on demand, (iv) the Pricing Rate or Repurchase Price applicable to the Transaction, and (v) any additional terms or conditions of the Transaction not inconsistent with this MRA. The Confirmation, together with this MRA, shall constitute conclusive evidence

of the terms agreed between Buyer and Seller with respect to the Transaction to which the Confirmation relates, unless with respect to the Confirmation specific objection is made promptly after receipt thereof. In the event of any conflict between the terms of such Confirmation and this MRA, this MRA shall prevail.

c. In the case of Transactions terminable upon demand, such demand shall be made by Buyer or Seller, no later than such time as is customary in accordance with market practice, by telephone or otherwise on or prior to the Business Day on which such termination will be effective. On the date specified in such demand, or on the date fixed for termination in the case of Transactions having a fixed term, termination of the Transaction will be effected by transfer to Seller or its agent of the Purchased Securities and any Income in respect thereof received by Buyer (and not previously credited or transferred to, or applied to the obligations of, Seller pursuant to Paragraph 5 hereof) against the transfer of the Repurchase Price to an account of Buyer.

#### 4. Margin Maintenance.

a. If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Buyer is less than the aggregate Buyer's Margin Amount for all such Transactions (a "Margin Deficit"), then Buyer may by notice to Seller require Seller in such Transactions, at Seller's option, to transfer to Buyer cash or additional Securities reasonably acceptable to Buyer ("Additional Purchased Securities"), so that the cash and aggregate Market Value of the Purchased Securities, including any such Additional Purchased Securities, will thereupon equal or exceed such aggregate Buyer's Margin Amount (decreased by the amount of any Margin Deficit as of such date arising from any Transactions in which such Buyer is acting as Seller).

b. If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Seller exceeds the aggregate Seller's Margin Amount for all such Transactions at such time (a "Margin Excess"), then Seller may by notice to Buyer require Buyer in such Transactions, at Buyer's option, to transfer cash or Purchased Securities to Seller, so that the aggregate Market Value of the Purchased Securities, after deduction of any such cash or any Purchased Securities so transferred, will thereupon not exceed such aggregate Seller's Margin Amount (increased by the amount of any Margin Excess as of such date arising from any Transactions in which such Seller is acting as Buyer).

c. If any notice is given by Buyer or Seller under subparagraph (a) or (b) of this Paragraph at or before the Margin Notice Deadline on any Business Day, the party receiving such notice shall transfer cash or Additional Purchased Securities as provided in such subparagraph no later than the close of business in the relevant market on such day. If any such notice is given after the Margin Notice Deadline, the party receiving such notice shall transfer such cash or Securities no later than the close of business in the relevant market on the next Business Day following such notice.

d. Any cash transferred pursuant to this Paragraph shall be attributed to such Transactions as shall be agreed upon by Buyer and Seller.

e. Seller and Buyer may agree, with respect to any or all Transactions hereunder, that the respective rights of Buyer or Seller (or both) under subparagraphs (a) and (b) of this Paragraph may be exercised only where a Margin Deficit or Margin Excess, as the case may be, exceeds a specified dollar amount or a specified percentage of the Repurchase Prices for such Transactions (which amount or percentage shall be agreed to by Buyer and Seller prior to entering into any such Transactions).

f. Seller and Buyer may agree, with respect to any or all Transactions hereunder, that the respective rights of Buyer and Seller under subparagraphs (a) and (b) of this Paragraph to require the elimination of a Margin Deficit or a Margin Excess, as the case may be, may be exercised whenever such a Margin Deficit or Margin Excess exists with respect to any single Transaction hereunder (calculated without regard to any other Transaction outstanding under this MRA).

5. **Income Payments.** Seller shall be entitled to receive an amount equal to all Income paid or distributed on or in respect of the Securities that is not otherwise received by Seller, to the full extent it would be so entitled if the Securities had not been sold to Buyer. Buyer shall, as the parties may

agree with respect to any Transaction (or, in the absence of any such agreement, as Buyer shall reasonably determine in its discretion), on the date such Income is paid or distributed either (i) transfer to or credit to the account of Seller such Income with respect to any Purchased Securities subject to such Transaction or (ii) with respect to Income paid in cash, apply the Income payment or payments to reduce the amount, if any, to be transferred to Buyer by Seller upon termination of such Transaction. Buyer shall not be obligated to take any action pursuant to the preceding sentence (A) to the extent that such action would result in the creation of a Margin Deficit, unless prior thereto or simultaneously therewith Seller transfers to Buyer cash or Additional Purchased Securities sufficient to eliminate such Margin Deficit, or (B) if an Event of Default with respect to Seller has occurred and is then continuing at the time such Income is paid or distributed.

6. **Security Interest.** Although the parties intend that all Transactions hereunder be sales and purchases and not loans, in the event any such Transactions are deemed to be loans, Seller shall be deemed to have pledged to Buyer as security for the performance by Seller of its obligations under each such Transaction, and shall be deemed to have granted to Buyer a security interest in, all of the Purchased Securities with respect to all Transactions hereunder and all Income thereon and other proceeds thereof. In all Transactions, Seller is acting as agent for Buyer. In the event of Seller's default under the MRA, Buyer has the right to either: (i) direct Seller to sell the Securities or (ii) sell the Securities, and, following any sale pursuant to this sentence, apply the proceeds in satisfaction of Seller's liability hereunder.

7. **Payment and Transfer.** Unless otherwise mutually agreed, all transfers of funds hereunder shall be in immediately available funds. All Securities transferred by one party hereto to the other party (i) shall be in suitable form for transfer or shall be accompanied by duly executed instruments of transfer or assignment in blank and such other documentation as the party receiving possession may reasonably request, (ii) shall be transferred on the book entry system of a Federal Reserve Bank, or (iii) shall be transferred by any other method mutually acceptable to Seller and Buyer.

8. **Segregation of Purchased Securities.** To the extent required by applicable law, all Purchased Securities in the possession of Seller shall be segregated from other securities in its possession and shall be identified as subject to this MRA. Segregation may be accomplished by appropriate identification on the books and records of the holder, including a financial or securities intermediary or a clearing corporation. All of Seller's interest in the Purchased Securities shall pass to Buyer on the Purchase Date and, unless otherwise agreed by Buyer and Seller, nothing in this MRA shall preclude Buyer from engaging in repurchase transactions with the Purchased Securities or otherwise selling, transferring, pledging or hypothecating the Purchased Securities, but no such transaction shall relieve Buyer of its obligations to transfer Purchased Securities to Seller pursuant to Paragraph 3, 4 or 11 hereof, or of Buyer's obligation to credit or pay Income to, or apply Income to the obligations of, Seller pursuant to Paragraph 5 hereof.

#### **Required Disclosure for Transactions in Which the Seller Retains Custody of the Purchased Securities**

Seller is not permitted to substitute other securities for those subject to this MRA and therefore must keep Buyer's securities segregated at all times, unless in this MRA Buyer grants Seller the right to substitute other securities. If Buyer grants the right to substitute, this means that Buyer's securities will likely be commingled with Seller's own securities during the trading day. Buyer is advised that, during any trading day that Buyer's securities are commingled with Seller's securities, they may be subject to liens granted by Seller to third parties and may be used by Seller for deliveries on other securities transactions. Whenever the securities are commingled, Seller's ability to re-segregate substitute securities for Buyer will be subject to Seller's ability to satisfy any lien or to obtain substitute securities.

9. **Substitution.** Seller may not substitute other Securities for any Purchased Securities.

10. **Representations.** Each of Buyer and Seller represents and warrants to the other that (i) it is duly authorized to execute and deliver this MRA,

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

**11. Events of Default.** In the event that (i) Seller fails to transfer or Buyer fails to purchase Purchased Securities upon the applicable Purchase Date, (ii) Seller fails to repurchase or Buyer fails to transfer Purchased Securities upon the applicable Repurchase Date, (iii) Seller or Buyer fails to comply with Paragraph 4 hereof, (iv) Buyer fails, after one Business Days' notice, to comply with Paragraph 5 hereof, (v) an Act of Insolvency occurs with respect to Seller or Buyer, (vi) any representation made by Seller or Buyer shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, or (vii) Seller or Buyer shall admit to the other its inability to, or its intention not to, perform any of its obligations hereunder (each an "Event of Default"):

**a.** The non-defaulting party may, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), declare an Event of Default to have occurred hereunder and, upon the exercise or deemed exercise of such option, the Repurchase Date for each Transaction hereunder shall, if it has not already occurred, be deemed immediately to occur (except that, in the event that the Purchase Date for any Transaction has not yet occurred as of the date of such exercise or deemed exercise, such Transaction shall be deemed immediately canceled). The non-defaulting party shall (except upon the occurrence of an Act of Insolvency) give notice to the defaulting party of the exercise of such option as promptly as practicable.

**b.** In all Transactions in which the defaulting party is acting as Seller, if the non-defaulting party exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Paragraph, (i) the defaulting party's obligations in such Transactions to repurchase all Purchased Securities, at the Repurchase Price therefore on the Repurchase Date determined in accordance with subparagraph (a) of this Paragraph, shall thereupon become immediately due and payable, (ii) all Income paid after such exercise or deemed exercise shall be retained by the non-defaulting party and applied to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder, and (iii) the defaulting party shall immediately deliver to the non-defaulting party any Purchased Securities subject to such Transactions then in the defaulting party's possession or control.

**c.** In all Transactions in which the defaulting party is acting as Buyer, upon tender by the non-defaulting party of payment of the aggregate Repurchase Prices for all such Transactions, all right, title and interest in and entitlement to all Purchased Securities subject to such Transactions shall be deemed transferred to the non-defaulting party, and the defaulting party shall deliver all such Purchased Securities to the non-defaulting party.

**d.** If the non-defaulting party exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Paragraph, the non-defaulting party, without prior notice to the defaulting party, may: (i) as to Transactions in which the defaulting party is acting as Seller, (A) immediately sell, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the non-defaulting party may reasonably deem satisfactory, any or all Purchased Securities subject to such Transactions and apply the proceeds thereof to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Securities, to give the

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

**e.** As to Transactions in which the defaulting party is acting as Buyer, the defaulting party shall be liable to the non-defaulting party for any excess of the price paid (or deemed paid) by the non-defaulting party for Replacement Securities over the Repurchase Price for the Purchased Securities replaced thereby and for any amounts payable by the defaulting party under Paragraph 5 hereof or otherwise hereunder.

**f.** For purposes of this Paragraph 11, the Repurchase Price for each Transaction hereunder in respect of which the defaulting party is acting as Buyer shall not increase above the amount of such Repurchase Price for such Transaction determined as of the date of the exercise or deemed exercise by the non-defaulting party of the option referred to in subparagraph (a) of this Paragraph.

**g.** The defaulting party shall be liable to the non-defaulting party for (i) the amount of all reasonable legal or other expenses incurred by the non-defaulting party in connection with or as a result of an Event of Default, (ii) damages in an amount equal to the cost (including all fees, expenses and commissions) of entering into replacement transactions and entering into or terminating hedge transactions in connection with or as a result of an Event of Default, and (iii) any other loss, damage, cost or expense directly arising or resulting from the occurrence of an Event of Default in respect of a Transaction.

**h.** To the extent permitted by applicable law, the defaulting party shall be liable to the non-defaulting party for interest on any amounts owing by the defaulting party hereunder, from the date the defaulting party becomes liable for such amounts hereunder until such amounts are (i) paid in full by the defaulting party or (ii) satisfied in full by the exercise of the non-defaulting party's rights hereunder. Interest on any sum payable by the defaulting party to the non-defaulting party under this Paragraph 11(h) shall be at a rate equal to the greater of the Pricing Rate for the relevant Transaction or the Prime Rate.

**i.** The non-defaulting party shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or applicable law.

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

made in consideration of payments, deliveries and other transfers in respect of any other Transactions hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

**13. Notices and Other Communications.** Any and all notices, statements, demands or other communications hereunder may be given by a party to the other by mail, facsimile, telegraph, messenger or otherwise to the address specified by Bank, or so sent to such party at any other place specified in a notice of change of address hereafter received by the other. All notices, demands and requests hereunder may be made orally, to be confirmed promptly in writing, or by other communication as specified in the preceding sentence.

**14. Entire Agreement; Severability.** This MRA shall supersede any existing agreements between the parties containing general terms and conditions for repurchase transactions. Each provision and agreement herein shall be treated as separate and independent from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

**15. Nonassignability; Termination.**

**a.** The rights and obligations of the parties under this MRA and under any Transaction shall not be assigned by either party without the prior written consent of the other party, and any such assignment without the prior written consent of the other party shall be null and void. Subject to the foregoing, this MRA and any Transactions shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This MRA may be terminated by either party upon giving written notice to the other, except that this MRA shall, notwithstanding such notice, remain applicable to any Transactions then outstanding.

**b.** Subparagraph (a) of this Paragraph 15 shall not preclude a party from assigning, charging or otherwise dealing with all or any part of its interest in any sum payable to it under Paragraph 11 hereof.

**16. Governing Law.** This MRA shall be governed by the laws of the State of New York without giving effect to the conflict of law principles thereof.

**17. No Waivers, Etc.** No express or implied waiver of any Event of Default by either party shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by any party shall constitute a waiver of its right to exercise any other remedy hereunder. No modification or waiver of any provision of this MRA and no consent by any party to a departure herefrom shall be effective unless and until such shall be in writing and duly executed by both of the parties hereto. Without limitation on any of the foregoing, the failure to give a notice pursuant to Paragraph 4(a) or 4(b) hereof will not constitute a waiver of any right to do so at a later date.

**18. Use of Employee Plan Assets.**

**a.** If assets of an employee benefit plan subject to any provision of the Employee Retirement Income Security Act of 1974 ("ERISA") are intended to be used by either party hereto (the "Plan Party") in a Transaction, the Plan Party shall so notify the other party prior to the Transaction. The Plan Party shall represent in writing to the other party that the Transaction does not constitute a prohibited transaction under ERISA or is otherwise exempt therefrom, and the other party may proceed in reliance thereon but shall not be required so to proceed.

**b.** Subject to the last sentence of subparagraph (a) of this Paragraph, any such Transaction shall proceed only if Seller furnishes or has furnished to Buyer its most recent available audited statement of its financial condition and its most recent subsequent unaudited statement of its financial condition.

**c.** By entering into a Transaction pursuant to this Paragraph, Seller shall be deemed (i) to represent to Buyer that since the date of Seller's latest such financial statements, there has been no material adverse change in Seller's financial condition which Seller has not disclosed to Buyer, and (ii) to agree to provide Buyer with future audited and unaudited statements of its financial condition as they are issued, so long as it is a Seller in any outstanding Transaction involving a Plan Party.

**19. Intent.**

**a.** The parties recognize that each Transaction is a "repurchase agreement" as that term is defined in Section 101 of Title 11 of the United States Code, as amended (except insofar as the type of Securities subject to such Transaction or the term of such Transaction would render such definition inapplicable), and a "securities contract" as that term is defined in Section 741 of Title 11 of the United States Code, as amended (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).

**b.** It is understood that either party's right to liquidate Securities delivered to it in connection with Transactions hereunder or to exercise any other remedies pursuant to Paragraph 11 hereof is a contractual right to liquidate such Transaction as described in Sections 555 and 559 of Title 11 of the United States Code, as amended.

**c.** The parties agree and acknowledge that if a party hereto is an "insured depository institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Transaction hereunder is a "qualified financial contract," as that term is defined in FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).

**d.** It is understood that this MRA constitutes a "netting contract" as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") and each payment entitlement and payment obligation under any Transaction hereunder shall constitute a "covered contractual payment entitlement" or "covered contractual payment obligation", respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a "financial institution" as that term is defined in FDICIA).

**20. Disclosure Relating to Certain Federal Protections.** The parties acknowledge that they have been advised that:

**a.** In the case of Transactions in which one of the parties is a broker or dealer registered with the Securities and Exchange Commission ("SEC") under Section 15 of the Securities Exchange Act of 1934 ("1934 Act"), the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 ("SIPA") do not protect the other party with respect to any Transaction hereunder;

**b.** In the case of Transactions in which one of the parties is a government securities broker or a government securities dealer registered with the SEC under Section 15C of the 1934 Act, SIPA will not provide protection to the other party with respect to any Transaction hereunder; and

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

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## P. ZERO BALANCE ACCOUNT (ZBA) SERVICES

**1. General.** ZBA Services allow Customer to concentrate balances across multiple checking accounts consisting of a lead ("Master Account") and one or more sub-accounts funded by the Master Account. At the close of each Business Day, at a time determined by Bank, Bank shall transfer available or collected balances between the Master Account and sub-account(s) via two-way automatic transfers to ensure that the sub-accounts maintain a zero balance or a balance otherwise designated by Customer (collectively, the "Established Balance"). In addition, one-way transfers can be made from: (i) the Master Account to the sub-account; (ii) the sub-account to the Master Account; or (iii) the Master Account to the sub-account with deposits remaining in the sub-account.

Customer agrees to maintain sufficient available funds in the Master Account to cover the aggregate debits made to the sub-accounts to enable the sub-accounts to be maintained at the Established Balance at the close of each Business Day. If the available balance in the Master Account is insufficient to restore the balance in a sub-account to the Established Balance, a lesser amount may be transferred to the sub-account in Bank's sole discretion. If there are multiple sub-accounts and insufficient funds in the Master Account to fund all sub-accounts, Bank may, in its sole discretion, determine which sub-accounts to fund and to what extent. In addition, Bank may, in its sole discretion, either (i) reject any checks or other debit items drawn on any sub-account or (ii) accept any checks or other debit items drawn on a sub-account, even if such acceptance would bring the sub-account below the Established Balance. If Bank must reverse a provisional credit and such reversal causes the Master Account to have a negative balance, Customer agrees that Bank may reverse the transfer of any funds, in whole or in part, between the sub-account and the Master Account, and Bank may additionally reject any items not finally paid on the sub-account. Bank reserves the right to suspend or terminate ZBA Services without prior notice to Customer.

**2. Focal Point Plus.** If selected by Customer, the Focal Point Plus Service allows Customer to: (i) concentrate balances across multiple checking accounts consisting of a lead ("Master Account") with one or more subaccounts ("Shadow Accounts"), which are all funded by the Master Account; and (ii) track transactions with location reporting. Two-way automatic transfers ensure the Shadow Accounts maintain a zero balance. One-way transfers can also be made from the Shadow Accounts to the Master Account. Customer acknowledges and agrees the Shadow Accounts are deemed to be part of the Master Account for purposes of this Agreement and cannot be used to process transactions independent of the Master Account.

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## Q. SINGLEPOINT® INTERNATIONAL REQUEST FOR TRANSFER SERVICES

The U.S. Bank SinglePoint® International Request for Transfer Services will enable domestic or foreign organizations doing cross-border business to initiate or execute payment or transfer instructions from, or between, Customer accounts held at Bank and foreign banks. Prior to implementation of this Service, the Forwarding Bank and the Executing Bank must enter into a Bilateral Agreement referencing their mutual accession to the SWIFT Request for Transfer (MT101) Service Level or other relevant Service Level. Bank acts in the capacity of the Forwarding Bank with respect to all Requests for Transfer. This Service or other similar remote initiation Services offered by Bank are governed by this Agreement, the Bilateral Agreement, the Interbank Agreement, and all other applicable federal, state and local laws and regulations. Unless otherwise defined, all capitalized terms shall have the meanings set forth in the Interbank Agreement and Bilateral Agreement.

### 1. Definitions.

- a. "Beneficiary" means the person or entity designated in the Originator's instruction to receive funds.
- b. "Beneficiary Bank" means the financial institution crediting the funds to the Beneficiary's account.
- c. "Execute" or "Execution" means the debiting of the Originator's account by the Executing Bank pursuant to a Request for Transfer from the Forwarding Bank and the forwarding of the credit transfer to the Beneficiary Bank.
- d. "Executing Bank" means the financial institution that receives and Executes the Request for Transfer from the Forwarding Bank and then forwards the credit transfer to the Beneficiary Bank.
- e. "Forwarding Bank" means a financial institution receiving a Request for Transfer from the Instructing Party and forwarding it to the Executing Bank.
- f. "Instructing Party" means a customer of the Forwarding Bank, which could be an office, department or division of the Originator, or a separate legal entity, authorized by the Originator to initiate a Request for Transfer to the Forwarding Bank.
- g. "Interbank Agreement" means the Service Level Master Agreement (SLMA) and Request for Transfer Service Level Rules and Regulations (MT 101) or other relevant Service Levels offered by Society for Worldwide Interbank Financial Telecommunication (SWIFT), to which the Forwarding Bank and the Executing Bank are a party.
- h. "Originator" means the customer of the Executing Bank whose account is to be debited pursuant to a Request for Transfer.
- i. "Request for Transfer" means a transfer instruction received by the Forwarding Bank from the Instructing Party for onward transmission as an MT101 to the Executing Bank, and which is capable of being processed under an Interbank Agreement.

**2. Bank as the Forwarding Bank.** If Customer selects Bank as the Forwarding Bank, Customer is deemed to be the Instructing Party for all Requests for Transfer. Customer will appoint those individuals authorized to instruct Bank regarding Request for Transfer Services ("Authorized Users") via the relevant Implementation Documents and System Administrator designations establishing the Authorized Users' access authority and transaction limits. Bank may rely on any such authorization until it has received Customer's written notice of revocation and has had a reasonable opportunity to act thereon. Customer and its Authorized Users and other Agents shall maintain the highest possible level of confidentiality with regard to PINs or other security devices and will take all steps necessary to prevent access to them by unauthorized persons. Customer shall be responsible for the accuracy, completeness and timeliness of all Requests for Transfer sent to Bank. Requests for Transfer received after Bank's established deadline or on any non-Business Day, including any Saturday, Sunday, holiday or any day that Bank's wire department is not open, will be considered received on the next Business Day. Customer authorizes Bank to process and forward to the Executing Bank all Requests for Transfer received in accordance with any established security procedures. Notwithstanding the foregoing, Bank does not



assume any responsibility for the Execution of the Request for Transfer by the Executing Bank and completion of the credit transfer to the Beneficiary Bank. Customer understands and acknowledges that any applicable callback notifications on PIN limits established by Customer with Bank for wire transfer dollar thresholds do not apply to Requests for Transfer. Customer agrees not to initiate a Request for Transfer in violation of applicable federal, state or local law or regulations.

**3. Security Procedures.** Customer and Bank shall comply with any established security procedures with respect to the initiation and forwarding of any Request for Transfer, including but not limited to, the SWIFT authentication procedures identified in the SWIFT User Handbook, as amended from time to time. Customer agrees that any such security procedures shall be deemed commercially reasonable. Customer understands that the security procedures are not intended for the purpose of detecting errors in the transmission or content of a Request for Transfer controlled by Customer. Customer agrees to be bound by any Request for Transfer sent in the name of Customer that is processed by Bank in compliance with the agreed security procedures whether or not authorized.

**4. Amendment or Cancellation.** Customer does not have the right to reverse, adjust or revoke any Request for Transfer after it has been received by Bank; provided, however, that Bank will make a reasonable effort to act on such a request by Customer. With respect to a Request for Transfer that has already been Executed, Bank may intervene at Customer's request, to request that the Beneficiary Bank return all or a portion of the funds. Customer understands that the Beneficiary Bank is under no legal obligation to comply with this request.

**5. Rejection/Repair.** Bank may reject a Request for Transfer if: (i) it is not initiated or transmitted in accordance with the applicable security procedures; (ii) there is any inconsistency between a Request for Transfer and information previously supplied to Bank; or (iii) Bank has other reasonable grounds not to honor the Request for Transfer. Bank shall have no obligation to repair any Request for Transfer it receives but may, in its absolute discretion, endeavor to repair any Request for Transfer. Bank shall notify Customer of any rejections or suspensions.

**6. Limits on Bank's Liability.** Bank sends outgoing and receives incoming Requests for Transfer using SWIFT. Bank shall not be responsible for the acts or omissions of Customer, the SWIFT network, other financial institution or any other person. Payment to a foreign country is subject to the laws of the foreign country involved. Bank assumes no liability for foreign exchange risk, delays, non-delivery or other events resulting from causes beyond Bank's control.

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## R. SWIFT-RELATED SERVICES

The SWIFT-Related Services (the "Service") will enable organizations with domestic or cross-border activity to initiate or execute payment or transfer instructions from Customer's Bank account to another account held at Bank or a third-party bank, and to receive account information and payment notifications from Bank via products and services offered by the Society for Worldwide Interbank Financial Telecommunication ("SWIFT"). This Service or other similar services offered by Bank are governed by this Agreement, applicable SWIFT agreements, rules, and terms and conditions (collectively, "SWIFT Terms"), and all other applicable federal, state and local laws and regulations. Unless otherwise defined, all capitalized terms shall have the meanings set forth in the SWIFT Terms.

### 1. Definitions.

a. "Account Reporting" means cash management notifications, transaction and account information provided by Bank to Customer.

b. "Beneficiary" means the person or entity (including Customer) designated in Customer's Transfer Request to receive funds.

c. "Beneficiary Bank" means the financial institution (including Bank) that credits the funds to the Beneficiary's account.

d. "Execute" or "Execution" means the debiting of Customer's account by Bank and the forwarding of the credit transfer to the Beneficiary Bank pursuant to a Transfer Request from Customer.

e. "FileAct" means a file transfer service that utilizes the SWIFT infrastructure to enable the transfer of data in various file formats.

f. "Transfer Request" means a MT103 or other SWIFT transfer instruction sent by Customer to Bank for onward processing. If SWIFT-Related services are accessed using SCORE, "Transfer Request" means a MT101 Request for Transfer instruction.

g. "SCORE" means the Standardized Corporate Environment, a SWIFT direct access corporate service which offers Customer a secure connection and standardized environment to manage Customer's payments and payment information.

**2. Security Procedures.** Customer shall comply with all security procedures established by Bank for the SWIFT-Related Services, including but not limited to, the SWIFT authentication procedures identified in the SWIFT User Handbook, as amended from time to time. Customer agrees that any such security procedures shall be deemed commercially reasonable. Customer understands that the security procedures are not intended for the purpose of detecting errors in the transmission or content of any Account Reporting, or of a Transfer Request controlled by Customer. Customer is solely responsible for maintaining its own internal security procedures to prevent errors or unauthorized access to Customer's computer systems by unauthorized employees, vendors or customers. Customer agrees to be bound by any Transfer Request that appears to have been sent by Customer that is processed by Bank in compliance with the agreed security procedures, whether or not authorized. Bank will use reasonable care in transmitting the Account Reporting but assumes no responsibility for the accuracy or timeliness of the information supplied by other financial institutions, the SWIFT network. Customer agrees to immediately notify and fully cooperate with Bank if it suspects or becomes aware of any breach or compromise of the security of the SWIFT-Related Services.

**3. Transmission and Processing of Transfer Requests.** Customer authorizes Bank to Execute all Transfer Requests delivered to Bank by Customer in compliance with the terms of this Agreement and any established security procedures. Customer shall adhere to formatting and processing requirements established by Bank. Customer authorizes Bank to use whatever means Bank, in good faith, deems reasonable under the circumstances to execute each Transfer Request, including selection of a funds transfer system, routing and means of transmission. Customer shall be responsible for the accuracy, completeness and timeliness of all Transfer Requests sent to Bank for Execution. Transfer Requests with settlement dates of more than thirty (30) calendar days from receipt may not be processed unless prior arrangements have been made. Customer is solely responsible for initiating Transfer Requests sufficiently in advance to meet Customer's contractual obligations to its vendors and/or customers. Bank shall not be responsible for any late payment or finance charges that may result from Customer's failure to allow sufficient lead-time to make a Transfer Request. Bank and any other financial institution may rely on the account, routing or BIC numbers in the Transfer Requests

even if such numbers do not correspond to the name of Customer, the Beneficiary or the Beneficiary Bank.

**4. Amendment or Cancellation of Transfer Requests.** Customer does not have the right to reverse, adjust or revoke any Transfer Request after it has been received by Bank; provided, however, that Bank will make a reasonable effort to act on such a request by Customer. With respect to a Transfer Request that has already been Executed, Bank shall, at Customer's request, request that the Beneficiary Bank return all or a portion of the funds. Customer understands that the Beneficiary Bank is under no legal obligation to comply with this request.

**5. Rejection/Repair of Transfer Requests.** Bank may reject a Transfer Request if: (i) it is not initiated or transmitted in accordance with the applicable security procedures; (ii) does not adhere to Bank's formatting or processing requirements; (iii) there is any inconsistency between a Transfer Request and information previously supplied to Bank; (iv) Customer's Transfer Requests exceed any applicable transaction limits established by Bank; (v) if there are insufficient collected funds in Customer's account to fund the Transfer Request; or (vi) Bank has other reasonable grounds not to honor the Transfer Request. Bank shall have no obligation to repair any Transfer Request it receives but may, in its absolute discretion, endeavor to do so.

**6. Account Reporting.** Bank may send notifications that allow Customer to receive advices relating to Customer's payments processed by Bank. Bank may also provide Customer with information on accounts maintained at Bank. If Customer elects to receive notifications and other account information via SWIFT, Customer shall exercise extreme care in maintaining its own security in the receipt of the notifications or information. Customer acknowledges that the data received via SWIFT may include confidential information, including, without limitation, names, amounts, phone numbers and account information. Customer further acknowledges that it alone assumes full responsibility for maintenance of its internal security procedures to keep such information confidential.

**7. Limits on Bank's Liability.** Bank will use reasonable efforts to provide notifications and information in a prompt fashion but shall not be liable for the temporary failure to provide timely data. Bank assumes no responsibility for any delays caused, or for inaccurate or incomplete information provided, by the SWIFT network or third-party banks with respect to payments and related information. Bank shall not be responsible for the acts or omission of Customer, the SWIFT network, any other financial institution or any other person. Payment to a foreign country is subject to the laws of the foreign country involved. Bank assumes no liability for foreign exchange risk, delays, non-delivery or other events resulting from causes beyond Bank's control.

**8. SCORE.** If Customer accesses the SWIFT-Related Services using SCORE, Customer shall additionally comply with applicable SWIFT agreements, documentation, user guides, security procedures and all other instructions and recommendations provided by SWIFT or by Bank in relation to the use of SCORE. Customer acknowledges that Bank does not regulate the setup and provision of SWIFT membership, joining the SWIFT network or SCORE, the SWIFT network security or the facilities necessary to access and use them. Customer represents that it is, and will throughout the term of this Service remain, an authorized SWIFT participant. Customer authorizes Bank to act on any instruction contained in a SWIFT message received by Bank through SCORE which appears to have been sent by Customer. In the event that Customer requests Bank to provide SWIFT-Related Services through SCORE to a parent company, subsidiary, affiliate or other commonly owned company, Customer agrees that it shall be jointly and severally liable for such related entity's obligations under this Agreement. Customer represents and warrants that such related entity is a duly authorized agent of the Customer and that the related entity is acting on behalf of Customer in its authorized capacity.

**9. FileAct.** If the FileAct service is offered by Bank and selected by Customer, Customer may use this service which enables the secure and reliable transfer of files to exchange batches of financial messages, reports, bulk payment files, images and other data over the SWIFT network. FileAct supports both interactive (real-time) and store-and-forward modes. Prior to implementation, Customer shall verify that Bank is capable of supporting the file formats and transaction types that Customer wishes to transmit. If the file format and transaction type is supported by Bank, Customer agrees that the processing of each file shall be additionally subject to all applicable Sections of the Agreement.

## V. TERMS APPLICABLE TO SPECIFIC FOREIGN EXCHANGE SERVICES

The following are additional terms and conditions applicable to all Foreign Exchange Services offered by Bank including, but not limited to, spot, forward, swap and option transactions, whether physically deliverable or non-deliverable FX transactions. Bank may change the number or type of Services offered at any time.

**1. Conflicting Provisions and Separate Disclosures.** With respect to all foreign exchange transactions or other derivative products entered into by Customer, to the extent that any provision of this Agreement conflicts with a provision of any ISDA Master Agreement by and between Customer and Bank or any documents related thereto (the "ISDA"), the ISDA terms shall govern. Disclosures herein supplement other disclosures that Bank may provide Customer and any other agreements between Bank and Customer in connection with FX transactions, including, but not limited to, ISDA Master Agreement, USBNA Assessment and Agreement for Swap Transactions, the ISDA August 2012 DF Protocol, the ISDA March 2013 DF Protocol, the ISDA General Disclosure Statement for Transactions, the ISDA Disclosure Annex for Foreign Exchange Transactions, and the U.S. Bank National Association Foreign Exchange Disclosures.

**2. Foreign Exchange Risk.** Many banking and finance transactions carry risk. All foreign exchange transactions, including but not limited to, swaps, options, forwards, foreign exchange transactions currency accounts, and other similar derivatives and related products involve unique risks specific to the nature of these types of transactions and the currency market. These types of transactions are not suitable for all Customers. Customer should fully understand the nature and extent of exposure to risk of loss, if any, which in some circumstances may significantly exceed the amount of any initial payment made by or to Customer. All decisions to enter into foreign exchange transactions should be made by Customer giving appropriate consideration to Customer's experience, objectives, financial resources and business environment. Bank will be truthful in its statements about any facts, but statements made by Bank should not be construed as recommendations or advice.

**3. Arm's Length Transactions.** Bank is a dealer and market maker in the foreign exchange market. As such, Bank engages in price quoting, order taking, trade execution and other related activities with counterparties and other dealers and for Bank's own account. Unless otherwise agree by Bank in writing, Bank acts as a principal on an arm's length basis, does not act as Customer's agent, broker, fiduciary, financial advisor or in any similar capacity when engaging in FX transactions with Customer, nor will Bank perform the duties associated with these roles.

**4. Pricing.** Many factors affect foreign exchange pricing, including but not limited to, the size and nature of the transaction, credit, capital and funding costs, applicable trading venue or platform and the manner that such trading platform or venue is utilized, settlement risk, operational considerations, regulatory requirements, relationship factors such as the amount and nature of service provided and volumes traded by Customer, the type of trade request, and business costs such as fees related to exchanges, brokers or other intermediaries. Market conditions, such as demand, frequency, timing and volatility, also affect foreign exchange pricing. These factors in pricing may result in Bank offering different prices to different customers for the same or similar FX transactions. Unless otherwise agreed, prices quoted by Bank on all FX transactions (actionable and indicative) are an "all in" price that typically includes Bank's bid or offer spread for the requested transaction and an amount to compensate Bank based on the many factors set forth above. These components will not be separately disclosed unless required by law. Bank's pricing may not be reflective of prices being offered by other dealers. During extreme market conditions, such as liquidity events, the notional size and price levels Bank offers may not match levels provided in normal market conditions.

## A. ELECTRONIC FOREIGN EXCHANGE SERVICES

**1. Introduction.** Bank may provide foreign exchange services to Customer in connection with one or more web-based services, via private Internet site owned and operated by Bank ("EFX"). If requested by Customer and agreed to by Bank, Bank will provide such services in accordance with this Agreement and other terms and procedures provided to the Customer. Customer agrees that Customer's use of EFX and all

transactions initiated thereby shall be governed by this Section, all other relevant sections of the Agreement and any other related disclosures provided to Customer, in either paper or electronic format. EFX shall be available only during hours as established by Bank, which may vary by day or location. Notwithstanding anything to the contrary herein, Bank does not confirm that the person authorizing any EFX transaction is an Authorized Signer or is otherwise authorized to conduct any EFX transaction on behalf of Customer.

**2. Access Devices.** Once Bank has granted Customer access to any EFX system, System Administrator(s) designated by Customer in the Implementation Documents will be provided with one or more access devices, which may include cards, identification numbers and/or passwords. Customer shall use all EFX services in accordance with the security procedures set forth in this Agreement.

### **3. Trades.**

**a. General Procedures.** Within the applicable EFX platform, Customer informs Bank that Customer wishes to purchase or sell a stated amount of currency against a second currency on a designated date ("Settlement Date") either unconditionally or at a displayed exchange rate, if one may be obtained ("Trade"). Any transaction that results following the submission of a Trade shall be Customer's legally binding obligation. Trades submitted to Bank via an EFX platform shall be effective only upon acceptance by Bank. Bank will establish from time to time specific times of day after which Trades will not be processed on a "same-day" or "next-day" basis. Trades submitted after Bank's deadline will be considered received on the next business day. Deadlines will differ depending on the Trade currency and other factors. Market movements could occur while systems are processing Customer's transaction. These market movements may be in Customer's favor or against Customer's position and will be reflected in the execution price.

**b. Confirmation.** Bank shall make reasonable efforts to provide information and status of the terms of any Trade on the EFX platform or by other means established by Bank. Failure by Bank to confirm a Trade for any reason, including without limitation computer malfunction, shall not excuse Customer's obligations related to any Trade. Bank's internal records with respect to each Trade shall constitute conclusive evidence of the terms of each Trade. The terms of each Trade shall be incorporated into and become part of this Agreement.

**b. Settlement Instructions and Payment.** Once a Trade has been made, Customer agrees to make payment or delivery of currency to Bank on the Settlement Date of the Trade in accordance with the settlement instructions provided by Customer, plus any applicable fees or charges. Bank expects that all trades will settle via standing settlement instructions. Customer is solely responsible for the accuracy and completeness of any settlement instructions delivered to Bank through EFX and such settlement instructions are subject to the concurrence of Bank. Any change to Customer's standing instructions must be completed on the platform no less than three business days prior to settlement. Failure to do so may result in settlement after value date and a claim for compensation or use of the previously applicable settlement instructions and a claim for compensation. Bank strongly discourages the use of third-party payments to settle foreign exchange transactions. Third-party payments will only be permitted in certain instances in the sole discretion of Bank. Requests for third-party payments will require all information requested by Bank in connection with anti-money laundering regulations and policies. Settlement instructions for approved third-party payments must be provided on the platform no less than three (3) business days prior to settlement. Settlement instruction provided after this time or incorrect or incomplete instructions may result in settlement after the value date or use of the previously applicable settlement instructions. Should Customer instruct Bank to settle a Trade by debiting an account, Customer agrees to maintain sufficient available funds in the account to settle on the Settlement Date. Should funds be insufficient to settle the trade on the Settlement Date, Bank reserves the right in its sole discretion to debit any of Customer's account with the Bank in the amount of Trade, subject to applicable account fees and charges, or to terminate the Trade.

**c. Cancellation or Change.** Customer acknowledges and agrees that Customer shall have no right to cancel or reverse a Trade once submitted. Bank will, however, make reasonable efforts in its sole and complete

discretion to cancel or amend the terms of a Trade upon Customer's request. Should a Trade be successfully canceled or amended, Customer agrees to reimburse Bank for any breakage costs and other expenses incurred by Bank to cancel or amend the Trade, including any fees imposed for this extraordinary service. Bank reserves the right to adjust the exchange rate on any Trade requiring a new Settlement Date to reflect any costs associated with carrying that Trade to a new Settlement Date.

**4. Funds Transfers.** Customer authorizes Bank to execute and charge the designated Customer account(s) for wire transfer payment orders delivered to Bank via any EFX service. Customer agrees that all such wire transfer payment orders will be governed by the relevant Sections of this Agreement.

**5. Representations and Warranties.** Customer represents and warrants to Bank as of the date of this Agreement and as of the date of each Trade that: (i) Customer is authorized to enter into this Agreement and any Trade, (ii) the persons entering into the Agreement (and each Trade) on Customer's behalf have been duly authorized to do so, (iii) the Agreement (and each Trade) is binding and enforceable against Customer in accordance with its terms, (iv) no Termination Event has occurred or is continuing, and (v) Customer is acting as principal with respect to each Trade.

**6. Close-Out Events.** Each of the following events shall constitute a close-out event under this Agreement (each a "Close-Out Event"): (i) failure by Customer to pay Bank for any amounts due under this Agreement or any Trade, (ii) any voluntary or involuntary insolvency proceeding (including without limitation any proceeding under any bankruptcy, insolvency or other similar laws governing the operations of Customer) shall have been commenced against Customer, (iii) Customer fails, or is otherwise unable, to pay its debts as they become due, (iv) Customer disaffirms, disclaims or repudiates any Trade, (v) any representation made by Customer under this Agreement shall prove to have been false or misleading in any material way at the time that it was made, or (vi) Customer shall be in default of any agreement between Customer and Bank or its subsidiaries or affiliates.

**7. Rights Upon Close-Out Event.** If a Close-Out Event has occurred, Bank shall have the right to terminate this Agreement and, upon notice to Customer, close out all outstanding Trades on a date specified by Bank (the "Close-Out Date"). In such event, Bank shall liquidate such Trades by calculating in good faith the gain or loss of all Trades as follows: (i) determine the close out amount of each Trade, which shall be equal to the sum of the face value of each Trade in a particular currency with a Settlement Date that is the same or later than the Close-Out Date and the face value of each Trade in the same currency with a Settlement Date prior to the Close-Out Date, plus interest at the Fed Funds rate from and including the Settlement Date, but excluding the Close-Out Date, (ii) convert the close out amount of each group of like currency Trades into U. S. Dollars at the rate of exchange at which, at the time of the calculation, Bank may buy U.S. dollars with or against currency of each closed out Trade, and (iii) determine for each Trade the sums that would have been owed by Customer to Bank and the sums that would be owed by Bank to Customer (adjusted to present value by discounting the gain or loss at the Fed Funds rate from and including the Settlement Date, but excluding the Close-Out Date). The preceding amounts shall be aggregated, so that all such amounts are netted into a single liquidated amount payable to or by Bank. Customer shall pay on demand any amounts owing to Bank pursuant to this Section and Bank's calculations shall be conclusively binding against Customer, absent manifest error.

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## **B. FOREIGN CURRENCY ACCOUNTS**

**1. Introduction.** If requested by Customer and agreed to by Bank, Customer may open a Foreign Currency Account ("FCA") at U.S. Bank National Association ("Standard FCA").

**2. Permitted Deposits.** Bank may accept the following for deposit into FCA:

- a. Proceeds of matured foreign exchange purchase contracts;
- b. Proceeds of foreign currency denominated letters of credit or documentary collection;
- c. Incoming international funds transfers;
- d. Proceeds of loan disbursements; or
- e. Foreign checks and other items subject to collection, which may not be available until funds are received by Bank.

Bank will not accept currency or coin for deposit into FCA. Deposits not specifically enumerated above may be allowed if agreed to by Bank in writing. Only collected and verified funds can be deposited into FCA, whereupon funds will be immediately available for withdrawal or transfer by Customer.

**3. Withdrawals.** Customer can make withdrawals out of FCA in the following ways:

- a. Settlement of a foreign currency exchange sale contract;
- b. Negotiation of foreign currency denominated letters of credit or documentary collection;
- c. Outgoing international funds transfers by wires initiated in accordance with Bank procedures; or
- d. Payment of a foreign currency loan.

Each of these methods of making a withdrawal will result in an immediate debit to the FCA for the entire amount Customer has elected to withdraw from such FCA.

**4. Interest.** Interest rates offered on FCAs are determined in Bank's discretion based on the applicable currency. Such interest rates may be set at zero or at a negative interest rate. Interest is calculated based on the average daily balance method. The average daily balance method is an annualized rate that reflects the relationship between the amount of interest each fiscal month and the average daily balance in the account for such fiscal month. Negative interest may be assessed as a fee based on the interest rate set by the applicable monetary authority plus the incremental cost of funding to U.S. Bank.

**5. Denomination.** Customer will elect the denomination of each FCA on a separate account opening document. Transfers of funds into and out of FCA in the currency in which that particular FCA is denominated will be made without regard to the equivalent value of that sum of foreign currency in U.S. dollars or other foreign currencies. Transfers of funds into and out of FCA in a currency other than the currency in which that particular FCA is denominated may be accommodated by the Bank in its discretion. Such transfers will be made at the prevailing exchange rate determined by Bank.

**6. Non-Business Days.** In addition to non-Business Days specified in the Agreement, there will occasionally be other days on which Bank cannot process or complete a transaction due to holidays in foreign countries.

**7. Other Terms.** Bank may refuse a deposit, limit the amount which Customer may deposit, return all or any part of a deposit or require that Customer close FCA at any time. Bank may also close FCA without prior notice and remit to Customer any balance remaining after taking into account all pending debits and charges against such FCA.

**8. Foreign Currency Account Risks.** Investing in any currency other than the base currency of the Customer carries risk. The value of the balances in such accounts may be significantly affected by changes in currency exchange rates. Some other risks of maintaining foreign currency balances include, but are not limited to: the effects of a different economic system in a foreign country, future political and economic developments, possible imposition of exchange controls or other government restrictions, and with respect to certain countries, the

possibility of expropriation or confiscatory taxation, political or social instability, or diplomatic developments which could adversely affect the value of the currency. Should Bank's balances in a foreign country become blocked or withdrawals by Bank become otherwise restricted, Customer's funds in the FCA will likewise be blocked or otherwise restricted.

**WHILE DEPOSITS IN FCAS MAY BE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC") UP TO A MAXIMUM AMOUNT ALLOWED BY LAW, CUSTOMER IS NOT PROTECTED BY BANK AGAINST FOREIGN CURRENCY EXCHANGE RATE FLUCTUATIONS OR FROM INABILITY TO ACCESS FUNDS FROM FOREIGN REGULATIONS BY THE FDIC INSURANCE, OR ANY OTHER INSURANCE OR GUARANTY PROGRAM.**

**9. Limitations on Liability.** In addition to other limitations on liability set forth in this Agreement, Customer expressly releases and holds harmless Bank, and its affiliates, agents and employees, from any liability, loss, damage or claim related to currency exchange rates or fluctuations in value of the currency in which the applicable FCA is denominated with respect to the U.S. dollar and other currencies. Customer hereby assumes all risks related to currency exchange rates and fluctuations in currency values, including that the foreign currency in FCA might be worth less, in U.S. dollars or other foreign currencies, than the U.S. dollar or other foreign currency equivalent of such funds at the time deposited into the FCA. Bank makes no warranty and no representation about the value of any FCA balance at any time.

## **VI. TERMS APPLICABLE TO SPECIFIC MONEY CENTER AND SAFEKEEPING SERVICES**

The following are additional terms and conditions applicable to specific Money Center and Safekeeping Services offered by Bank. In the event of a conflict between this Section VI and any other provision of this Agreement, Section VI shall govern. Bank may change the number or type of Services offered at any time. Customer shall not be bound by the terms and conditions for the specific Services described in this Section VI to the extent Customer is not using such Service(s).

**Municipal Advisor Rule Disclosure.** This disclosure applies to Customer if Customer is classified as a municipality or an "obligated person" under the Municipal Advisor Rule. For purposes of Section 15B of the Securities Exchange Act of 1934 (the "Act") (SEC Rule 15Ba1-1 et seq.) (the "Rule"), Bank: (1) is not recommending and will not recommend an action to Customer; (2) is not providing and will not provide "advice" to Customer as defined in the Rule, and any information or communication from Bank in respect of Customer's accounts with the Money Center or the Safekeeping Departments of Bank or in respect of any securities transaction or potential securities transaction to be executed via such account(s) is not intended to be and should not be construed as "advice" as defined in the Rule; and (3) is not acting as an advisor to Customer and does not owe Customer any fiduciary duty pursuant to Section 15B of the Act or otherwise with respect to any such account(s), information, communication, transaction or potential transaction. Customer should discuss any information or material provided to Customer by Bank in connection with trading, investing or other activity in the such account(s) with any and all of Customer's internal or external advisors and experts that Customer deems appropriate before acting on any such information or material.

### **A. INVESTMENT, DEPOSITORY AND SAFEKEEPING SERVICES**

From time to time, Customer may effect securities transactions or establish deposits with Bank's Money Center Department and/or request safekeeping services from Bank's Safekeeping Department. All such transactions shall be subject to the terms and conditions of this Agreement.

#### **1. Definitions.**

a. "Confirmation" means the confirmation statement from Bank as described in this Agreement.

b. A "Money Center deposit" means an interest-bearing demand deposit account, a money market deposit account ("MMDA"), a time deposit, or other deposit liability of Bank to Customer established under this Agreement and maintained in Customer's Money Center investment account.

c. "Safekept Securities" means securities that Bank has agreed to accept and hold for the account of Customer under the terms of this Agreement.

d. The term "securities" means all securities (as Defined in the Securities Exchange Act of 1934) and all investment securities or products from time to time offered by Bank to Customer, other than certificates of deposit issued by Bank and deposits made with Bank.

e. "Settlement Account" means any settlement account(s) designated by Customer or any replacement account identified by Customer in a written notice delivered to Bank.

#### **2. Securities Transactions: Compensation and Capacity of Bank.**

a. In General. In any securities transaction governed by this Section VIA, Bank may be acting as principal, riskless principal, or agent. Bank's capacity in any securities transaction will be indicated on the Confirmation.

(i) As Principal. When acting as a principal in securities transactions, Bank will either buy securities for its own account or sell for its own account securities owned by Bank, whether such securities are bought before or after receiving Customer's order. Bank's compensation is reflected in the price at which Bank buys or sells the securities.

(ii) As Riskless Principal. When acting as a riskless principal in securities transactions, after receiving from Customer an order to buy

or sell securities, Bank will buy or sell securities for its own account to offset the sale to or purchase from Customer. Bank's compensation is reflected in the price at which Bank buys and sells the securities.

(iii) As Agent. When acting as Customer's agent in securities transactions, Bank will buy or sell securities solely for Customer's account. Bank's compensation due from Customer is the amount of any agency service charge indicated on the Confirmation.

b. Service Fees. In addition to compensation received as a principal, riskless principal or agent, Bank may charge Customer service fees in relation to securities transaction as specified in the current fee schedule as provided to Customer, which may be amended from time to time upon notice to Customer.

c. Other Compensation; Bank Securities. Bank may be paid a fee or other compensation by any other party in connection with any securities transaction, and any such fee or compensation will be in addition to fees payable by Customer to Bank under this Agreement. Such additional compensation may include, without limitation, advisory, custodial, distribution and/or shareholder service fees (which may be paid as service fees pursuant to Rule 12b-1 under the Investment Company Act of 1940) that Bank or its affiliates may receive from various mutual funds and/or mutual fund service providers, based upon moneys invested in the funds. Customer acknowledges that those fees or other compensation may be paid to Bank for such services, and that such payments will not reduce or offset any fee or compensation due from Customer to Bank under this Agreement. Further, Customer acknowledges that securities Customer acquires through Bank may directly or indirectly (including through mutual or money market funds) represent an ownership interest in securities issued by Bank or its affiliates or by funds sponsored by Bank or its affiliates.

#### **3. Money Center Deposits.**

a. In General. If Customer elects to deposit funds through the Bank's Money Center Department, that Money Center deposit shall be maintained within Customer's Money Center investment account. Bank will provide Customer with a Confirmation upon Customer's placement of funds, and the deposit transaction will be reflected on Customer's Money Center account statement. With the exception of Eurodollar deposits (which are not deemed deposits under rules promulgated by the FDIC and therefore are not insured by the FDIC), Money Center deposits are FDIC insured per depositor, up to applicable FDIC limits. By opening and maintaining a Money Center deposit, Customer agrees to be bound by this Agreement.

b. Access to Funds. In addition to any other restrictions specified elsewhere in this Agreement, Customer shall not be allowed to make withdrawals or transfers from a Money Center deposit at a U.S. Bank branch or ATM or via check. No debit or ATM cards will be issued on a Money Center deposit. Customer shall be permitted to make withdrawals or transfers from a Money Center deposit only by contacting the Money Center Department in the following manner: telephone, facsimile, email, or via an online system provided or approved by Bank.

c. Notice of Withdrawal. Bank reserves the right to require at least seven (7) days written notice prior to withdrawal or transfer of funds from an MMDA, unless otherwise specified on the Confirmation for the Customer's placement of funds. Customer must provide such notice to Bank's Money Center Department by 3:00 PM Central Time via telephone, email, or fax.

#### **4. Pledges; Segregation.**

a. Pledges. Upon request of Customer, Bank can provide a form of control agreement suitable for transactions where Customer wishes to grant to third parties a lien, pledge or other rights over its property held by or at the Money Center or Safekeeping Departments at Bank. Customer agrees that all costs of Bank, including reasonable fees and expenses of outside counsel if deemed necessary by Bank, will be at Customer's expense if such a control agreement is requested, whether or not a final agreement is entered into.

b. Segregated Assets. Where Customer wishes to effect transactions hereunder on behalf of its customers using the property of such

customers, Customer will first notify Bank in writing of its intention to do so before effecting any such transactions. Customer acknowledges that Bank may require one or more additional agreements in order to accept such transactions. Once acceptance of such transactions has been approved by Bank, Customer agrees to include in its instructions to Bank an agreed identifier or designation as to the applicable securities, deposits and transactions.

#### **5. Securities Transaction Requests.**

**a. Effecting Transactions.** Each securities transaction will be effected pursuant to Customer's instructions made verbally, by fax or sent electronically via email or a trading system provided or approved by Bank. Emailed instructions must be directed to Bank's email address as designated from time to time by Bank, and fax instructions must be directed to Bank's fax number as designated from time to time by Bank. Securities transaction requests may be acted upon by Bank without acknowledgment by Bank that it has received such request.

**b. Cut-Off Times.** Bank establishes cut-off times for receipt of securities transaction requests depending on the type of security and the market in which it is traded. In addition, market holidays, procedural or operational matters, and actions taken by market operators may affect Bank's ability to process securities transaction requests. Customer instructions for same day settlement received before the applicable cut-off time will be submitted for processing that Business Day. Customer instructions for same day settlement received after the applicable cut-off time may be processed by Bank on a 'best efforts' basis that Business Day and otherwise will be submitted for processing the next Business Day.

**c. Bank's Rights.** Bank may reject, refuse to honor, or reverse all or any portion of any transaction request, with or without prior notice to Customer. If Customer fails to pay in full for any security purchased or fails to deliver security sold, in each case on or before the related settlement date, Bank is authorized in its discretion and without notice or demand to take any one or more of the following actions: cancel the transaction; sell the securities covered thereby; buy-in cover securities or other property required to make delivery; charge the Settlement Account for amounts due; hold Customer liable for any loss, cost or expense including but not limited to, breakage or pair-off fees and the capital charge and interest cost to carry any securities purchased; and/or impose fees.

**6. Safekept Securities.** Bank, acting through its Safekeeping Department, agrees to hold and keep as custodian hereunder all Safekept Securities, and to deliver such Safekept Securities in accordance with the instructions of Customer, all subject to the terms and conditions of this Agreement.

**a. Acceptance and Withdrawal.** Securities eligible to be Safekept Securities may be delivered to Bank, and any Safekept Securities may be withdrawn from Bank, in each case upon an instruction of Customer delivered in accordance with this Agreement. Withdrawal or delivery of Safekept Securities is subject to availability (e.g., among other reasons, securities involved in a corporate action or in frozen status, restricted securities or pledged securities may not be available for withdrawal or delivery). Bank shall not be liable or responsible for or on account of any act or omission of any broker or other agent designated by Customer or, in the absence of such designation, selected by Bank to receive or deliver securities for the account of Customer.

**b. Registration; Depositories.** Bank shall register Safekept Securities in nominee name and may from time to time change the registration of Safekept Securities from nominee name to Customer's name, or vice versa. Customer agrees that it will timely complete any necessary documentation provided by Bank to change the registration of Safekept Securities. Safekept Securities held in nominee name may be deposited with The Depository Trust Company or other third-party depository acceptable to Bank. Securities that are depository eligible will be held at the depository in the depository's nominee name.

**c. Securityholder Information.** Unless otherwise required by law or pursuant to instructions from Customer, in no event shall Bank be responsible to take any action concerning any puts, calls, conversions, exchanges, reorganizations, offers, tenders or other corporate actions or similar matters relating to Safekept Securities, other than (i) to forward to Customer in accordance with this Agreement the written information

received by Bank relating to any such transaction, and (ii) follow Customer's lawful instructions with respect to such actions. Customer may directly vote any proxy or other corporate action, or if it instructs Bank to vote on its behalf, agrees that any instructions to Bank with respect to any such actions shall be delivered to Bank within sufficient time for Bank to act thereon if any action is required. Safekept Securities called for redemption prior to maturity will be presented by Bank for payment provided the trustee or other appropriate entity gives Bank adequate notice of redemption. Should any Safekept Security be called for partial redemption by the issuer of such security, Bank is authorized to accept the allocation applied by any central depository. In the event Bank has to allocate any redemption among its accounts, Bank shall allot the redemption proceeds in accordance with its standard procedures therefor, effected in such manner as it deems appropriate in its sole discretion.

**d. Collection of Income and Principal.** Bank shall collect and receive the interest, principal and other income payable in connection with the Safekept Securities, and shall pay to Customer or credit to the Settlement Account all such amounts. Bank shall not be obligated (i) to pay to Customer or credit to the Settlement Account any payment of interest, principal or other income until Bank receives such payment in immediately available funds or (ii) to institute or participate in any collection proceedings or other proceedings to enforce Customer's rights relative to any Safekept Securities or to pursue any remedies on behalf of Customer. Bank is hereby authorized to sign on behalf of Customer any declarations, affidavits, certificates of ownership or other documents relating to securities held by Bank in nominee name that may at any time be required with respect to all coupons, registered interest, dividends or other income. If any of Customer's deposits or securities the subject of this Agreement, including Safekept Securities, are subject to a variable or fixed rate of interest and such deposits or securities bear an interest rate less than zero, Customer agrees to pay Bank all amounts of the negative interest or fees that Bank imposes as compensation for the less-than-zero interest rate (which may also be debited from the Settlement Account by Bank), and Customer agrees that the principal amount of such Safekept Securities may be reduced to the extent necessary to cover the amount of the negative interest or fees if available funds are not otherwise provided by Customer.

**e. Return of Payments.** Customer will repay Bank, or Bank may charge the Settlement Account, in the event that for any reason (i) Bank is required to return to the issuer or to a third party any payments in respect of Safekept Securities, (ii) Bank fails to receive from the issuer or appropriate other party a payment Bank paid to Customer in respect of Safekept Securities, or (iii) Bank must return to the issuer or appropriate other party a payment Bank paid to Customer in respect of Safekept Securities. Customer further agrees that the principal amount of any Safekept Securities may be reduced, and any remittances due from Bank to Customer (whether or not under this Agreement), and any other accounts of Customer with Bank, may be offset to the extent necessary to cover the amount of such returned payments to the extent that immediately available funds are not otherwise provided by Customer to Bank.

**7. Confirmation Statements.** Promptly after effecting any transaction pursuant to this Section VI.A, Bank will deliver to Customer a Confirmation which shall identify at least (i) Bank and Customer, (ii) the trade and settlement dates of the transaction, (iii) the issuer and par amount of the related securities (for securities transactions) and the principal amount of any deposit (for deposit transactions), (iv) the interest rate if applicable and/or any discount rate applicable to any securities transactions or deposit transactions, (v) the maturity date of the transaction, if applicable, (vi) the capacity of Bank as principal, riskless principal or agent (if the transaction is a securities transaction) and, if applicable, whether the securities will be Safekept Securities, (vii) any terms and information required by applicable law, and (viii) any other terms and information which Bank may include at its discretion. The information contained on the Confirmation shall be considered true and correct and conclusively binding upon Customer unless Customer notifies Bank of any error therein within three (3) business days after the date the Confirmation is deemed delivered to Customer in accordance with this Agreement. Customer may, by notice from an Authorized User in accordance with this Agreement, elect to receive Confirmations by mail, fax, email, or other electronic

means including posting to a password-protected website), subject to the terms of this Agreement.

**8. Settlement Account.** Unless Bank is otherwise instructed in writing, Customer unconditionally authorizes, empowers, and directs Bank (and authorizes and directs Bank to communicate with any financial institution maintaining the Settlement Account as necessary) to: (i) debit the Settlement Account on the settlement date indicated on the Confirmation for the full amount of each transaction effected under this Section VI.A (including all fees and charges payable hereunder), notwithstanding that such debit may cause the Settlement Account to be overdrawn; and (ii) credit the Settlement Account with interest payments, principal payments, maturity payments or other payments received in respect of transactions effected under this Agreement. Customer hereby represents and warrants that instruction from any Authorized User is sufficient to authorize Bank to debit or credit the Settlement Account. If the Settlement Account is not held by Bank, Customer confirms to Bank that it has authorized the financial institution maintaining the Settlement Account to accept debit and credit entries to the Settlement Account and that no such authorization will be cancelled except with prior notice to Bank and in sufficient time and in such manner as to allow the financial institution maintaining the Settlement Account and Bank a reasonable opportunity to act on such termination without disruption of any transactions or services under this Agreement. Customer acknowledges that ACH payments to a Settlement Account not held by Bank are subject to ACH processing timelines, which may involve a delay in available funds.

**9. Delivery.** Through the instructions of an Authorized User, Customer shall specify the account to which any securities purchased hereunder are to be delivered. If such account is maintained by the Safekeeping Department of Bank, the securities will be held in accordance with this Agreement. If such account is maintained by an institution other than Bank, Bank's responsibility for ensuring delivery shall be limited to accurately conveying the instructions for the appropriate delivery account to the depository, agent or issuer of the securities, as applicable for the particular type of securities. Bank will issue no certificate, passbook, or any other evidence of any deposit except for the Confirmation.

**10. Interest.** All securities, Money Center deposits, and certificates of deposit purchased by Customer or held by Customer under this Agreement shall earn interest on the principal balance from the date of deposit or settlement date, as applicable, computed at the rate and in the manner established by Bank from time to time for the given product. Any interest due will be credited monthly unless otherwise agreed to by Customer and Bank. No interest shall accrue on the date of withdrawal. Bank reserves the right to change the applicable interest rate on variable rate products (including those products whose underlying interest rate is not managed by Bank) at any time. Such interest rate may be set at zero or an interest rate less than zero. If the interest rate, or the index or other referenced rate upon which the interest rate is based, is at any time less than zero percent, Customer agrees to pay Bank all amounts of the negative interest or fees that Bank imposes as compensation for the less-than-zero interest rate. Bank will not provide notice of rate changes, but Customer may call the Money Center Department to obtain current rate information. Bank shall notify Customer of the applicable interest rate and maturity term for the product opened under this Agreement at the time that the request for such product is made.

**11. Fixed Investment Periods.** Customer acknowledges that certain products held by Bank under this Agreement have fixed investment periods, and agrees that such products will be held by Customer until their maturity dates or through their commitment dates. Customer agrees that if it withdraws part or all of such product before such date, Bank shall be entitled to impose a penalty (including by debiting the Settlement Account for such amounts) in accordance with the terms of such product or the fee schedule provided to Customer, as applicable, and that the principal amount of such product may be reduced to the extent necessary to cover such penalty if available funds are not otherwise provided by Customer.

**12. Repurchase Transactions.** Customer shall not effect any securities transactions under this Agreement in the expectation of entering into a repurchase transaction with Bank as counterparty unless Customer shall first have executed and delivered to Bank a written master repurchase agreement, in form and substance satisfactory to Bank, governing such transactions. In any such transaction, where Bank is to hold securities as

collateral or as the subject of a transaction, such securities will be held by the Safekeeping Department of Bank subject to the terms of this Agreement, unless Customer is otherwise notified. To the extent of any inconsistency between the terms of any such agreement and the terms of this Agreement, the terms of such other agreement shall control.

**13. Fees and Expenses.** Customer shall pay to Bank such fees in respect of the services provided under this Agreement, as disclosed to Customer on the current fee schedule (which fee schedule may be amended from time to time by Bank). If the fee schedule is amended, the amended fees will apply to any Safekept Securities being held at that time, and to any securities transactions effected on the day such amendment becomes effective. Customer agrees to pay, and agrees and acknowledges that Bank may debit the Settlement Account for any fees and other amounts owing by Customer to Bank under this Agreement, or exercise an offset for such amounts against any funds of Customer on deposit with Bank, or against any interest, principal or other income received or to be received by Bank on behalf of Customer, whether or not in respect of Safekept Securities. In addition, Customer agrees to reimburse Bank for its commercially reasonable out-of-pocket expenses for providing the services hereunder, including, but not limited to the reasonable fees and expenses of outside counsel if retained by Bank in its discretion in connection with this Section VI. If Customer fails to pay Bank any sums due under this Section VI within thirty (30) days after the same are due (whether or not a late notice is sent to Customer by Bank), Bank may terminate this Agreement and return any Safekept Securities to Customer at Customer's expense, and to avail itself of any other remedy it may have in law or in equity.

**14. Service Termination; Account Closure.** Subject to Section VI.A.11 ("Fixed Investment Periods"), Customer may terminate the Service(s) described in this Section VI or close its Money Center investment account at any time upon prior notice to Bank. Bank may terminate the Service(s) described in this Section VI or close Customer's Money Center investment account at any time without prior notice to Customer. If any Service described in this Section VI is terminated or Customer's Money Center investment account is closed for any reason, Customer will continue to be responsible for any obligation incurred by Customer prior to termination or closure and for the fees and costs, if any, payable under this Agreement with respect to delivery of Customer's securities (including Safekept Securities) or funds held by Bank to Customer or to another financial institution.

**15. Notices.** Except for oral instructions to Bank from Authorized Users or from Bank to Authorized Users, all notices, disclosures and communications (including Confirmations) under this Section VI shall be in writing and delivered by mail, fax, email or other electronic means as provided for in this Agreement. Notices, disclosures and communications (including Confirmations) shall be deemed delivered upon transmission of the same by mail, fax, email or other electronic means as provided for in this Agreement, or on the third (3<sup>rd</sup>) Business Day after deposit of the same in the United States mail, postage prepaid, and addressed to the mailing address provided by Customer. All written confirmations, notices, instructions, or other communications from Customer to Bank shall be sent to following address (which may be amended from time to time by Bank upon notice to Customer):

*For securities transactions:*  
U.S. Bank National Association  
Money Center Department  
800 Nicollet Mall, BC-MN-H18T  
Minneapolis, MN 55402  
Fax: (866) 904-7067  
Email: Money.Center.Sales@usbank.com

*For safekeeping services:*  
U.S. Bank National Association  
Safekeeping Department  
800 Nicollet Mall, BC-MN-H18R  
Minneapolis, MN 55402  
Fax: (612) 303-0202  
Email: Safekeeping@usbank.com

**16. Terms and Conditions of Electronic Delivery.** All notices, disclosures and communications (including Confirmations and other

account information) from Bank may be delivered to Customer by electronic means (including, without limitation posting to a password-protected website) to the extent Customer elects to receive such information through electronic means, subject to the Terms and Conditions of Electronic Delivery set forth in Section VI.B below. Customer agrees that sending information in this manner will constitute good and effective delivery of the information to Customer, regardless of whether Customer actually accesses the website or other electronic medium containing the information.

**17. No Investment or Tax Advice.** Customer acknowledges that Bank's role is ministerial in nature and that Bank will not provide supervision, recommendations, or advice to Customer in connection with the investment, purchase, sale, retention, or other disposition of any securities or Money Center deposits, or the advisability or suitability of any product or transaction. Customer is responsible for evaluating the risks associated with such decisions. Customer acknowledges Bank is not an investment adviser, has no investment discretion, and will merely carry out instructions as directed by Customer. Bank's ability to determine interest rates on securities or Money Center deposits shall not be deemed to be discretion or advice. Customer further acknowledges that Bank will not provide advice to Customer regarding the tax implications associated with the investment, purchase, sale, retention, or other disposition of any securities or Money Center deposits.

**18. ERISA.** If assets of an employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), are intended to be deposited, invested or used by Customer in a transaction under this Section VI.A, Customer shall notify Bank prior to effecting such deposit, investment or transaction and will provide Bank with such additional information as Bank may reasonably request. Customer represents and warrants to Bank that any deposit, investment, or transaction pursuant to this Section VI.A shall not result in a "prohibited transaction" under ERISA or shall otherwise be exempt under ERISA, and Customer further agrees to indemnify and hold Bank harmless from any loss or claim arising therefrom.

**19. No Representation or Warranty.** Customer acknowledges and agrees that Bank makes no representation or warranty, express or implied, with respect to the validity, enforceability, collectability or investment quality of any securities bought or sold hereunder, or any deposits made or terminated hereunder.

**20. Records; Account Statements; Taxes.** Bank will maintain records of Customer's account and provide customer with a Confirmation for transactions in accordance with this Section VI.A and periodic account statements. Bank will also send to Customer such notices and reports as are required by law. Customer acknowledges and agrees that it is Customer's obligation to prepare and file all required tax returns and to pay all taxes due on any income that Bank collects for Customer.

**21. Set Off.** Bank has the right to apply funds in Customer's Money Center investment account or Settlement Account to any debt Customer owes Bank. A debt includes any fees, overdrafts, debts that now exist and debts that Customer may incur in the future, or Customer's obligations under a guaranty. When Bank sets off a debt Customer owes Bank, Bank reduces the funds in the Money Center investment account or Settlement Account by the amount of the debt. Bank is not required to give Customer any notice before exercising its right of setoff. Customer agrees to hold Bank harmless from any claim arising as the result of Bank's enforcement of its right of setoff against Customer's Money Center investment account or Settlement Account. This right of setoff is in addition to any security interest that Bank might have in Customer's Money Center investment account or Settlement Account.

**22. Legal Process.** Legal process includes any levy, garnishment or attachment, tax levy or withholding order, injunction, restraining order, subpoena, search warrant, government agency request for information, forfeiture or seizure, or any other legal process relating to Customer's Money Center investment account or Settlement Account. Bank may accept and act on any legal process Bank believes to be valid, whether the process is served in person, by mail, by electronic notification, or at a banking location. If Bank incurs any fees or expenses (including attorneys'

fees and expenses) due to responding to legal process related to Customer's Money Center investment account or Settlement Account, Bank may, in its sole discretion, charge these costs to any other deposit account Customer maintains with Bank. All legal process is subject to Bank's rights of setoff and security interest in Customer's Money Center investment account and/or Settlement Account.



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## **B. TERMS AND CONDITIONS OF ELECTRONIC DELIVERY**

The following sets forth the terms and conditions of use of Bank's electronic delivery and notification service (the "Electronic Delivery Service") in connection with account(s) with Bank's Money Center Department or Safekeeping Department.

The Electronic Delivery Service described in this Section VI.B shall constitute an Internet Service as defined in Section III of this Agreement and shall be subject to the terms set forth therein, as well as any other agreements between Customer and Bank and any applicable laws or regulations. If there is a conflict between the terms and conditions set forth in this Section VI.B and the terms and conditions of any other section of this Agreement or any other agreement between Customer and Bank as they relate to the Electronic Delivery Service, the terms and conditions set forth herein will control.

**1. Electronic Delivery of Account Communications.** Customer may elect to receive Account Communications (defined below) related to Customer's account(s) electronically. All Account Communications will be delivered electronically by posting to Bank's password-protected website designated for Customer's account(s) or, at Bank's election, delivered via electronic mail to the email address provided by Customer to Bank. "Account Communications" include, without limitation, all current and future account statements, Confirmations, security notices, maturity notices, prospectuses, offering and disclosure documents, shareholder communications (such as quarterly, semi-annual and annual reports, proxy statements, etc.), regulatory communications and other information, documents, data, notices and records regarding Customer's account(s) with Bank. Bank may, from time to time, designate additional Account Communications that are then eligible for electronic delivery through the Electronic Delivery Service, the delivery of which will then be subject to these terms and conditions. From time to time, Bank may add to, modify or delete any feature of the Electronic Delivery Service or Account Communications eligible for delivery through the Electronic Delivery Service at its sole discretion. Customer acknowledges and agrees that by being enrolled in the Electronic Delivery Service, Customer will no longer receive Account Communications by mail that is otherwise available for delivery as part of the Electronic Delivery Service.

**2. Accessing Account Communications.** Bank will notify Customer via email when Account Communications are posted. Bank may also provide, in its sole and absolute discretion, Account Communications directly via email. Customer may access all Account Communications for at least thirty (30) days from the date of initial posting. Customer acknowledges and agrees that all Account Communications will be deemed to constitute good and effective delivery to Customer upon posting, regardless of whether Customer actually or timely receives or accesses the Account Information, or if Account Communications are delivered directly to Customer via email, when so delivered.

**3. Changes in Delivery Method.** Customer must notify Bank if it wishes to discontinue use of the Electronic Delivery Service. Following Bank's receipt of such notice and after Bank has a reasonable opportunity to act on such notice, Customer will thereafter begin to receive Account Communications via U.S. mail beginning with Customer's next statement cycle and/or mailed Confirmation.

**4. Reporting Unauthorized Transactions or Erroneous Statements.** Customer agrees to promptly and carefully review all Account Communications as and when delivered and notify Bank in accordance with this Agreement if Customer objects to any of the information provided.

**5. Third-Party Services.** Customer acknowledges and agrees that Customer's access to the Electronic Delivery Service and Customer's receipt of email notifications when Account Communications are posted may be delayed or prevented by factors affecting Customer's or Bank's Internet or telephone service provider(s) or other similar entities ("Third-Party Service Providers"). Bank makes no representations or warranties whatsoever with regard to the products and services offered by such Third-Party Service Providers and shall not be liable for any loss caused, in whole or in part, by a Third-Party Service Provider.

**6. International Use.** Bank makes no representations or warranties that any content or use of the Electronic Delivery Service is appropriate, legal or available in locations outside the United States. Customer

acknowledges and agrees that accessing the Electronic Delivery Services from territories where its contents or use is illegal and is prohibited by Bank. If Customer accesses the Electronic Delivery Service from locations outside the United States, Customer does so at its own risk. Customer is responsible for compliance with local laws.

**7. Proprietary Rights; Materials; Trademarks.** All content included or available through the Electronic Delivery Service (other than Customer's account information), such as advertisements, tests, graphics, logos, button icons, images, audio clips and software, is the property of Bank and/or third parties and is protected by copyrights, trademarks or other intellectual property rights. The compilation (meaning the collection, arrangement and assembly) of all content on the Electronic Delivery Service is the exclusive property of Bank and/or its licensors and is protected by copyrights or other intellectual property rights. The trademarks, logos and service marks displayed on the Electronic Delivery Service (collectively, "Trademarks") are the registered and unregistered Trademarks of Bank or third parties. Under no circumstances may Customer use, copy, alter, modify or change these Trademarks. Nothing contained on the Electronic Delivery Service should be construed as granting by implication or otherwise any license or right to use any Trademark without the express written permission of Bank or the third party that has rights to such Trademark, as the case may be.

# Your Deposit Account Agreement

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General Terms & Conditions

Electronic Transfers

Funds Availability

Effective May 10, 2021



Member FDIC

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## TERMS APPLICABLE TO ALL ACCOUNTS

### THIS IS AN AGREEMENT

Welcome to U.S. Bank and thank you for opening an account with us. This Agreement provides the general rules that apply to the account(s) you have with **U.S. Bank (“us”)** described herein. Additional rules will be provided in:

1. disclosures we give you when you open your account for example our *Consumer Pricing Information and Business Pricing Information* disclosure(s) and other fee disclosures (Both can be obtained by stopping in a U.S. Bank branch or for the *Consumer Pricing Information* only, call 800.872.2657 to request a copy);
2. disclosures that are applicable to additional products and services (for example the *Digital Services Agreement*);
3. periodic statements;
4. user guides;
5. *Consumer Privacy Pledge* brochure;
6. any appropriate means such as direct mail and notices on or with your statement, including any statements or notices delivered electronically; and
7. disclosures we give you about ATM and Debit Card Overdraft Coverage (applicable to certain consumer accounts, refer to the **Insufficient Funds and Overdrafts** section on page 14 for details).

These things, together, are an agreement between you and **U.S. Bank.**

**Please read this carefully and retain it for future reference. This brochure is revised periodically, so it may include changes from earlier versions.**

By providing a written or electronic signature on a signature card or other agreement or contract, opening, or continuing to hold an account with us, you agree to the most recent version of this Agreement, which is available to you at your local U.S. Bank branch, at [www.usbank.com](http://www.usbank.com), or by calling U.S. Bank 24-Hour Banking at a number listed on the last page of this booklet.

This Agreement represents the sole and exclusive agreement between you and us regarding the subject matter described herein and supersedes all previous and contemporaneous oral agreements and understandings. If any terms of your signature card, resolution, or certificate of authority are inconsistent with the terms of this Agreement, the terms of this Agreement will control. Any other variations to this Agreement must be acknowledged by us in writing.

If you have any questions, please call us. Our most commonly used phone numbers are printed on the back of this booklet.

### DEFINITIONS

The following definitions apply in this Agreement except to the extent any term is separately defined for purposes of a specific section.

- The words “**we**,” “**our**,” and “**us**” mean **U.S. Bank National Association (“U.S. Bank”)**. We are a national bank. We are owned by **U.S. Bancorp**.

- **U.S. Bancorp and U.S. Bank** own or control other companies, directly and indirectly. The members of this family of companies are our “**affiliates**.” The words “**you**” and “**your**” mean each account owner and anyone else with authority to deposit, withdraw, or exercise control over an account. If there is more than one owner, then these words mean each account owner separately, and all account owners jointly.

- The term “**account**” means any savings, transaction (for example, checking, NOW Account), and time deposit (for example, certificate of deposit or CD) account or other type of account you have with us, wherever held or maintained.

- An “**owner**” is one who has the power to deal with an account in his, her or its own name. An “**agent**,” in contrast, is one whose power to withdraw from an account comes from, or is on behalf of, the owners. Authorized signers, designated corporate officers, trustees, attorneys-in-fact, and convenience signers are examples of agents.

- Entities such as corporations, limited liability companies, partnerships, estates, conservatorships, and trusts are not natural persons, and can only act through agents. In such cases, it is the “**entity**” that is the owner.

- “**Personal accounts**” are consumer accounts in the names of natural persons (individuals). They are to be distinguished from “**non-personal accounts**” which are accounts in the name of businesses, partnerships, trusts and other entities.

- An “**account cycle**” or “**statement cycle**” represents the period of time when your statement starts and ends. It’s approximately 30 days long but doesn’t necessarily align with the beginning and end of the month and won’t end on a weekend or holiday.

Except where it is clearly inappropriate, words and phrases used in this document should be interpreted so the singular includes the plural and the plural includes the singular.

### CELLULAR PHONE CONTACT POLICY

By providing us with a telephone number for a cellular phone or other wireless device, including a number that you later convert to a cellular number, you are expressly consenting to receiving communications—including but not limited to prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system—from us and our affiliates and agents at that number. This express consent applies to each such telephone number that you provide to us now or in the future and permits such calls for non-marketing purposes. Calls and messages may incur access fees from your cellular provider.

### MONITORING AND RECORDING COMMUNICATIONS

You acknowledge and agree that we, or anyone acting on our behalf, may monitor and/or record any communication between you and us, or anyone acting on our behalf, for quality control and other purposes. You also acknowledge and agree that this monitoring or recording may be done without any further notice to you. The communication that may be monitored or recorded includes telephone calls, cellular or mobile phone calls, electronic mail messages, text messages, instant or live chat, or any other communications in any form.

### WAIVERS AND PRECEDENTS

Our Agreement with you gives us rights and duties. If we don’t take advantage of all our rights all the time that does not mean we lose them. For example:

- If we make funds available to you for withdrawal ahead of schedule, that does not mean we have to do it again.
- If we pay a check that is more than your account balance, that does not mean we have to do it again.

### APPLICABLE LAW

Unless otherwise stated herein, your account and this Agreement will be governed by federal law and, unless superseded by federal law, by the law of the state in which your account is located. If you opened your account in person, it is located in the state in which you opened it. If you opened your account online, in the U.S. Bank Mobile App or by telephone and you reside in a state in which we have a branch at that time (or reside within 50 miles of a branch), it is located in the state in which the branch is located. If you reside anywhere else, then your Account is located in Minnesota.

### CUSTOMER IDENTIFICATION PROGRAM NOTICE (USA PATRIOT ACT)

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

#### What this means for you

When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see other identifying documents like a driver’s license or documents showing your existence as a legal entity.

#### Existing customers

Even if you have been a customer of ours for many years, we may ask you to provide this kind of information and documentation because we may not have collected it from you in the past or we may need to update our records.

#### Failure to Provide Information

If, for any reason, any owner is unable to provide the information necessary to verify their identity, their account(s) may be blocked or closed, which may result in additional fees assessed to the account(s).

### OWNER’S AUTHORITY

Each owner of a personal account, or an agent for a non-personal account, acting alone, has the power to perform all the transactions available to the account. For example, each owner or agent can:

1. make withdrawals by whatever means are available for the account;
2. make deposits by whatever means are allowed for the account;
3. obtain and release information about the account;
4. sign or authenticate any document in connection with the account (for example, an owner can endorse a check payable to a co-owner for deposit to a joint account);

5. give rights to others to access the account (for example, any owner could grant a power of attorney to have access to the account); and
6. close the account.

In addition, if you share ownership of an account with someone else (for example, you have a joint or multi-party account), then each of you can endorse items for deposit to the account on behalf of another owner. If there is shared ownership of an account, it is the intention of all owners that each of you has complete and separate access and withdrawal rights to all the funds in the account irrespective of who had deposited the funds in the account.

### AUTHORIZED ACCESS AND POWER OF ATTORNEY

Each owner of your account is independently permitted to authorize someone else to access your account. For example, the following persons will have access to your account:

1. Any person listed on a signature card, resolution, or certificate of authority as being authorized to make withdrawals or transfers, by check or otherwise, from your account;
2. Any person that you authorize to make withdrawals or transfers from the account by whatever means the account allows (for example, pre-authorized withdrawals, wire transfers, ATM card, or debit card transactions);
3. Any person you give rights to act on your behalf, such as a power of attorney;
4. Any person to whom you make your checkbook or your checking account number available for purposes of transacting business on the account. We discourage this type of “authorization” because it is possible that we will detect such transactions and treat them as unauthorized. If you give any such person “authority,” we are not responsible whether we honor the transactions or dishonor them; and
5. Any person to whom you make your ATM card or debit card personal identification number (PIN) available. Although we discourage this practice, by allowing this type of “authorization,” the person to whom you make your personal identification number (PIN) available may be able to access all of your accounts held with us by using the telephone, ATM, online or other banking access channels. If you give any person such “authority,” we are not responsible for actions they take with respect to your accounts.

We will use the word “agent” to mean any person who you authorize to act on your behalf, whether by following the process we require (for example, by designating an authorized signer on a signature card), or on your own (for example, by creating a power of attorney). If you name such an agent:

1. we may require that you use forms we approve and require each owner to sign the form to be effective;
2. the powers you give to your agent, and any limitations on those powers, are between you and your agent, even if we have express written notice of those powers. You understand and agree that we have no duty or responsibility to monitor the acts of your agent or ensure that the acts of your agent

are for your benefit. For example, if you only give your agent authority to pay your bills and your agent exceeds that authority, we are not responsible for that breach of authority;

- you agree not to hold us responsible for any loss or damage you incur as a result of us following instructions given to us by your agent;
- the owners of the account are responsible to us for any actions of your agent, regardless of whether those actions exceed the authority given or whether the agent is appointed by all the owners or less than all the owners;
- the agency will end if the owner dies **and** we have actual knowledge of that death, or if there is more than one owner, the agency will end after the death of the last owner and we have actual knowledge of that death and, in either case, once we've had reasonable opportunity to act on it;
- the agency will end after the owner notifies us in writing to end the agency and we have had a reasonable opportunity to act on it; and
- if you authorize any third person, such as a bookkeeping service, an employee, or agent of yours to retain possession of or prepare items, you agree to assume full responsibility for any errors or wrongdoing performed or caused by such third person or any of its agents or employees if we should pay any such item.

## YOU CANNOT TRANSFER AN ACCOUNT

You may not transfer an account to someone else without our express written permission. This does not limit your right to access your account by any permissible means.

## CHANGE IN AUTHORIZED SIGNERS

Any owner, including one of the owners of a joint account, may add owners or authorized signers to an account; however, we have the right to require the signature of all owners to make the change. Only under special circumstances and subject to prior approval by us may an owner remove another owner or authorized signer from an account.

No change in owners or authorized signers is effective until we have received written notice of the change and have had adequate time to approve and act on it.

## ADJUSTMENTS

If we (or you, or you and us together) make an error on your account, we can fix the error without first notifying you. For example, if:

- the dollar amount of your check is paid for the incorrect amount;
- a deposit is added incorrectly;
- we apply a deposit to the wrong account;

we can fix the error without any special notice to you, though such a correction will normally appear on your statement if the error and the correction occur on different business days.

For accounts coded as Consumer and Business accounts, we may not adjust for insignificant errors unless you request it. For all other account types including Corporate and Commercial accounts, we

may not adjust for deposit errors of \$50.00 or less unless we have agreed with you to a lower adjustment amount.

## RETENTION OF DOCUMENTS

You should retain your copy of deposit receipts and other documents associated with your deposit(s). Should you claim that a deposit was incorrectly credited, we may request a copy of your receipt or other documents associated with your deposits.

## LIABILITY FOR CHARGES AND OVERDRAFTS

All account owner(s) are responsible to repay to us any overdraft amount **and** any overdraft fees charged to an account, no matter which owner caused it or why. That repayment is due immediately, and we will take it from your next deposit or whenever funds become available in your account. If there is more than one owner, each owner is separately, and all owners are jointly, responsible for an overdraft and any account fees. (This means we can collect the total from any owner(s), on any of the owner(s) accounts, but we won't collect it more than once). For more information on overdrafts please refer to the section titled **Insufficient Funds and Overdrafts**.

We list the charges that you may incur on your account in separate pricing information disclosures or agreements for your account.

## TRANSACTION POSTING ORDER

We reserve the right to decide the order of the items we will pay and which items will be returned (if any). Our posting order may not be the same as the order in which you conducted a transaction and could result in overdraft fees, if you do not have available funds at the time the item is paid. Generally, we post the following three transaction types after the close of each business day in the following order:

- Deposits we receive before the daily cutoff time will be posted before any withdrawals. (Refer to our Cutoff Time and/or Funds Availability section for cutoff time description.)
- Your non-check withdrawals will be posted in date/time order, based on the date and time associated with each transaction. A date and time (if one is available) will be assigned to each transaction based on one of the following: (1) when the transaction was preauthorized (for example a debit card or ATM transaction was approved); **or** (2) when the transaction was processed by U.S. Bank (for example an ACH, or bill pay transaction for which there is no pre-authorization). If a date and time is not available, these transactions are posted to your account after all transactions with a valid date and time or check number are complete, and posted to your account in order of amount, starting with the lowest transaction amount first (frequently referred to as low-to-high).
- Your checks will be posted in check number order, starting with the lowest number. (For example: on Monday we may receive and post check # 107; on Tuesday we may receive check # 102 and # 105, and those would be posted on Tuesday in the order of lowest check number (e.g., # 102) posting first).

## DEPOSITS

When you make a non-cash deposit to your account, we give you credit for that deposit, but that credit is provisional (temporary). If the deposit needs to be collected from another financial institution, we must be paid before the credit becomes final. After a credit is

final it may still be reversed if the funds cannot be collected. See the sections titled **Returned Deposited and Cashed Items** and **Funds Availability**. All deposit receipts are issued subject to our count and verification of the items deposited. You should retain your copy of deposit receipts and other documents associated with your deposit(s). Should you claim that a deposit was incorrectly credited, we may request a copy of your receipt or other documents associated with your deposit.

**Foreign Currency:** Deposits received in a foreign currency, whether by check, wire-transfer, or otherwise, must be converted to U.S. dollars prior to being deposited into your account. U.S. Bank will convert your funds at an exchange rate established by U.S. Bank on the business day when such exchange is processed. Currency exchange rates are determined in our sole discretion based on factors such as market conditions and risk, economic and business factors. The exchange rate is an all-in rate which includes our profit, fees, costs, and charges. Currency exchange rates will be applied to these deposits without notice to you. You agree to this procedure and accept our determination of the currency exchange rates.

Foreign currency conversions can take time and exchange rates fluctuate at times significantly. You acknowledge and accept all risk that may result from such fluctuations. Your transaction is a retail transaction. Retail foreign exchange conversion rates are different from the wholesale exchange rates for large transactions between two banks as may be reported in *The Wall Street Journal* or elsewhere. Exchange rates offered by other banks or shown at other sources (including online sources) may be different from our exchange rates. The exchange rate you are offered may be different from, and likely inferior to, the rate paid by U.S. Bank to acquire the underlying currency. The exchange rate may also be different from a rate offered by U.S. Bank to a different customer, at a different time, for a different transaction amount, or in a different payment channel (checks, wire-transfers, etc.).

U.S. Bank sometimes relies on other financial institutions in the conversion process. In this event, the conversion will be in accordance with the policies and procedures of that bank and the funds will be converted at the exchange rate determined by that bank. Any fees or charges assessed by that bank will be passed on to you. Your final credit will be adjusted to reflect that final exchange rate less all fees or charges.

**Foreign Checks:** Checks and other items drawn off a foreign financial institution, whether negotiable in a foreign currency or in U.S. dollars may require special funds collection processing by us. As a result, funds availability may be delayed. If you deposit such an item, you agree that we may delay funds availability at our discretion until we are satisfied that we have received final payment of the item.

**Deposits by Mail:** If you make a deposit by mail, we have to receive it and have time to record it before it becomes effective. (See our **Funds Availability** section.)

**Cutoff Time:** A deposit made after our daily cutoff time on a business day, or on a day we are not open for all forms of business, will be considered deposited on the next full business day. (Refer to our **Funds Availability** section for cutoff time description.) The cutoff time applies to all accounts (savings, certificate of deposits, payments, etc.), not just checking accounts.

**Endorsement:** If you make a deposit to an account and you fail to endorse the item, we may add an endorsement on any item and you will be responsible for the item as if you endorsed it yourself.

We can refuse to accept any item or other type of deposit, for any reason, or no reason, or impose conditions on a deposit. For example, we can treat a deposit as an "inquiry" or take an item for "collection" instead of deposit. We may also decline to accept a large cash deposit or require you to make such a deposit at a location and time of our choosing.

## RETURNED DEPOSITED AND CASHED ITEMS

The funds you deposit to your account are subject to normal collection processes even after we make the funds available to you for withdrawal (i.e., the check has "cleared"). If we do not collect the funds, or we need to return the funds, your deposit will be reversed and become your responsibility. **Returned items** are charged back to your account and a Return Item Advice notice is mailed to the primary account address on file.

For example:

- The deposit amount of the check is recorded incorrectly to your account. The person who wrote the check catches the error, and reports it to their bank, who in turn reports it to us. We would reverse the incorrect portion of the deposit and correct the mistake.
- A check you deposit has a forged endorsement. The person who wrote the check notices the forgery and reports it to their bank, who reports it to us. We would reverse the deposit and collection of the check would become your responsibility.
- This also applies to checks we might cash for you that you don't deposit. For example, if you bring a check to us and take cash back from a deposit, or we simply cash the check and if that check "bounces" (is returned to us unpaid), we can take the money from your account to reimburse us for the check and you will have to collect it through other channels.

There will be one fee posted for the sum of all Returned Deposited Item or Cashed Check fees returned within a single transaction as well as applicable overdraft fees if sufficient funds are not in your account to cover your items.

## CHECK 21

Check processing is getting faster as banks begin to process checks "electronically." We are required by law to provide the notice in the following section ("**SUBSTITUTE CHECKS AND YOUR RIGHTS**"), which explains the differences between your original check (which might not be returned) and a substitute check, and your rights in the event the substitute check causes a loss that would have been avoided if the original check was still available.

## SUBSTITUTE CHECKS AND YOUR RIGHTS

### What is a substitute check?

To make check processing faster, federal law permits banks to replace original checks with "substitute checks". These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of the substitute check states: "This is a legal copy of your check. You can use it the same way you

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Once these funds are available, they will be reflected in the Available Balance.

- Funds held for debit card authorizations: This reflects merchant-authorized requests for payment, when the final charge has not been submitted by the merchant. Debit card authorizations will be reflected as pending transactions from the time we receive the authorization until the merchant presents the item for payment, a completion message is received, or three business days, whichever occurs first. If the debit card transaction has not been presented for payment after three business days, it will be removed from your pending transactions and your Available Balance will no longer be reduced by the authorization amount. Once the final charges have been received and processed, they will be reflected in the Available Balance.
- Any other holds on funds in your account.

Note: The Available Balance does *not* reflect every transaction you have initiated or previously authorized. Items that may not be reflected in your Available Balance include, but are not limited to:

- Outstanding checks and authorized automatic withdrawals (such as recurring debit card transactions, transfers, and ACH transactions that we have not received for payment or processing).
- The final amount of a debit card purchase. For example, we may authorize a purchase amount from a restaurant or a gas station, but the authorized amount may be different from the final charge. Once a final charge has been received and processed, it will be reflected in the Available Balance. (Please refer to “Debit Card Transactions” subsection for more information about how these situations are handled.)
- Scheduled bill payments that have not yet been processed.
- Debit card transactions that have been previously authorized but not sent to us for payment from your account where we have released the transaction authorization hold and the transaction is sent for payment from your account at a later date.

“**Insufficient funds**” means you do not have enough available funds in your account to pay the withdrawals you are attempting from that account.

Having insufficient funds in your account could lead to returned items, which refers to any withdrawal or transfer that we return because it exceeds your Available Balance on a given day. Examples of withdrawals that could be returned may include any checks, ACH transactions, online or mobile bill payments, or any other debit from your account where we return it because it is for more than the Available Balance you have in your account at the time the transaction is presented to your account. We reserve the right to pay an insufficient funds withdrawal and overdraw your account, which may result in an Overdraft Paid Fee, or return the insufficient funds withdrawal, which may result in an Overdraft Returned Fee. Even if we’ve paid insufficient funds items before, we are not required to do it in the future.

“**Overdraft**” means a transaction has caused the Available Balance on an account to become a negative number. An overdraft can happen, for example,

- by writing a check without enough money in your checking account to pay the check, and we pay the item;
- by making a withdrawal from your account that exceeds your Available Balance;
- by using your U.S. Bank Debit Card for payment without enough money in your checking account to cover the amount authorized or the amount paid to the merchant. If any debit card transaction results in a negative Available Balance at the time it is presented for payment, even if your Available Balance was positive at the time the debit card transaction was authorized, you may be charged an Overdraft Paid Fee;
- by making a deposit, withdrawing money based on the credit received from that deposit, and then having that deposit reversed because the deposited item is later returned to us unpaid;
- by withdrawing money from your account and not having enough money left to pay any related charges posted to the account;
- when funds are credited to your account in error and you use the funds, and the reversal of the credit results in an overdraft; or
- when fees such as monthly maintenance fees are charged, and you do not have sufficient funds to cover.

**Our Options:** You do not have the right to withdraw funds that exceed the Available Balance on your account. When an item of yours overdraws an account, we can either pay or return the item. You cannot choose which items we pay or return, except as identified in your selection of “Overdraft Handling” (as identified later).

If we get a **batch, or multiple batches**, of such items in a day (for example, checks, ATM purchase transactions, and debit card purchase transactions typically come in batches), and if one, some or all of them would overdraw the account if paid, we will post items in accordance with the “**Transaction Posting Order**” section listed within this Agreement. This may result in processing larger dollar items before smaller dollar items, even though this would have the effect of reducing your Available Balance more quickly.

**Our Fees:** We charge an Overdraft Returned Fee for each withdrawal (e.g., in-person, ATM, automatic payment, or other paper or electronic withdrawal transaction) we return because it exceeds your Available Balance on a given day. We charge an Overdraft Paid Fee for each item or transaction we pay that causes the Available Balance to become negative or occurs while the Available Balance is negative on the checking account. Any Overdraft Returned Fees or Overdraft Paid Fees are deducted from your account on the next business day. We may charge you an Extended Overdraft Fee if your Available Balance remains negative for eight consecutive days; the fee will be charged on that day or the next business day, as applicable. See the current pricing information disclosure for information on fees and how fees will be assessed. The Extended Overdraft Fee may be suspended during a fraud investigation or dispute. Once the investigation or dispute is resolved, an Extended Overdraft Fee may be assessed if the account remains negative. If you want to avoid the inconvenience and extra expense of overdraft fees, refer to the section titled “Overdraft Protection Plans” on page 19 for information.

There are some circumstances that can take your account into a negative balance where we will not charge a fee, for example:

- If certain fees such as your monthly maintenance fee are the only items that resulted in the negative balance.
- If the negative Available Balance is less than our threshold. See your *Consumer Pricing or Business Pricing Information* disclosure for specific information. (Both can be obtained by stopping in a U.S. Bank branch or for the *Consumer Pricing Information* only, call 800.872.2657 to request a copy.)

**Your responsibilities for overdrafts:** If you have an overdraft on your account, you must deposit enough money into your account to pay both the overdraft amount and the fees we charge, and you must do so immediately. If you share ownership of your account with someone else, you are responsible to us for the overdraft, whether or not you personally caused the overdraft or benefited from it.

## OVERDRAFT HANDLING

### Consumer Checking and Money Market Accounts:

Most U.S. Bank Consumer checking and money market accounts come with Standard Overdraft Coverage. Under Standard Overdraft Coverage we will authorize and pay overdrafts for these types of transactions at our discretion:

- Checks and other transactions using your checking account number
- Automatic bill payments
- Recurring debit card transactions, for example setting up your debit card to automatically pay a monthly gym membership. We rely on the merchant to inform us if a debit card transaction is a one-time or a recurring transaction.

If we pay these transactions into overdraft, we may charge an Overdraft Paid Fee. If we do not pay these transactions, we may charge an Overdraft Returned Fee.

**In addition to Standard Overdraft Coverage, you have the following options outlined below.**

### ATM and Debit Card Overdraft Coverage:

Upon opening your U.S. Bank Consumer checking OR money market account, you will receive a notice advising you of your choice to say ‘Yes’ or ‘No’ to ATM and Debit Card Overdraft Coverage.

#### If you say ‘Yes’

If you choose to say ‘Yes’, you allow U.S. Bank to authorize and pay ATM and everyday debit card transactions (purchases made with your debit card on a day-to-day basis) that may cause the Available Balance in your account to become negative. If this happens we may charge an Overdraft Paid Fee.

#### If you say ‘No’

If you choose to say ‘No’, you do not allow U.S. Bank to authorize and pay ATM and everyday debit card transactions into a negative Available Balance. If we do not authorize and pay an overdraft your transaction will be declined and you will not be charged a fee.

In limited circumstances, your ATM or everyday debit card transaction may be processed, resulting in your Available Balance becoming negative. These situations may include, but are not limited to:

- A debit card transaction is processed for more than the preauthorized amount. For example, we may authorize a purchase amount from a restaurant or a gas station, but the authorized amount may differ from the final charge (Please refer to “Debit Card Transactions” subsection for more information about how these situations are handled.);
- A debit card transaction that obtained an authorization based on a sufficient Available Balance in your account, but is sent to us for payment later when your Available Balance is no longer sufficient to cover the item;

In these situations, if you have chosen ‘No’ you will not be charged an Overdraft Paid Fee.

**If you wish to discuss your options or change your account election at any time, contact a local U.S. Bank branch, call U.S. Bank 24-Hour Banking or visit [usbank.com](https://www.usbank.com). Please be aware it may take up to three business days to implement your request.**

### Requested Return:

You may ask us to place your account in *Requested Return* status. When you select this option, you are automatically choosing to say ‘No’ to ATM and Debit Card Overdraft Coverage (refer to **If you say ‘No’** for more details). In addition, we will attempt to return items which would result in an overdraft to your account such as checks, and automatic bill pay transactions.

- Note that when you select *Requested Return*, an **Overdraft Returned Fee may be charged for returned items**. You may also be charged fees by the merchant or service provider.
- Please understand we will not be able to return all items. **If we pay an item, for any reason, you will be charged the applicable Overdraft Paid Fee** (with the exception of ATM and everyday debit card transactions). These situations include, but are not limited to: recurring debit card transactions when a merchant had obtained an authorization for the first instance, but did not obtain a new authorization for subsequent occurrences (for example, a monthly gym membership); or other transactions/adjustments that may be processed in accordance with our Transaction Posting Order resulting in an insufficient Available Balance (Refer to “**Transaction Posting Order**” section listed within this Agreement). We rely on the merchant to inform us if a debit card transaction is a one-time or a recurring transaction.

**If you wish to select *Requested Return*, contact a local U.S. Bank branch or call U.S. Bank 24-Hour Banking (see last page for phone numbers). Please be aware it may take up to three business days to implement your request.**

### Business Options for Checking and Money Market Accounts

For Business Checking and Business Money Market accounts, we will authorize and pay overdrafts for all types of transactions at our discretion. If we pay these transactions into overdraft, we may charge an Overdraft Paid Fee. If we do not pay these transactions, we may charge an Overdraft Returned Fee.

### Requested Return

You may ask us to place your account in *Requested Return* status. When choosing this option, we will attempt to return and/or decline items which would result in an overdraft to your account.



- Note that when you select *Requested Return*, an **Overdraft Returned Fee may be charged for returned items**. You may also be charged fees by the merchant or service provider.
- Please understand we will not be able to return all items. **If we pay an item, for any reason, you may be charged an Overdraft Paid Fee.**

If you wish to request *Requested Return*, contact a local U.S. Bank branch or call U.S. Bank 24-Hour Banking (see last page for phone numbers). Please be aware it may take up to three business days to implement your request.

**Other sections:** While many other sections of this Agreement relate to these issues, these sections are particularly appropriate:

- Setoff (page 45)
- Security Interest in Accounts (page 46)
- Funds Availability: Your Ability to Withdraw Funds - All Accounts (page 49)
- Electronic Banking Agreement for Consumer Customers (page 55)
- Limits on Transfers (page 58)
- Electronic Banking Agreement for Business Customers (page 65)

## OVERDRAFT PROTECTION PLANS

### Consumer Overdraft Protection

U.S. Bank offers Overdraft Protection Plans to help you avoid the inconvenience of having a check returned, and/or a debit card purchase rejected, resulting in the expense of overdraft fees. These Overdraft Protection Plans allow an eligible account to be linked to a U.S. Bank Personal Checking Account(s) (“checking account(s)”) to cover overdraft situations when the Available Balance is insufficient to cover checks presented for payment **and/or** Available Balance has been reduced due to pending authorized debit card transactions, as specified in subsection “Debit Card Transactions”.

U.S. Bank lets you choose which eligible accounts are linked to your checking account for Overdraft Protection, and the order in which those accounts are accessed to transfer funds to your checking account. Some eligible accounts (e.g. depository accounts) do not have Overdraft Protection Transfer fees, and if you have deposit and credit accounts linked for Overdraft Protection, the first Overdraft Protection Account determines whether a fee is charged (if any).

You can choose to link up to three eligible U.S. Bank accounts to your personal checking account for Overdraft Protection. Owner(s) who are signers on the checking account must also be signers on the account(s) linked for Overdraft Protection.

Eligible accounts include:

- U.S. Bank Savings Account or Money Market Account
- U.S. Bank Reserve Line of Credit
- U.S. Bank Credit Card
- A secondary U.S. Bank Personal Checking Account
- U.S. Bank Personal Line of Credit
- U.S. Bank Home Equity Line of Credit
- Other U.S. Bank Lines of Credit

If you have linked eligible accounts, and the Available Balance in your checking account is or would be overdrawn by \$5.01 or more, the advance amount will transfer in multiples of \$50.00 and an Overdraft Protection Transfer Fee may be charged (fee waived

for transfers from a depository account). If, however, the Available Balance is or would be overdrawn by \$5.00 or less, the amount advanced will be \$5.00 **and** the Overdraft Protection Transfer Fee will be waived.

If the negative Available Balance in your checking account is caused by monthly fees, such as a maintenance fee or statement/image fee only, overdraft protection will not advance. (For example, the account is overdrawn due to a Monthly Maintenance Fee, overdraft protection will not advance. If additional transactions post, overdraft protection will advance to cover the negative Available Balance amount and an Overdraft Protection Transfer Fee may be charged.) If the account linked for Overdraft Protection does not have enough funds to cover the overdrawn amount, the current Available Balance will still be transferred to reduce the overdrawn amount.

If there is more than one account linked for Overdraft Protection and the Available Balance of the first linked account is not enough to cover the overdrawn balance, the next linked account will transfer funds in multiples of \$50.00 to cover the remaining overdrawn balance. When multiple accounts are linked as Overdraft Protection, the first account funds are transferred from determines the amount of the Overdraft Protection Transfer Fee (if any).

For each day an Overdraft Protection transfer occurs, a Bank fee will be charged to the checking account that received the transfer. (Refer to the *Consumer Pricing Information* disclosure Overdraft Protection Transfer Fee for fee amount. This disclosure can be obtained by contacting a U.S. Bank branch or calling 800.872.2657.) While no fee will be charged to your U.S. Bank savings account or secondary checking account, U.S. Bank Reserve Line of Credit, U.S. Bank Credit Card, U.S. Bank Personal Line of Credit, or U.S. Bank Home Equity Line of Credit, for any automated advance to cover an overdraft to your associated deposit account, you will incur an interest charge according to the terms of your agreement governing your credit account. Advances on a U.S. Bank Credit Card Overdraft Protection Plan account are subject to the standard cash advance interest rate, as well as the current cash advance fee. Please refer to your U.S. Bank Reserve Line of Credit, U.S. Bank Credit Card, U.S. Bank Personal Line of Credit or U.S. Bank Home Equity Line of Credit for information regarding interest charges.

When the Bank accesses funds from an eligible line of credit or credit card, these types of transfers may be subject to additional charges such as annual fees. In addition, you may be subject to interest that will accrue on the amounts advanced in accordance with your line of credit or cardmember agreement.

### Business Banking Overdraft Protection

U.S. Bank offers Overdraft Protection Plans to help you avoid the inconvenience of having a check returned, and/or a debit card purchase rejected, resulting in the expense of overdraft fees. These Overdraft Protection Plans allow an eligible account to be linked to a U.S. Bank Business Checking Account(s) (“checking account(s)”) to cover overdraft situations when the Available Balance is insufficient to cover checks presented for payment and/or Available Balance has been reduced due to pending authorized debit card transactions, as specified in subsection “Debit Card Transactions”.

U.S. Bank lets you choose which eligible accounts are linked to your checking account for overdraft protection. Only one deposit product

and one credit product may link to a business checking account. If the checking account has both a credit product and a deposit product linked as overdraft protection, the system will always advance first from the credit product. Funds only draw from the deposit product if the credit product has insufficient available funds.

The name of the business on the business checking account must match the name of the business on the business credit overdraft protection plan account. The name(s) of the account signer(s) on the business checking account may also be required to match the account signer(s) on the business Overdraft Protection Plan account.

Eligible accounts include:

- U.S. Bank Business Savings or Money Market Account
- A secondary U.S. Bank Business Checking Account
- U.S. Bank Business Reserve Line of Credit
- U.S. Bank Business Credit Cards
- U.S. Bank Cash Flow Manager or Advantage Line
- If you have a U.S. Bank Business Savings, Business Money Market account, or secondary U.S. Bank Business Checking account linked as Overdraft Protection, any automatic advances will be in \$200.00 increments made to cover the overdraft. Automated transfers from a U.S. Bank deposit account are not assessed Overdraft Protection Transfer Fees.

If you have a U.S. Bank Business Reserve Line of Credit linked as overdraft protection, any automatic advances will be in \$200.00 increments made to cover the overdraft. Please refer to your U.S. Bank Business Reserve Line Agreement for information regarding interest charges.

U.S. Bank Business Credit Card linked as overdraft protection, any automatic advances will be in \$25.00 increments made to cover the overdraft. Advances on a U.S. Bank Business Credit Card Overdraft Protection Plan account are subject to the standard cash advance interest rate, as well as the current cash advance fee.

When the Bank accesses funds from an eligible line of credit or credit card, these types of transfers may be subject to additional charges such as annual fees. In addition, you may be subject to interest that will accrue on the amounts advanced in accordance with your line of credit or Cardmember Agreement. Please refer to your Cardmember Agreement for information regarding charges and fees.

Each time an overdraft protection transfer from a Business Reserve Line or a U.S. Bank Business Credit Card automatically transfers funds to the checking account, an Overdraft Protection Transfer Fee (daily fee) applies. The transfer fee amount posts as a separate transaction to the checking account.

Refer to the *Business Pricing Information* brochure for current fees. This brochure can be obtained by stopping in a U.S. Bank branch.

If you have a U.S. Bank Cash Flow Manager linked as overdraft protection, any automatic advances will be in \$100.00 increments made to cover the overdraft. While no Overdraft Protection Transfer Fee is charged to the Cash Flow Manager account for any automated advance to cover an overdraft to your associated deposit account, you will incur an interest charge according to the terms of your agreement governing your credit account. Please refer to your U.S. Bank Cash Flow Manager agreement for information regarding interest charges.

If the negative Available Balance is caused by a monthly maintenance fee, service fee or statement/image fee only, overdraft protection will not advance. (For example, the account is overdrawn due to a Monthly Maintenance fee, overdraft protection will not advance. If additional transactions post, overdraft protection will advance to cover the negative Available Balance amount and an Overdraft Protection Transfer Fee may be charged.)

### Business Overdraft Protection Agreements

U.S. Bank also offers certain business customers overdraft protection through separate written agreement. The terms of such agreement shall govern those Business Overdraft Protection Plans.

## REFUSING PAYMENT ON YOUR CHECKS

You must fill in an amount (in words and numbers) correctly and clearly, and sign your name on checks you write. You should fill in the date and name a payee on your checks. If you don't name a payee, anyone can cash the check. If you fail to follow these rules, we may refuse to honor your checks.

When a check you write is presented to us by another bank for payment, we will generally accept the endorsements on the check, because if an endorsement is missing or forged, we have rights against the other bank that protect us. When a check of yours comes to us *other than through another bank*, we might not cash it if we are not comfortable with the endorsements on it or the identity of the person who presents it. This is especially true with an endorsement in the name of a business entity.

We may require anyone who presents a check for payment in person (other than an account owner presenting a check on his or her own account) to:

- pay a fee to cash the check if applicable; and
- give a fingerprint or thumbprint, and identification, as a condition of cashing a check.

If the presenter of the check refuses to comply with these requirements, or complies but later asserts that these requirements infringed on their legal rights, you understand and agree that imposing these requirements will not be considered a “wrongful dishonor” of your checks.

## FUNDS TRANSFERS

Unless we have entered into a specific written agreement with you that provides otherwise, payment orders you give to us for the transfer of funds out of the account by wire transfer or otherwise, and payment orders we receive for the transfer of funds into the account, will be governed by this paragraph. In addition, your rights and obligations with respect to a payment order, and our rights and obligations, will be governed by (a) any separate written agreement with us; then (b) this section; and then, to the extent not specified in a separate written agreement or this Agreement; (c) by Article 4A of the Uniform Commercial Code (“UCC4A”) as enacted in the state in which you have your account with us.

We reserve the right to refuse to accept any payment order. Payment orders are accepted when they are executed by us. We may process any payment order request (as well as any amendment or cancellation request concerning a payment order) that we believe is transmitted or authorized by you if we act in compliance with a security procedure

agreed upon by you and us. Such payment orders will be deemed effective as if made by you, and you will be obligated to pay us in the amount of such orders, even though they are not transmitted or authorized by you. Unless we agree on another security procedure, you agree that we may confirm the authenticity and content of a payment order (among other ways) by placing a telephone call to you. If we cannot reach you, or if the payment order is not confirmed or approved in the manner we require, we may refuse to execute the payment order.

YOU AGREE THAT IF A PAYMENT ORDER OR CANCELLATION THEREOF IDENTIFIES THE BENEFICIARY BY BOTH NAME AND AN IDENTIFYING NUMBER, AND THE NAME AND NUMBER IDENTIFY DIFFERENT PERSONS OR ACCOUNT HOLDERS, EXECUTION AND PAYMENT TO THE BENEFICIARY OR CANCELLATION MAY BE MADE SOLELY ON THE BASIS OF THE IDENTIFYING NUMBER. YOU ALSO AGREE THAT IF A PAYMENT ORDER IDENTIFIES AN INTERMEDIARY BANK OR THE BENEFICIARY'S BANK BY BOTH NAME AND AN IDENTIFYING NUMBER AND THE NAME AND NUMBER IDENTIFY DIFFERENT PERSONS, EXECUTION OF THE PAYMENT ORDER BY ANY BANK MAY BE MADE SOLELY ON THE BASIS OF THE IDENTIFYING NUMBER.

If we receive a funds transfer into any account you have with us, we are not required to give you any notice of the receipt of the funds transfer. The funds transfer will appear on your next periodic statement. To confirm the completion of funds transfers, please contact us through U.S. Bank 24-Hour Banking (see last page for phone numbers), usbank.com or the U.S. Bank Mobile App. Prior to the acceptance of an outgoing payment order, the outgoing payment order may be cancelled, but may not be amended or modified, if the beneficiary's bank is located within the United States of America and the outgoing payment order is to be paid in U.S. dollars. Other outgoing payment orders may not be cancelled, amended or modified. We must receive your cancellation in a reasonable time prior to the time we execute the outgoing payment order. Payment orders sent by Fedwire will be subject to the Federal Reserve's Regulation J, and payment orders sent via other payment systems will be subject to the rules of those systems. You agree that we may record all telephone conversations and data transmissions received from, made for or made on behalf of you pursuant to or in connection with a payment order.

YOU AGREE THAT IF A PAYMENT ORDER, OR ANY CANCELLATION OR AUTHORIZATION RELATING THERETO, BUT FOR THE APPLICABILITY OF THE ELECTRONIC FUND TRANSFERS ACT OF 1978 (AS IN EFFECT FROM TIME TO TIME), CONSTITUTES A PORTION OF A FUNDS TRANSFER AS DEFINED IN UCC4A, ALL ACTIONS AND DISPUTES CONCERNING SUCH PAYMENT ORDER, CANCELLATION OR AUTHORIZATION SHALL BE DETERMINED PURSUANT TO UCC4A AND THIS AGREEMENT TO THE FULL EXTENT PERMITTED BY LAW. If an outgoing payment order in a foreign currency cannot be completed, the exchange rate that will apply to any refund due you will be the exchange rate in effect at the time on the day the refund is made. Additional fees may be deducted from a payment order amount by other banks involved in the funds transfer process.

We may route payment at our own discretion for each outgoing wire transfer. A wire transfer is irrevocable once payment has been transmitted to the beneficiary's bank. At your request, we may request that the beneficiary's bank return funds previously transferred. However, you acknowledge that the beneficiary's bank is under no obligation to comply with this request.

## WITHDRAWAL RIGHTS, OWNERSHIP OF ACCOUNT, AND BENEFICIARY DESIGNATION

The following rules govern the ownership and withdrawal rights of deposit accounts with the various titles given to them.

There are two primary issues that these rules control. The first is "withdrawal rights" and the second is "ownership."

By "withdrawal rights" we mean who has access to the funds in the account for all purposes. These withdrawal rights will control, for example, whose instructions we must follow, whose checks we must pay, and whose withdrawal requests we must honor. These withdrawal rights do not control who actually owns the funds, as between multiple parties to an account.

By "ownership" we generally mean who owns the funds in the account. In particular, by selecting a particular ownership, you are expressing your intention of how and to whom your interest in the funds in the account should pass in the event of your death.

If you create a type of account, you retain the right to change or close the account to the extent of the withdrawal rights you retain in your own name.

We make no representations as to the appropriateness or effectiveness of any particular ownership or beneficiary designations. Our only responsibility is to permit access to the account as provided by the withdrawal rights. You must consult with your own attorney or financial advisor as to whether and how to effect any change in actual ownership of funds in the account.

**Individual Account.** This is an account in the name of one person. Such an account is also referred to as a "single ownership" account.

**Withdrawal Rights.** The holder of such an account is the only person who has the right to withdraw from the account, unless we permit the holder to designate an agent or attorney-in-fact to the account.

**Ownership.** The holder of such an account is presumed to be the owner. Holding such an account, by itself, creates no additional ownership rights nor survivorship rights (nor does such type of ownership create or extinguish any community property rights). In almost all instances this type of account will pass, on the death of the owner, through the estate of the owner. (You must consult your own estate planner to be sure.)

**Agents and "Attorneys-in-Fact."** The owner of this type of account can nominate an authorized signer or attorney-in-fact.

**Joint Account - With Survivorship.** If your account is opened as a joint account, we will treat it as a joint account with right of survivorship unless our account records demonstrate a different type of ownership. This is an account in the names of two or more natural persons, with the following features:

**Withdrawal Rights.** Each joint tenant has complete and separate access to the funds and withdrawal rights, and each authorizes the other(s) to endorse for deposit any item payable to the joint tenant. Upon the death of any joint tenant, any surviving joint tenant will have complete withdrawal rights to the balance of the account. If there is more than one surviving joint tenant, such survivors remain as joint tenants with right of survivorship with the same withdrawal rights provided in this section.

Each joint tenant reserves the right to change the ownership of the account to the extent of that owner's withdrawal rights.

**Ownership.** Each joint tenant is presumed to "own" the funds in proportion to that person's net contribution to the account. Each joint tenant intends upon his or her death that the funds owned by such person will be owned by the survivor. If there is more than one survivor, the "ownership" of the decedent's funds will be shared equally with such survivors.

**Other Titles.** In some states, it is advisable to add either "not as tenancy in common" or "not as a tenancy by the entirety" or both to insure the intention described above.

**Agents and "Attorneys-in-Fact."** Any joint tenant can nominate an authorized signer or attorney-in-fact who can hold all the same withdrawal and deposit rights as the authorizing owner, except the authorized signer or attorney-in-fact will not be an owner (a joint tenant).

**Joint Account with Survivorship - Arizona.** A Joint Account with Survivorship in Arizona has a unique feature that will change the "ownership" rights on the death of one of the joint owners if there is more than one surviving joint tenant and one of the surviving joint tenants is the surviving spouse of the deceased joint tenant.

**Withdrawal Rights.** This rule will not change the withdrawal rights to the account on the death of a joint tenant; it only affects the actual ownership of the account balance, which will only affect the survivors, and will not affect our responsibilities under the account.

**Ownership.** If two or more parties survive and one is the surviving spouse of the deceased party, the amount to which the deceased party, immediately before death, was beneficially entitled by law belongs to the surviving spouse. If two or more parties survive and none is the spouse of the decedent, the amount to which the deceased party, immediately before death, was beneficially entitled by law belongs to the surviving parties in equal shares, and augments the proportion to which each surviving party, immediately before the deceased party's death, was beneficially entitled under law, and the right of survivorship continues between the surviving parties.

**Tenancy in Common Accounts.** A Tenancy in Common account is another form of joint account without the survivorship feature. A Tenancy in Common account is also in the name of two or more individual owners.

**Withdrawal Rights.** Each joint tenant has complete and separate access to the funds and withdrawal rights, and each authorizes the other(s) to endorse for deposit any item payable to the joint tenant. Until we receive notice of the death of any joint tenant,

any tenant in common will have complete withdrawal rights to the entire account balance.

If more than one tenant in common survives the death of another tenant in common, such survivors remain as tenants in common between them.

Each tenant in common reserves the right to change the ownership of the account to the extent of that owner's withdrawal rights.

**Ownership.** Each tenant in common is presumed to "own" the funds in proportion to that person's net contribution to the account. However, because of the extreme difficulty in determining such proportions over time, you agree that upon the death of one tenant in common, the balance in the account at the time immediately before the death of the tenant in common will be deemed to be owned in equal shares between all tenants in common. After death and our receipt of notice of such death, the decedent's share will be set aside for the estate of the decedent, and the survivor's share in the account balance will be at the disposal of the surviving tenant in common.

**Other Titles.** In some states this account is referred to as Joint Tenancy WITHOUT Right of Survivorship.

**Agents and "Attorneys-in-Fact."** Any tenant in common can nominate an authorized signer or attorney-in-fact who can hold all the same withdrawal and deposit rights as the authorizing owner, except the authorized signer or attorney-in-fact will not be an owner (a tenant in common).

**Marital Account (Wisconsin).** This account is an account established by two persons in Wisconsin who claim to be husband and wife. This account is, for such persons, the same as the Tenancy in Common account described above.

**Marital Account with P.O.D. Beneficiaries (Wisconsin).** This account is, first, the same as a Wisconsin Marital Account (which is, in turn, the same as a Tenancy in Common account described above).

**Withdrawal Rights.** During the lives of both parties to the marriage, the withdrawal rights will be the same as for the Marital Account. The beneficiaries have no withdrawal rights until the death of one of the marriage partners.

**Ownership.** Upon the death of one of the spouses, the surviving spouse owns 50% of the funds on deposit, and the P.O.D. beneficiary named by the deceased party (if that beneficiary is then surviving) owns the other 50%. Each spouse can name his or her own beneficiary.

If there is more than one beneficiary who is named by a party who survives, the shares of those beneficiaries will be equal.

On the death of one of the marriage partners, the account will have to be retitled and beneficiary shares will have to be redeposited or withdrawn.

**Pay-on-Death Account.** This is an account where one or more persons create the account and name one or more living persons as beneficiaries. Frequently the account title is A.B. Pay-on-Death to C.D. beneficiary.



**Withdrawal Rights.** The person who creates this type of account retains complete withdrawal rights in such an account during his or her lifetime and for his or her own benefit. The named beneficiary has no withdrawal rights to the account during the lifetime of the creator of the account. The owner can change or close the account, and change beneficiaries at any time.

On the death of the creator of the account, the beneficiary (on proof of death of the creator and proof of the identity as the named beneficiary), can withdraw the entire account balance. If there is more than one beneficiary who is named and survives the creator, the surviving beneficiaries acquire and can withdraw an equal share with the other surviving beneficiaries, without survivorship rights between beneficiaries. If a beneficiary dies before the creator, neither the beneficiary's estate nor heirs acquire anything on the death of the owner.

If more than one person creates such an account, then such creators have complete and separate withdrawal rights between them during their joint lives, and the survivor of them will have complete withdrawal rights upon the death of the other creator. Named beneficiaries can withdraw a share of the account balance only upon the death of the last creator and only if such beneficiaries are then alive (and upon proof of the deaths of the creators and their own identity as the named beneficiaries). In effect, if more than one person creates this type of account, with one or more beneficiaries, the account has first all the incidents of a "Joint Account with Survivorship" and only after there is but one joint tenant does the account have the incidents of a "Pay-on-Death" account.

**Ownership.** The creator of this type of account is presumed to own the funds during his or her lifetime and intends that ownership to pass to the beneficiary only upon his or her death and only if the named beneficiary survives him or her. If there is more than one creator, the ownership between such creators is the same as that between joint tenants with right of survivorship, with the same incidents upon the death of a joint tenant.

If there is more than one beneficiary who is named and survives the creator(s), the creators intend his, her or their ownership rights to pass to the then surviving beneficiaries in equal shares, with no survivorship rights between them.

**Other Titles.** This type of account has other names such as "Tentative Trust," "Totten Trust," "In Trust For" and "Revocable Trust." In states where one of these trust accounts is recognized, the creators of such accounts will be referred to as a "settlor" or "grantor." Nevertheless, all the incidents of such an account, the rights of the grantor(s) and beneficiaries are exactly the same as described for "Pay-on-Death" accounts above. Only the names have been changed.

#### **Revocable Trust or Pay-on-Death Account (not subject to the Nonprobate Transfers Law of Missouri)**

In Missouri, a Revocable Trust or Pay-on-Death account may include an appendage to its title "not subject to the Nonprobate Transfers Law of Missouri." This appendage does not change the features of the account as described above for Pay-on-Death accounts.

#### **Registration in Beneficiary Form - Missouri**

Adding the acronym *LDPS* (which stands for lineal descendants, per stirpes) to a Revocable Trust or Pay-on-Death account in Missouri, changes the rights of beneficiaries of such accounts. LDPS designation means that if a named beneficiary of such an account dies before the account owner, then the unnamed lineal descendants of that deceased beneficiary will acquire the share of the deceased beneficiary on the death of the owner per stirpes.

#### **UTMA (Uniform Transfers to Minors Act) Account**

This is an account in the name of an adult custodian (or possibly a corporate custodian) for the benefit of a person who is a minor at the time the account is created.

**Withdrawal Rights.** During the minority of the child (as defined under applicable UTMA laws), the custodian has all withdrawal rights, but is required by law to exercise those rights solely for the benefit of the child. We, however, have no duty or agreement whatsoever to monitor or insure that the acts of the custodian are for the child's benefit.

The custodian is required to turn over the account balance when the child reaches the age of majority. The custodian authorizes us, at our discretion, to exercise the custodian's duty to transfer funds to the child at the child's request upon reaching the age of majority.

**Ownership.** The child/beneficiary is at all times the owner of the funds in the account.

#### **UGMA (Uniform Gifts to Minors Act) Account**

A few states have not adopted the Uniform Transfers to Minors Act. These few states have, for our purposes, an equivalent statute known as the Uniform Gifts to Minors Act, which has the same incidents as those described above for the UTMA account.

#### **Fiduciary Account**

A fiduciary account is an account opened by or taken over by an executor, administrator, personal representative, guardian, conservator, trustee, or other fiduciary in such capacity. Any fiduciary named as a signer on a fiduciary account shall be solely responsible for acting in accordance with the terms of the applicable laws, will, court order or trust instrument establishing and covering the fiduciary relationship, and we are not responsible for examining, or insuring compliance with the provisions of any such law or instrument.

#### **Corporate, Partnership, Limited Liability Company and other Organizational Accounts**

These are accounts opened by any business organization or association. We reserve the right to require the account holder(s) to furnish us with such resolutions, agreements or documents as we may reasonably request to evidence the authority of individuals to act on behalf of the account holder(s). We will honor such an authorization until we receive written notice of change from the governing body of the organization. It is mutually agreed that the power and authority of each person named as authorized to take action with respect to the account shall continue in full force and effect until we receive actual written notice of revocation, whether the same be brought about by dissolution of the account holder or otherwise.

#### **PLEDGES AND SECURITY INTERESTS IN FAVOR OF OTHERS**

You cannot give a security interest or pledge your account to someone other than us without first getting our express written consent. We are not required to give consent to a security interest or pledge to someone else.

Unless we agree in a separate writing otherwise a security interest or pledge to someone else must be satisfied or released before any right to withdraw from the account can be exercised, including any right that arises by surviving the death of an owner (for example, a surviving joint tenant or beneficiary of a pay-on-death account).

#### **ACCRUAL OF INTEREST**

We will begin to accrue interest on deposits drawn from other banks at the time we get credit for the deposit in the collection process, which is not necessarily the same time as the time we make funds available for withdrawal.

If your account (for example a savings account) earns a variable rate of interest, we can change that rate at any time without notice to you, except as specifically provided in writing in the account disclosure or agreement. If the interest rate for your account(s) or the index or other referenced rate upon which the interest rate for your account(s) is based, is at any time less than zero percent, you agree to pay all amounts of the negative interest or fees which we impose as compensation for the negative interest rate.

You can find out our current rates on accounts that earn interest in our branches, from U.S. Bank 24-Hour Banking, or at usbank.com. The telephone number is at the end of this booklet.

#### **STOP PAYMENTS**

Unless otherwise provided, the rules in this section cover stopping payment of items such as checks and drafts drawn on your account. Rules for stopping payment on other types of transfers of funds, such as consumer electronic fund transfers, are covered elsewhere in the **Electronic Banking Agreement for Consumer Customers** section.

Here is what you must do to stop a payment:

##### **ACH Check Conversion**

An ACH Check Conversion is a transaction that starts as a paper check that you give to a merchant. The merchant converts the check, using the information on the paper, to send an electronic message to a bank to immediately take the money from your account. The merchant is required to post a notice about ACH Check Conversion in a prominent and conspicuous location at the time of the transaction. You can stop payment on an ACH Check Conversion only if it has not yet been presented by the merchant.

##### **Electronic Fund Transfers**

You can stop payment of certain types of electronic transactions. Please refer to the Electronic Banking Agreement section for details.

##### **Checks and drafts**

If you want to stop payment of a check, you must stop by a U.S. Bank branch or call U.S. Bank 24-Hour Banking (see last page for phone numbers). Writing to us will take too much time and we will not

have time to act on your request before the check is paid. We will need the following information:

1. the account number the check is written on;
2. the check number;
3. the dollar amount;
4. the date; and
5. the name of the person you wanted to pay.

This information must be exact and correct. If it is not, we will not be responsible if the item is paid.

#### **Who can stop a payment and for how long?**

1. Any owner can stop payment of any check on the account whether that owner wrote the check or not (and assuming the item can still be stopped).
2. A stop payment order is effective for 24 months or longer, as determined at the time the stop payment order is placed. You must renew it prior to the expiration of the stop payment effective period or the item could get paid. We will not notify you when the stop payment effective period ends. Fees may be assessed for placing a stop payment order.
3. Only the owner who made the stop payment order can release it.
4. You must give us sufficient notice so that we have a reasonable period of time to act upon your request and verify that the item has not been paid.

#### **Effect of a stop payment**

When you stop payment of a check, you may still be obligated to the payee, and the payee may still have the right to collect on the check or the underlying transaction. If we have to defend ourselves for letting you stop payment on a check, you have to protect us by paying our expenses, including our reasonable attorney's fees.

#### **What if we don't stop payment?**

We cannot stop payment of a check that has already been paid.

If you ask us to stop payment of a check and we pay it anyway, we gain whatever rights the payee has against you. This means, if the check should have been paid, or the payee has the right to collect from you anyway, we can collect from you. Therefore, if we pay an item that should have been stopped, before we recredit your account, you will have to prove to us that by our payment you have suffered a loss and the cause is our failure to stop the payment.

#### **What kinds of checks does this NOT apply to?**

This section does not apply to items not drawn on your account, such as teller's checks, official (cashier's) checks, and accepted checks (e.g., certified checks). We have no responsibility to honor your request to stop payment of items not drawn on your account. If we agree to stop payment on these items, we may require you to provide us with additional security (for example, a bond or collateral) and you agree to indemnify us for any damages and costs we incur as a result of stopping payment of such items.

#### **Fee**

To stop a payment you must pay our fee, the amount of which is disclosed in the pricing information disclosure or agreement for your account.

## DORMANT ACCOUNTS AND ESCHSAT

A **dormant account** is an account that has been inactive. Generally, subject to state law, “inactive” means there has been no deposit, withdrawal or other communication from you about the account for the period of time as follows:

1. after 11 months for a checking account;
2. after 23 months for a savings account including those that offer limited (no more than six per month) check writing options.

For security reasons, we may refuse a withdrawal or transfer from an account we internally classify as inactive if we cannot reach you in a timely fashion to confirm the transaction’s authorization.

We charge a dormant account fee, unless excluded by account type or prohibited or restricted by state law. The dollar amount and frequency is disclosed in our pricing information disclosure.

If your account has a zero balance, we reserve the right to close it. Any accounts linked as overdraft protection will be de-linked as part of the closure process. Refer to CLOSING YOUR ACCOUNT for additional information.

**Escheat** is the term that is used to describe the process of transferring an account balance to the state government after an account has been dormant and if our attempts to contact you fail.

The time period after which funds must escheat to the state varies from state to state. Once the funds are transferred to the state, you may be able to recover the funds from the state itself, but not from us.

As permitted by the state, we may deduct the cost of required due diligence from the balance of your account. This due diligence may include first class and certified mailings or public notices about your account’s pending escheatment, as required by state law.

## SPECIAL PROVISIONS FOR THIRD-PARTY ACCOUNTS

If you have opened a deposit account on behalf of the beneficial owner(s) of the funds in the account (for example as an agent, nominee, guardian, executor, custodian or funds held in some other capacity for the benefit of others), those beneficial owners may be eligible for “pass-through” insurance from the FDIC. This means the account could qualify for more than the standard maximum deposit insurance amount (currently \$250,000 per depositor in the same ownership capacity). If the account has transactional features (such as check writing capabilities or the use of debit cards), as defined in 12 C.F.R. 370.2(j), you as the account holder must be able to provide a record of the interests of the beneficial owner(s) in accordance with 12 C.F.R. 370.5(a) and with the FDIC’s requirements as specified below.

The FDIC has published a Deposit Broker’s Processing Guide that describes the process to follow and the information you will need to provide in the event U.S. Bank fails. That information can be accessed on the FDIC’s website at <https://www.fdic.gov/deposit/deposits/brokers/> In addition, the FDIC published an Addendum to the Deposit Broker’s Processing Guide, section VIII, which is a good resource to understand the FDIC’s alternative recordkeeping requirements for pass-through insurance and is accessible at the website above. The Addendum sets forth the expectations of the

FDIC for pass-through insurance coverage of any deposit accounts, including those with transactional features. The Addendum will provide information regarding the records you keep on the beneficial owners of the funds, identifying information for those owners, and the format in which to provide the records to the FDIC upon failure of U.S. Bank. You must be able to provide this information in a timely manner in order to receive payment for the insured amount of pass-through deposit insurance coverage as soon as possible. You have an opportunity to validate the capability to deliver the required information in the appropriate format so that a timely calculation of deposit insurance coverage can be made. Please contact your account representative for details on the validation process.

You agree to cooperate fully with us and the FDIC in connection with determining the insured status of funds in such accounts at any time. In the event of failure of U.S. Bank, you agree to provide the FDIC with the information described above in the required format within 24 hours of the failure of U.S. Bank. As soon as the FDIC is appointed, a hold may be placed on your account so that the FDIC can conduct the deposit insurance determination; that hold will not be released until the FDIC obtains the necessary data to enable the FDIC to calculate the deposit insurance. You understand and agree that your failure to provide the necessary data to the FDIC may result in a delay in receipt of insured funds and legal claims against you from the beneficial owners of the funds in the account. If you do not provide the required data, your account may be held or frozen until the information is received, which could delay when the beneficial owners could receive funds. Notwithstanding other provisions in this Agreement, this section survives after a receiver is appointed for us, and the FDIC is considered a third-party beneficiary of this section.

## CONSUMER ELECTRONIC CHECK REPRESENTMENT

If you write a check on a personal account that we return unpaid because of insufficient or uncollected funds, the depositor of the check or the depositor’s bank may resend (“represent”) the check to us electronically. That is, the depositor or the depositor’s bank may send us an electronic instruction (“electronic represented check”) to charge your account in the amount of the check.

**Our Handling of Electronic Represented Checks.** If we receive an electronic represented check from the depositor or the depositor’s bank, we will pay or return the electronic represented check as if the original paper check were being represented to us. The section titled “**Electronic Fund Transfers**” will not apply to any electronic represented check.

**Ineligible or Unauthorized Electronic Represented Checks.** For an electronic represented check to be charged to your account, all of the following must be true:

- the electronic represented check must relate to a paper check drawn on a personal account that we returned unpaid because of insufficient or uncollected funds;
- the paper check must not have contained an unauthorized signature or an alteration and must not have been a counterfeit;
- you must not have placed a stop payment on the paper check after we returned it unpaid but before it was collected electronically;

- the paper check must have been less than \$2500.00 in amount;
- the paper check must have been dated 180 days or less before the date on which the electronic represented check is sent to us;
- the electronic represented check must be for the face amount of the paper check only and may not include any collection fee charged by the depositor, the depositor’s bank, or a collection agency;
- the payee of the paper check must have given you notice that, if we returned the paper check unpaid because of insufficient or uncollected funds, the fee could be collected electronically; and
- the electronic represented check must have been sent to us no more than twice after the first time we returned the paper check, or no more than once after the second time we returned the paper check.

You may have the right to reverse any ineligible or unauthorized electronic represented check that we charged to your account. If you want to reverse an electronic represented check because you placed a stop payment on the paper check to which the electronic represented check relates after we returned the paper check unpaid but before it was collected electronically, you must notify us within 15 days after we send or make available to you the periodic statement that reflects payment of that electronic represented check. If you want to reverse an electronic represented check for any other reason, you must give us an ACH Claim Form within 15 days after we send or make available to you the periodic statement that reflects payment of that electronic represented check. An ACH Claim Form may be obtained by contacting U.S. Bank 24-Hour Banking or a local U.S. Bank branch. In your claim form, you must declare and swear under oath that the electronic represented check was ineligible or unauthorized. If we receive your notice or claim form within the 15-day period, we will recredit your account with the amount of the charge but will not be responsible for any other damages associated with the transaction.

**Stop Payment.** If you wish to stop payment of any electronic represented check, you must follow the procedures contained in the rules for stopping payment of checks, not the procedures contained in the rules for stopping payment on electronic loan or bill payments.

## CHECKING ACCOUNTS AND “SUBACCOUNTS”

For regulatory accounting purposes we may designate two sub-accounts for a checking account; one sub-account is a savings (non-transaction) account and the other is a checking account. Checks and other third-party transfers are paid from the checking (transaction) account. As necessary, we transfer funds from the savings sub-account to the checking sub-account automatically. You cannot access the savings sub-account directly. This accounting device does not affect either the appearance or the operation of your checking account in any way.

## TELEPHONE TRANSFERS

If you have more than one account with us, including a credit card or open-end loan account, you can transfer funds between your accounts by telephone. You will need to have a PIN, and enter your account numbers, and other qualifications, but if you meet them,

1. you can transfer funds between your accounts by calling our 24-hour phone banking (see last page of this booklet for phone numbers), and
2. telephone transfers may be made by the same account owners/signers and usually under the same conditions as generally applicable to withdrawals made in writing or by other means.

A transfer made by telephone is not immediately completed. It may take as long as one business day for us to verify the transaction and make the transfer. Consumer customers are assigned or can choose a PIN when requesting a ATM or Debit Card. Consumer customers without a debit card or ATM card can request a PIN by speaking to a 24-Hour Banking representative at 800.872.2657. A form is sent by 24-Hour Banking to the customer for completion and must be mailed back to the address on the form. A confirmation letter is mailed to the customer once the PIN has been established.

## REAL-TIME PAYMENTS/PROHIBITION ON FOREIGN PAYMENTS

Real-Time Payments (“RTP”) is an electronic payment system which permits payment senders to send funds in real-time to payment receivers for deposit into the payment receiver’s account(s). This means that a payment receiver will have near immediate availability of funds sent using an RTP system. The RTP system is intended for domestic payments only. It prohibits payments which involve either a sender or receiver located outside the United States. You agree that to the extent you either send or receive payments through an RTP system, you will not use your accounts to do so on behalf of a person who is not a United States resident or otherwise domiciled in the United States and that you will comply with all regulations of the Office of Foreign Assets Control.

## REQUIRED SIGNATURES

**Signature Comparison.** We process certain items mechanically, based on information encoded on checks and other transaction items, and we are not required to examine items and debits drawn on your account. We collect your signature to obtain your agreement to the rules we establish for your account, but this does not create any responsibility on our part to verify signatures on items and other charges to your account.

**Number of Signatures.** You agree that if you

1. require the signatures of two or more persons to open an account;
2. have an account in which more than one signature is required to complete a transaction;
3. authorize someone to transact some but not all transactions on your account;
4. authorize someone to transact business on your account for limited purposes and no others; or
5. use checks that require two or more signatures,

such arrangements are strictly between you and the other person(s) you authorize, whether we have notice of your arrangement (including in a form we provide you) or not. You cannot assert a claim against us for permitting a transaction so long as any one of

the owners or authorized persons sign or initiate the transaction, even if a person exercises more authority than you have given.

## CHANGES TO OUR AGREEMENT WITH YOU

We may change any term of this Agreement. We will give you reasonable notice in writing or by any other method permitted by law. You agree that in any event 30 days written notice is reasonable.

If we notify you that the terms of your account have changed, and you continue to have your account after the effective date of the change, you have agreed to the new terms. For consumer customers, rules governing changes in interest rates are provided for separately in the Truth-in-Savings disclosure(s) or in another document.

## CLOSING YOUR ACCOUNT

*This section does not apply to an active time deposit (or certificate of deposit) account.*

**If you intend to close your account:** If you intend to close your account with us, you should tell us; simply transferring all the money in your account and reducing your account balance to \$0.00 is insufficient notice and may result in additional fees charged to your account.

If you close your account,

1. you are still responsible for transactions you arranged for, including those that arrive after the account is closed;
2. you should pay special attention to pre-authorized electronic deposits to your account and payments from that account; you should reroute the deposits to another account and make other arrangements for the payments, with us and the other institutions involved;
3. you should not close your account until all the transactions you arranged for have been cleared, and you should leave enough funds to clear them and the fees that might be due; and
4. if it is an interest-bearing account, accrued interest will not be paid.

If your account is closed and you have a debit or ATM card associated with the account, you will need to either:

1. close the associated card; or
2. select a new account to be linked to your card.

If you do not designate a new account, the bank will automatically assign your ATM/debit card to a new account from any eligible account where you are an owner/joint owner. If there are no eligible accounts the card will be closed.

### We can close your account:

We can close your account, ATM and debit card for any reason or for no reason at all. If we close your account, we will send you notice within ten days after closing and/or indicate the closure on your next account statement. We will send the collected account balance to you at your last known address as reflected in our account records. At our sole discretion we may, but are not required to, withhold a sufficient sum to cover any outstanding items and likely fees. If we withhold any money for such contingencies,

we will refund that to you after we are satisfied that no further withholding is necessary.

If your account is closed for any reason, you authorize us to re-open your account to process any transactions authorized prior to account closure, or for other purposes consistent with applicable law.

As part of the account closure, any accounts linked to the Checking Account as overdraft protection will be de-linked. If a U.S. Bank Reserve Line of Credit is linked as overdraft protection to a Checking Account that is closed for any reason, the Reserve Line will also be closed, and you must repay any remaining balance according to the monthly payment coupon included in your future periodic statements.

## STATEMENTS AND NOTICES

**Statements.** We will periodically make available to you a paper or eStatement of your checking or savings account. These statements show the transactions that occurred in the time period covered by the statement. If you elect **not** to receive or review your statement, you are still responsible for having access to the information provided in the statement. At our option, a statement will not be produced in any statement period in which service charges, fees, reversals, refunds or interest are the only transactions on the account. When other activity exists, such as a deposit or withdrawal, a statement will be available to you and will include all transactions which have occurred since the last statement (this includes any service charges, fees, reversals, refunds or interest that occurred since the last available statement). At a minimum, all accounts will receive an annual statement. Regardless of how frequently a statement is made available, monthly service charges and other account fees will continue to be deducted from the account. In addition, applicable interest will continue to accrue and be paid periodically as disclosed in the product pricing information disclosure.

**Combined Statements.** If you have multiple accounts with us, we may at any time automatically combine your accounts on a single, easy-to-read monthly statement. We will only combine statements for accounts that have common ownership (meaning at least one owner is common across multiple accounts) and the same address and Social Security Number.

**If you prefer to continue receiving separate statements, please contact U.S. Bank within 30 days of receiving your combined statement. You may reach us by calling one of the numbers listed on the back of this brochure, sending a letter to U.S. Bank, 60 Livingston Ave, EP-MN-WS5D, St. Paul, MN 55107, or sending a secured email by logging on to [usbank.com](http://usbank.com) and selecting “Contact Us”. Please include the following information in your correspondence: your name, account number(s) and the reference code “CMBSTMN.”**

**Your address.** You must give us your correct address, and if you move or change your address, you must keep us advised. You are responsible for messages and statements we send to the most recent address you have given us. We may also update your address in our records without a request from you if we receive an address change notice from the U.S. Postal Service or if we receive updated address information from our mail services vendor.

If you agree to accept mail electronically, you must give us your accurate email address and keep us up to date with any changes to your address. You are responsible for keeping your email functioning properly, or advising us if it does not work.

**Multiple owners.** Periodic statements and notices that we make available to one owner or agent/signer of an account will be the same as providing statements and notices to all owners of an account. You agree to designate the primary address for purposes of receiving statements and other account correspondence. Each account owner agrees that we may send any legal notice or legal process affecting any owner or the account to the primary address designated on the account. Each account owner agrees to notify the other owners of any legal notice received at that address pertaining to such other account owner or to the account.

**Your Duty to Examine Your Statement.** As used in this section, the term “problem” means any error, alteration, counterfeit check, or unauthorized transaction (including, but not limited to, forged or missing signatures and excluding consumer electronic banking transactions) related to your account. Because you are in the best position to discover any problem, you agree to promptly examine your statement and report to us any problem on or related to your statement within 30 calendar days after we mail the statement (or make the statement available) to you. You agree that we will not be responsible for:

1. any problem that you do not report to us in writing within a reasonable time not to exceed 30 calendar days after we mail the statement (or make the statement available) to you;
2. subsequent problems or fraudulent items occurring after 30 days of the first occurrence; if you fail to report the problem within 30 days of the first occurrence reported on your statement;
3. results from a forgery, counterfeit or alteration so clever that a reasonable person cannot detect it (for example, unauthorized checks made with your facsimile or other mechanical signature device or that look to an average person as if they contain an authorized signature); or
4. as otherwise provided by law or regulation.

You agree to waive any rights to recovery you may have against us if you do not provide notice to us in the manner and within the time required by this Agreement. You may not start a legal action against us because of any problem unless: (a) you have given us the above notice and (b) the legal action begins within one year after we send or make your statement available to you. You agree that if the problem is the result of a series of events (for example, multiple forgeries over a period of time) then the date the first event occurred is the date from which the period to bring a legal action will begin to run. If you make a claim against us in connection with a problem, we reserve the right to conduct a reasonable investigation before re-crediting your account and you agree to fully cooperate in such investigation. Within 30 days of the date of mailing, you agree to complete and return an affidavit of unauthorized paper debit on the form we provide you along with any other information we may request. You further agree to file a police report if we request. If you refuse to sign such an affidavit or fail to return the affidavit and other requested documentation within 30 days of the date we mail it to you, you agree that we may consider the matter resolved

and reverse any provisional credit provided. At our sole discretion, we may, but are not obligated to, provisionally credit your account during the investigation for all or a portion of the amount claimed. Any provisional credit to your account may be reversed if you fail to fully cooperate in our investigation or, if as a result of our investigation, we determine that the charge to your account was proper. You agree to pay any fees assessed or accrued against your account during the investigation or that may arise upon reversal of any provisional credit.

For problems involving an electronic banking transaction, please refer to the “**Electronic Banking Agreement**” sections of this brochure.

This time period for you to examine your statement and report problems to us are without regard to our level of care or the commercial reasonableness of our practices, and without regard to whether cancelled checks are supplied to you.

Contact us if you do not receive your regular statement. If this is a business account, you agree that you will have at least two people review your statements, notices, and returned checks, or in the alternative, the person who reviews these will be someone who does not have authority to transact business on the account.

## RETURN OF CANCELLED CHECKS

For some specific consumer and business checking accounts we currently offer two plans, with respect to the return of cancelled checks:

1. Check Safekeeping: paid checks that are not returned - your statement will show the check number, the amount, and the date it is paid; or
2. Image Checks on Statement: paid checks that are not returned - your statement will include a reduced image of the front of the check or front and back of a check in addition to the number, amount and date the check is paid as part of the statement; (See the **CHECK 21** section; the images sent with your statement are **not** substitute checks themselves, but some may be images of substitute checks.).

Option 1 is what you will get unless you specifically ask for option 2. The checking accounts for which these options are available vary. The products and our fee structures for each option are disclosed in the *Consumer Pricing Information* or *Business Pricing Information* disclosure or agreement for your account.

(Both can be obtained by stopping in a U.S. Bank branch or for the *Consumer Pricing Information* only, call 800.872.2657 to request a copy.)

If you take option 1 or 2, and you have need for a specific paper check, we can provide a substitute copy to you upon request.

## CHECKS, CHECKING ACCOUNTS AND SAVINGS ACCOUNTS WITH DRAFT ACCESS

**NOW Accounts:** Transaction accounts are NOW Accounts on which you can write negotiable orders of withdrawal. Negotiable orders of withdrawal look and function like checks, and the rules governing checks also apply to them. Depending on account features, NOW Accounts may or may not bear interest. Although we have no intention of exercising this right, federal regulations

require that we reserve the right to require at least seven days' written notice prior to withdrawal or transfer of any funds on your NOW Account.

## SAVINGS ACCOUNTS

By the term "savings" account we mean an account that earns interest but has no specific maturity date or required notice period. (A maturity date or a required notice period is a characteristic of a time deposit or certificate of deposit.)

We will provide you with a periodic (quarterly, monthly, annually based on your account type and account activity) statement for your savings account and you must examine your statement for errors or forgeries just as you should for your checking account.

### Savings Account Transaction Policy

We reserve the right to require seven days' notice before any withdrawal from any savings account, though it is very unlikely we will require such notice and, if we do, we will require it for all savings accounts.

## S.T.A.R.T. PROGRAM AGREEMENT

(New enrollment discontinued as of November 15, 2015)

### *Savings Today And Rewards Tomorrow*

S.T.A.R.T. is a program offered by U.S. Bank to help you achieve and maintain your savings goals. The following information provides the terms of the S.T.A.R.T. Program (the "Program"), the details you need to know to enroll in and manage your savings plan, as well as the terms for earning rewards under the Program. We may change these terms at any time, in which case we will provide you notice of those changes. Please read these terms carefully and contact us if you have any questions. By enrolling in the Program, you agree to these terms.

### Enrollment Process and Eligibility

*To be eligible for the Program, you must meet, and continue to meet, the following three requirements:*

1. Open and/or maintain an active U.S. Bank Package, including:
  - A Silver, Gold or Platinum Package Checking account AND
  - A Package Money Market Savings account

*Note: Account ownership must be identical for both the package checking and package money market savings accounts.*

2. Enroll in the Program.
3. Schedule and maintain a qualifying transfer from your Package Checking account to your Package Money Market Savings account.

### Qualifying Transfers Options

*A qualifying transfer must occur at least once per month from your Package Checking account ("checking account") to your Package Money Market Savings account ("savings account"). Three transfer options are available for you to choose. You are required to set up at least one option but can utilize all three choices.*

Note: Qualifying transfers may not be processed if your checking account has a negative Available Balance or if your balance would become negative as a result of the transfer.

**1. Scheduled Transfer option:** A recurring regularly scheduled transfer based on a specific amount transferred from the Package Checking to the Package Money Market Savings on a specific date(s) you select.

- Transfers can occur daily, weekly, every other week, or can be based on a specified date(s) or day(s) during the month. One-time or same-day transfers do not qualify.
- Example: Schedule a transfer of \$10.00 from your checking account to your savings account on the 1st of each month.

**2. Transfers Based on Debit Card Purchases:** A recurring transfer from the Package Checking account to the Package Money Market Savings account based on each number of U.S. Bank Debit Card purchases you make, transferred on the business day after the transaction is posted.

- Select a dollar amount between \$.25 and \$5.00 to transfer for each purchase transaction.
- The total number of debit card purchase transactions posted to your checking account each day will be multiplied by the per transaction dollar amount selected. That amount will be transferred from your Package Checking account to your Package Money Market Savings account.
- The debit card must be associated with the enrolled checking account. For joint checking accounts, more than one debit card can be designated and a separate transfer will occur for the activity of each card.
- Example: You have selected a transfer amount of \$.50. If five debit card purchases post on Tuesday, a transfer of \$.25 will occur on Wednesday (from your checking account to your savings account).

**3. Transfers Based on Credit Card Purchases:** A recurring transfer based on the number of U.S. Bank Credit Card purchases you make, transferred on the business day after the transaction is posted.

- Select a dollar amount between \$.25 and \$5.00 to transfer from the Package Checking account to the Package Money Market Savings account for each credit card purchase transaction.
- The total number of credit card purchase transactions posted to your credit card each day will be multiplied by the dollar amount selected. That amount will be transferred from your Package Checking account to your Package Money Market Savings account.
- The credit card owner's name must also be an owner on the enrolled S.T.A.R.T. checking account. For joint checking accounts, more than one credit card can be designated, and a separate transfer will occur for the activity of each card.
- All U.S. Bank-branded, co-branded or affinity credit cards are eligible.
- If more than one credit card is enrolled in S.T.A.R.T. for this transfer option, separate transfers will occur for the total purchases posted to each card.
- Example: You have selected a transfer amount of \$3.00. If two credit card purchases post on Monday, a transfer of \$6.00 will occur on Tuesday (from your checking account to your savings account).

## S.T.A.R.T. Goals and Rewards

*The Program offers two rewards that can be earned by achieving and maintaining a specific account balance – called your Goal Balance – in your savings account. Your Goal Balance is the account balance of your Package Money Market Savings account at time of enrollment, plus \$1,000.00. You must reach Goal 1 before you become eligible for Goal 2.*

**S.T.A.R.T. Goal 1:** When you reach the Goal 1 Balance in your Package Money Market Savings account AND a qualifying transfer occurs within 35 days of meeting the Goal 1 Balance, you will earn a \$50.00 U.S. Bank Rewards Card.

**S.T.A.R.T. Goal 2:** When you maintain the Goal Balance in your Package Money Market Savings account for 12 consecutive months from the date of meeting Goal 1, you will earn a \$50.00 U.S. Bank Rewards Card.

Note: Reward(s) will be sent to the primary savings accountholder within 30 days of goal verification. Rewards will be reported as interest earned on IRS Form 1099-INT. The accountholder is responsible for any applicable taxes. If your savings account is subject to State or Federal tax withholding, the amount of your U.S. Bank Rewards Card will have taxes withheld. A customer is eligible to earn only one of each goal type, for a maximum reward of \$100.00.

Rewards Cards cannot be reloaded with additional funds, nor can they be used at an ATM. No cash access. Terms and conditions, including fees, apply. Rewards Cards are issued by U.S. Bank National Association pursuant to a license from Visa U.S.A. Inc. © 2021 U.S. Bank.

### Monitor and Make Changes to your S.T.A.R.T. Selections

**You can make changes to any transfer option, add or delete transfer selections, and monitor your goal progress: by accessing your account via online banking, speaking with a banker at a participating branch, or calling U.S. Bank 24-Hour Banking (see last page for phone numbers). Additionally, S.T.A.R.T. mobile or email alerts can be set up through online banking, and your monthly statements will provide S.T.A.R.T. progress information.**

### Program Termination

Your participation in S.T.A.R.T. will end if:

- You notify your banker that you no longer wish to participate in the Program.
- Your Package Checking account or Package Money Market Savings account is closed, is transferred to another product, or the account ownership does not match on both the checking and savings accounts.
- A qualifying transfer is not scheduled for six consecutive months when working towards Goal 1 achievement.

## TIME DEPOSITS

A time deposit is more commonly known as a certificate of deposit or CD. With a time deposit, you agree to keep your deposit with us for a specified period of time, or agree to give a required advance notice prior to withdrawal, and we agree to pay you interest at an

agreed upon rate, or an agreed formula for a rate, for that period of time.

We are not required to permit an early withdrawal from a time deposit, and if we do, it will be on condition that you pay an early withdrawal fee and penalty. The amount of that penalty will be disclosed to you when you open such an account.

All the features of your time deposit will be disclosed to you when you open the account. You can call 24-Hour Banking, visit a local U.S. Bank branch, or go to [usbank.com](http://usbank.com) to find out what CD products and terms we offer.

If your time deposit, including single maturity, automatically renewable or Individual Retirement Account CDs, remains inactive for a pre-determined period of time, as required by state, and our attempts to contact you fail we may transfer or escheat your funds to the state as required.

**Escheat** is the term that is used to describe the process of transferring an account balance to the state government after an account has been dormant for a pre-determined period of time, as required by state, and if our attempts to contact you fail.

The time period after which funds must escheat to the state varies from state to state. Once the funds are transferred to the state, you may be able to recover the funds from the state itself, but not from us.

As permitted by the state, we may deduct the cost of required due diligence from the balance of your account. This due diligence may include first class and certified mailings or public notices about your account's pending escheatment, as required by state law.

## LIMIT OF LIABILITY

We process millions of transactions every day, with the help of complicated technology and other companies. If we make a mistake and charged you more than we should have, or failed to give you credit you were due, we will correct the error, so long as you give us sufficient and timely notice and an opportunity to fix it. See the section above titled **Statements and Notices**, for your duty to pay attention to your statement and report any errors.

You agree – to the extent allowed by law – to waive any indirect, incidental, special, consequential and punitive damages for errors or mistakes we make in good faith. This includes damages that might otherwise be available in a tort or contract action, and whether the consequences are foreseeable or not.

## ELECTRONIC MESSAGES AND AGREEMENTS

Many customers use the Internet and email as their primary form of communication with us. If you provide us with an email address, you agree that we may communicate with you via email and you further agree to notify us of any changes to your email address.

You agree that we may make agreements with you by electronic means. Your authorization and consent to such an agreement, or your delivery of instructions, may be made by use of certain numbers, codes, marks, signs, personal identification numbers (PINs), public or private keys or other means, acceptable to you and to us, to establish your identity and acceptance of the electronic communications. All electronic communications that meet these requirements will be deemed to be valid and authentic and you

intend and agree that those electronic communications will be given the same legal effect as written paper communications signed by you. You agree that electronic copies of communications are valid and you will not contest the validity of the originals or copies, absent proof of altered data or tampering.

You are not required to accept electronic communications; we want you to be aware that this is an option for you to accept. **We will never ask you for sensitive account information, such as, passwords, PINs, Social Security numbers or account numbers via email. If you receive an email that appears to be from U.S. Bank asking for this type of information, immediately forward the email in its entirety (not as an attachment) to fraud\_help@usbank.com.**

## LEVIES, GARNISHMENTS AND OTHER LEGAL PROCESS

We are a national bank with many locations. You agree that for purposes of this part, we may treat your funds as existing at any and all locations where legal process can be served upon us or on an appointed agent of ours on our behalf. You understand and agree that a creditor or governmental agency may attach your account by service of legal process on any of our locations, at any site designated by us for acceptance of service of process, on any appointed agent of ours, or any other method authorized by law, court rule, or regulation. We may accept and comply with legal process served by any means, whether in person, by mail, facsimile, electronic transmission, or other means. You agree that we may not contest such legal process.

If we are served with a garnishment, levy, execution, or other legal process of apparent validity (together referred to as “legal process”), you understand and agree that we will pay all amounts in the account, or release information about your account, in satisfaction of the legal process and in compliance with our understanding of applicable law. If your account is a joint account, for purposes of responding to legal process, we will consider each joint owner to have an undivided interest in the entire account. Therefore, you agree we may pay all amounts in the account in satisfaction of any legal process, even if it attaches to the interest of fewer than all the account owners. You agree that we may process a levy, garnishment, or other legal process served on us even if we do not process it on the same day it was received. If you believe your funds are exempt from legal process, or otherwise should not be subject to the legal process (for example, if you own funds and the legal process applies to another joint owner, you believe the court, garnishor, or levying authority lacks jurisdiction over you or the property, or you believe the garnishment or levy names the wrong party as garnishee), you agree that it is your responsibility to raise any defense to the legal process against the party who originated the legal process or seek reimbursement from a joint owner, and you agree that we have no obligation to do so.

If we are served with any legal process that tries to attach or in some way prevent you from freely using your funds, you give us the right, but we have no obligation, to hold any portion of the funds during any time necessary to determine to our satisfaction who has the legal right to the funds. If we are not able to determine whether the funds are subject to the legal process, you agree that we may deposit the funds with any court which we deem to have jurisdiction over us or the property in your account and ask that court to determine

to whom the funds belong. You consent to the jurisdiction of such court to determine the legal right to the property in your account and agree to reimburse us for our expenses, including attorney’s fees and expenses, arising out of the service of the legal process on us and our response to it.

If the legal process requires us to release information about one or more accounts for which combined statements are provided, we may release the entire combined statement even if other accounts on the statement are not covered by the legal process.

All legal process is subject to our rights of setoff and our security interest in your account. We will assess a service fee against your account for any legal process served on us regardless of whether the process is subsequently revoked, vacated, or released. Unless expressly prohibited by law, we will set off or enforce our security interest against your account for such fee prior to our honoring the legal process. We will not be liable to you if an attachment, a hold, or the payment of our fee from your account leaves insufficient funds to cover outstanding items. You agree to hold us harmless from any claim relating to or arising out of how we handle legal process pursuant to this part.

## RESOLVING ACCOUNT DISPUTES AND ADVERSE CLAIMS

If a dispute arises concerning your account (including, for example, a dispute over who is an authorized signer or owner), or if we believe we have a claim against you or we have or receive a claim by a third party (including our affiliates) to all or a portion of the property (including money, certificates of deposit, securities and other investment property, financial assets, etc.) in your account, or if we have concerns regarding your account or the use of your account, we have the right to hold any portion of the property in your account until the dispute, claim, or concern is resolved to our satisfaction. We will not be liable to you if the hold we place on your account leaves insufficient funds to cover outstanding items. For purposes of this section, “account” includes any account you have with us or any of our affiliates (including, without limitation, agency, custody, safekeeping, brokerage, and revocable trust accounts). If the dispute, claim or concern remains unresolved, you agree that we may at our option deposit the property in your account with a court and ask the court to determine to whom the property belongs. If we deposit your property with a court, you agree that we may charge your account for our costs, including attorney’s fees and expenses.

## INCREASED COSTS TO MAINTAIN YOUR ACCOUNT

If your account becomes subject to a receivership, court order or bankruptcy, and we are required to implement changes as to your account that increase our costs to maintain your account (for example, a requirement for us to pledge property to secure your account above the amount of any deposit insurance on your account), you agree to reimburse us for the additional costs and any expenses incurred by us (including legal fees) to implement such required changes as to your account.

## CONSUMER REPORT DISPUTES

We may report information about your deposit accounts to Consumer Reporting Agencies (CRA). As a result, this may prevent you from

obtaining services at other financial institutions. If you believe we have inaccurately reported information to a CRA, you may submit a dispute by calling 844.624.8230 or by writing to:

U.S. Bank Attn: CBDH Management, P.O. Box 3447, Oshkosh, WI 54903-3447. In order for us to assist you with your dispute, you must provide: your name, address and phone number; the account number; the specific information you are disputing; the explanation of why it is incorrect; and any supporting documentation (e.g., affidavit of identity theft), if applicable.

## ACCOUNT INFORMATION

Our Privacy Pledge discloses the information we share with other entities for marketing purposes. We also may be required to provide information about you and your account when and as required or permitted by law for other purposes, such as, for example:

1. reporting of interest you earn to federal and state tax authorities;
2. reporting of cash transactions that are at reportable limits;
3. investigating and reporting of transactions that we reasonably determine to be suspicious; and
4. responding to subpoenas, court orders, or government investigations.

## SETOFF

We have the right under the law to set off amounts you owe us against your accounts with us. For purposes of this section, “account” includes any account you have with us or any of our divisions, departments, and affiliates (including, without limitation, agency, custody, safekeeping, securities, investment, brokerage, and revocable trust accounts) and “you” includes, without limitation, your revocable trust, any partnership in which you are a general partner, any prior or successor entity by way of an entity conversion, and any other series of your series limited liability company (as applicable). In addition to this legal right, you give us and our affiliates the contractual right to apply, without demand or prior notice, all or part of the property (including money, certificates of deposit, securities and other investment property, financial assets, etc.) in your accounts, against any debt any one or more of you owe us or our affiliates. If your account is a joint account, you agree we may consider each joint owner to have an undivided interest in the entire account, so we may exercise our contractual right of setoff against the entire account. This includes, for example, debts that now exist and debts that you may incur later, your obligations under a guaranty, and also includes all fees you owe us or our affiliates. We will not be liable to you if enforcing our rights of setoff against your account(s) leaves insufficient funds to cover outstanding items or other obligations. You agree to hold us harmless from any claim arising as the result of our enforcement of our rights of setoff in, or enforcement of our rights of setoff against, your account(s).

Our contractual right of setoff does not apply:

1. to an account that is an IRA or other tax-deferred retirement account;
2. to a debt that is created by a consumer credit transaction under a credit card plan (but this does not affect our rights under any consensual security interest); or
3. if our records demonstrate to our satisfaction that the right of withdrawal that a depositor/debtor has with us only

arises in a representative capacity (for example, only as an authorized signer, attorney-in-fact or a fiduciary) for someone else.

This right of setoff is in addition to any security interest that we or an affiliate of ours might have in your deposit account.

## SECURITY INTEREST IN ACCOUNTS

You grant to us and our affiliates, a security interest in all your accounts with us, and all property in your accounts (including money, certificates of deposit, securities and other investment property, financial assets, etc.), to secure any amount you owe us or our divisions, department, and affiliates, now or in the future. This includes, for example, debts that now exist and debts that you may incur later, your obligations under a guaranty, and also includes all fees you owe us or our affiliates. For purposes of this section, “account” includes any account you have with us or any of our affiliates (including, without limitation, agency, custody, safekeeping, securities, investment, brokerage, and revocable trust accounts) and “you” includes, without limitation, your revocable trust, any partnership in which you are a general partner, any prior or successor entity by way of an entity conversion, and any other series of your series limited liability company (as applicable). In order to provide us and our affiliates with control over your account and all property in your account for purposes of perfecting the security interest granted above, you agree that we shall comply with any and all order, notices, requests and instructions originated by us or any of our affiliates directing disposition of the funds in your account without any further consent from you, even if such instructions are contrary to your instructions or demands or result in our dishonoring items which are presented for payment.

If your account is a joint account, you agree we may consider each joint owner to have an undivided interest in the entire account, so we may exercise our security interest against the entire account. We may enforce our security interest without demand or prior notice to you. You agree, for purposes of this security interest, that our affiliates may comply with any instructions we give them regarding your accounts held with them, without further consent. You also agree that we may comply with any instructions regarding your accounts that we receive from our affiliates pursuant to a security interest they have in your accounts with us. We will not be liable to you if enforcing our security interest against your account(s) leaves insufficient funds to cover outstanding items or other obligations.

You agree to hold us harmless from any claim arising as the result of our security interest in, or enforcement of our security interest against, your account(s).

## SECURITY

It is your responsibility to protect the account numbers, including card numbers and electronic access devices (e.g., an ATM card, debit card, username and password or PIN) we provide to you for your account(s). Do not discuss, compare, or share information about your account number(s) with anyone unless you are willing to give him or her full use of your money. An account number can be used by thieves to encode your number on a false demand draft which looks like and functions like an authorized check.

If you furnish your access device and grant actual authority to make transfers to another person (a family member, coworker or employee, for example) who then exceeds that authority, you are liable for the transfers unless we have been notified that transfers by that person are no longer authorized.

Your account number can also be used to electronically remove money from your account. If you provide your account number in response to a telephone solicitation for the purpose of making a transfer (to purchase a service or merchandise, for example), payment can be made from your account even though you did not contact us directly and order the payment.

You must also take precaution in safeguarding your blank checks. Notify us at once if you believe your checks have been lost or stolen. As between you and us, if you are negligent in safeguarding your checks, you must bear the loss entirely yourself or share the loss with us (we may have to share some of the loss if we failed to use ordinary care and if we substantially contributed to the loss).

We reserve the right to place a hold on your account if we suspect irregular, fraudulent, unlawful or other unauthorized activity involved with your account. We may attempt to notify you of such a hold, but we are not required to provide notice prior to placing the hold. You agree that we may maintain such a hold until all claims against you or us to the funds held in your account, whether civil or criminal in nature, have been resolved fully in our sole satisfaction.

## RESOLUTION OF DISPUTES BY ARBITRATION

**PLEASE READ THIS PROVISION CAREFULLY. UNDER THIS PROVISION, YOU WAIVE YOUR RIGHTS TO TRY ANY COVERED CLAIM IN COURT BEFORE A JUDGE OR JURY AND TO BRING OR PARTICIPATE IN ANY CLASS OR OTHER REPRESENTATIVE ACTION.**

The following provision applies to any claim, cause of action, proceeding, or any other dispute between you, on the one hand, and us, our respective parents, subsidiaries, affiliates, agents, employees, predecessors-in-interest, personal representatives, heirs and/or successors, and assigns, on the other hand (each a “Claim” as further defined under the heading “Claims Covered by Arbitration”), including all questions of law or fact related thereto.

**Agreement to Arbitrate:** Either you or we may elect in writing, and without the consent of the other, to arbitrate all Claims covered by this provision.

**Claims Covered By Arbitration:** Claims subject to our agreement to arbitrate shall include all of the following: (1) Claims related to or arising out of this account Agreement, or any prior or later versions of this account Agreement as well as any changes to the terms of this account Agreement; (2) Claims related to or arising out of any aspect of any relationship between us that is governed by this account Agreement, whether based in contract, tort, statute, regulation, or any other legal theory; and (3) Claims that relate to the construction, scope, applicability, or enforceability of this arbitration provision. Claims include Claims that arose before we entered into this account Agreement (such as Claims related to advertising) and after termination of this account Agreement.

**Claims Not Covered By Arbitration:** Claims subject to our agreement to arbitrate shall not include any Claim you file in a small claims court, so long as the Claim remains in such court and advances only an individual claim for relief.

**Commencing an Arbitration:** The party initiating arbitration must choose one of the following arbitration forums to administer the arbitration:

- The American Arbitration Association (“AAA”) under AAA’s Consumer Arbitration Rules, except as modified by this account Agreement. AAA’s Rules may be obtained from [www.adr.org](http://www.adr.org) or 1-800-778-7879 (toll-free).
- JAMS/Endispute (“JAMS”) under JAMS’ Comprehensive Arbitration Rules & Procedures or Streamlined Arbitration Rules & Procedures, including JAMS’ Consumer Minimum Standards, except as modified by this account Agreement. JAMS’ Class Action Procedures shall not apply. JAMS’ rules may be obtained from [www.jamsadr.com](http://www.jamsadr.com) or 1-800-352-5267 (toll-free).

If the chosen arbitration forum is for any reason unable to serve, then the parties may agree to a comparable substitute organization. If the parties are unable to agree, then a court of competent jurisdiction shall appoint a substitute organization.

**Arbitration Procedure:** The arbitration shall be decided by a single neutral arbitrator selected in accordance with AAA’s or JAMS’ rules, as applicable. The arbitrator will decide the dispute in accordance with the terms of our account Agreement and applicable substantive law, including the Federal Arbitration Act and applicable statutes of limitation. The arbitrator shall honor claims of privilege recognized at law. The arbitrator may award damages or other relief (including injunctive relief) available to the individual claimant under applicable law. The arbitrator will not have the authority to award relief to, or against, any person or entity who is not a party to the arbitration. The arbitrator will take reasonable steps to protect customer account information and other proprietary or confidential information. Any arbitration hearing shall take place in the federal judicial district that includes your home address, unless you and we agree in writing to a different location or the arbitrator so orders. If all Claims are for \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing in accordance with AAA’s or JAMS’ rules.

At your or our request, the arbitrator will issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. The arbitrator’s award shall be final and binding, subject to judicial review only to the extent allowed under the Federal Arbitration Act. You or we may seek to have the award vacated or confirmed and entered as a judgment in any court having jurisdiction.

**No Class Action or Joinder of Parties:** You and we agree that no class action, private attorney general, or other representative claims may be pursued in arbitration, nor may such action be pursued in court if either you or we elect arbitration. Unless mutually agreed to by you and us, Claims of two or more persons may not be joined, consolidated, or otherwise brought together in the same arbitration (unless those persons are joint account

owners or beneficiaries on your account and/or related accounts, or parties to a single transaction or related transaction). If this specific paragraph is determined by the arbitrator to be unenforceable, then this entire provision shall be null and void.

**Arbitration Costs:** Unless the applicable arbitration rules at the time of filing a Claim are more favorable to you, we will advance (i) all arbitration costs in an arbitration that we commence, and (ii) the first \$2,500 in arbitration filing, administration, and arbitrator’s fees in an arbitration that you commence. To the extent allowed by applicable law and our agreements, the arbitrator may award arbitration costs and attorneys’ fees to the prevailing party.

**Applicable Law:** You and we agree that you and we are participating in transactions that involve interstate commerce and that this provision and any resulting arbitration are governed by the Federal Arbitration Act. To the extent state law applies, the laws of the state governing your account relationship apply. No state statute pertaining to arbitration shall apply.

**Severability:** Except as this provision otherwise provides, if any part of this provision is deemed to be invalid or unenforceable by the arbitrator, that part will be severed from the remainder of this provision and the remainder of this provision will be enforced.

## ATTORNEY’S FEES

Where used, “attorney’s fees” includes our attorney’s fees, court costs, collection costs, and all related costs and expenses. Notwithstanding any provision in this Agreement to the contrary, any provision for attorney’s fees in this Agreement shall not be enforceable in any dispute governed by the laws of California or Oregon.

## FUNDS AVAILABILITY: YOUR ABILITY TO WITHDRAW FUNDS – ALL ACCOUNTS

This funds availability policy applies to deposits into a checking or savings account made at a branch or ATM. This policy may not apply to deposits made remotely through a mobile or other electronic device.

Some sections of this disclosure apply to all accounts and all customers. There are special sections for New Accounts, Commercial Accounts, Wealth Management Accounts and Retail Consumer and Business Accounts. We will make that clear in the section headings.

Funds “availability” means your ability to withdraw funds from your account, whether those withdrawals are to be in cash, by check, automatic payment, or any other method we offer you for access to your account. If deposited funds are not “available” to you on a given day, you may not withdraw the funds in cash and we may not use the funds to pay items that you have written or honor other withdrawals you request. If we pay items that you have written or honor other withdrawals before funds are available to you, we may charge a fee for this. Please review the product pricing information disclosure for information regarding overdraft fees associated with your accounts.

Please remember that even after the item has “cleared,” we have made funds available to you, and you have withdrawn the funds,

you are still responsible for items you deposit that are returned to us unpaid and for any other problems involving your deposit. See our **Returned Deposited and Cashed Items** section.

## DETERMINING THE AVAILABILITY OF A DEPOSIT – ALL ACCOUNTS

The day funds become available is determined by counting business days from the day of your deposit. Every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit in person before our “cutoff time” on a business day we are open, we will consider that day to be the day of your deposit for purposes of calculating when your funds will become available. However, if you make a deposit after the cutoff time, or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

**Our cutoff times vary from branch to branch. The earliest cutoff time at any of our branches is 2:00 p.m. (local time at the branch).**

If a deposit is made after 8:00 p.m. (local time at the ATM location) or on a day we are not open, we will consider the deposit to be made on the next business day we are open.

Deposits you send by mail are considered deposited on the business day it arrives if it arrives by the cutoff time at the branch of deposit. In all cases, availability of any deposit assumes that a requested withdrawal will not overdraw the account.

## IMMEDIATE AVAILABILITY – ALL ACCOUNTS

The following types of deposits will usually be available for withdrawal immediately under normal circumstances:

- Cash (if deposited in person to an employee of ours);
- Electronic direct deposits;
- Wire transfers; and
- The first \$225.00 from the total of all other deposits made on any given day.

Cash and wire transfer deposits are subject to the **Special Rules for New Accounts** and the \$225.00 availability is subject to the rule in the section titled **Longer Delays May Apply**.

## LONGER DELAYS MAY APPLY

**Government Checks, Cashier’s Checks, and Other Types of Special Checks.** If you make a deposit of one of the following items in person to one of our employees, our policy is to make the funds from those deposits available no later than the first business day after the day of deposit:

- State and local government checks that are payable to you;
- Cashier’s, certified, and teller’s checks that are payable to you; and
- Federal Reserve Checks, Federal Home Loan Checks, and U.S. Postal Money orders that are payable to you.

If you do not make your deposit in person to an employee of the bank (for example, if you mail us the deposit), funds from these deposits may be available no later than the second business day after the day of deposit. However, we may delay funds for a longer period of time, see section titled **Longer Delays May Apply – Safeguard Exceptions**.



**Case-by-Case Delays.** In some cases, we will not make all of the funds that you deposit available to you as provided above. Depending on the type of check that you deposit, funds may not be available until the second business day after the day of your deposit. The first \$225.00 of your deposit, however, will be available no later than the first business day after the day of deposit, and usually immediately.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees (including a deposit made at an ATM) or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

**Safeguard Exceptions.** In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,525.00 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit.

## RETAIL CONSUMER, BUSINESS AND COMMERCIAL ACCOUNTS

Our general availability policy for these accounts is to make funds available to you on the first business day after the day of deposit. We generally make some portion of a day's deposits available for withdrawal immediately. See the previous section for the types and amounts of deposits that are available immediately.

## WEALTH MANAGEMENT ACCOUNTS

Our general availability policy for **Private Client Accounts** is to make funds you deposit available to you immediately. This immediate availability policy includes all deposits at any ATM. The section above titled **Longer Delays May Apply** also applies to your accounts. If we impose a delay as provided in that section, then the sections titled **Cashing Checks** and **Other Accounts** may also apply.

## DEPOSITS AT AUTOMATED TELLER MACHINES – RETAIL CONSUMER, BUSINESS AND COMMERCIAL ACCOUNTS

**Our Machines.** If you make a deposit at a deposit-accepting ATM identified as ours with the U.S. Bank name, your deposit will generally be available on the first business day after the day of deposit. However, in certain circumstances, and at U.S. Bank's

discretion, the funds may not be available until the second business day after the day of deposit.

**Partner ATMs.** U.S. Bank has established alliances to expand ATM convenience. These partner ATMs display the U.S. Bank logo and are included in the definition of a U.S. Bank ATM. However, these ATMs generally do not accept deposits. If we permit a deposit at a partner ATM, your deposit will not be available until the fifth business day after the day of deposit.

**Other Machines.** Generally, deposits at an ATM that is not identified as ours with the U.S. Bank name are not permitted. If we permit a deposit at an ATM that is not identified as ours with the U.S. Bank name, your deposit will not be available until the fifth business day after the day of deposit.

## SPECIAL RULES FOR NEW ACCOUNTS – RETAIL CONSUMER AND BUSINESS ACCOUNTS

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits and deposits of cash and wire transfers to your account will be available on the day we receive the deposit. The first \$5,525.00 of a day's total deposits of cashier's, certified, teller's, traveler's, on-us checks (checks drawn on U.S. Bank), and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess amount over \$5,525.00 will be available on the fifth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,525.00 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will generally be available on the fifth business day after the day of your deposit. In certain instances, we may hold funds from other check deposits for longer than five business days. For example, if we receive a check that falls within the Safeguard Exception description above, we may delay funds for up to seven business days. If we do so, we will provide you with a hold notice at the time of deposit or when we learn that we will hold the funds from the deposit.

## CASHING CHECKS

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it.

## OTHER ACCOUNTS

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the day the deposited item would have been available, which will usually be the first business day after the day of deposit.

## ADDITIONAL TERMS FOR BUSINESS ACCOUNTS

**All other sections of this Agreement apply to consumer and business accounts alike, (except when a rule specifically says it will apply to consumers). The following sections apply to accounts used primarily for business purposes.**

## UNLAWFUL INTERNET GAMBLING AND OTHER ILLEGAL TRANSACTIONS

**You agree that you, or anyone acting on your behalf, will not use your account, access device or banking relationship with us to facilitate illegal transactions such as those prohibited by the Unlawful Internet Gambling Act of 2006, or otherwise violate any law, rule or regulation applicable to you. If we identify a suspected illegal transaction, we may block such transactions, and further we may close your account or terminate our banking relationship with you.**

## DEPOSIT OF PRE-AUTHORIZED DRAFTS

A pre-authorized draft is an arrangement whereby you get authority from a person (a customer, usually) to access a deposit account owned by that person to pay a debt that person owes you. You deposit these "drafts" into a deposit account with us, and we collect them from your customers, who may have accounts with us or other banks. (These "drafts" are checks you create based on information your customer provides you, such as the customer's name and account number, and the express permission your customer gave you to draw on his account.)

When you deposit these pre-authorized drafts, you make the following agreements and warranties:

1. You have express, verifiable and binding authorization from your customer to access his, her or its account for the amount you ask us to collect;
2. You will keep the proof of your authorization in retrievable form for not less than two years from: (a) the date of the authorization of a one-time draft; or (b) from the date of revocation of the authorization of recurring drafts. You agree to provide us with such proof upon our request;
3. We may reverse any credit given to you for any draft deposited to your account and returned to us regardless of when it is returned or the reason for the return. We may take funds in your account to pay the amount you owe us, and if there are insufficient funds in your account, you will still owe us the remaining balance.

## EARNINGS CREDIT

Fees for services used by you may be assessed in full to your accounts or may be offset through account analysis by applying earnings credit to your service charges to determine a single monthly net service charge. Your earnings credit rate is established by us and will change from time to time. For business accounts, the variable earnings credit rate may be zero or a negative rate. If the earnings credit rate for any of your account(s) or the index or other referenced rate upon which the earnings credit rate for your account(s) is based is at any time less than zero percent, you agree to pay all amounts of the negative earnings credit or fees which we impose as compensation for the negative earnings credit rate. Your

net service charge could be zero if your earnings credit equals or exceeds your total charges in a given month. If your earnings credit is not sufficient to offset the amount due hereunder, you agree to pay such amounts to us upon demand.

## WAIVER OF NOTIFICATION OF REDEPOSITED CHECKS

When you deposit checks to your account, you have a right to be notified whenever a check you deposit is returned unpaid. We offer a plan (to businesses who elect it) whereby we will automatically redeposit checks returned unpaid due to insufficient funds. To simplify collection of these items, you give up this right to notification for those items we redeposit. If these items are returned unpaid a second time, you will receive standard notification.

We may withhold the availability of funds represented by a redeposited check. We will notify you of such delay.

## FACSIMILE SIGNATURES

You may wish to use a facsimile signature stamp or other mechanical signature device to sign checks or other orders relating to your accounts. If you do, we will, without contacting you, debit your account for items bearing an imprint that looks substantially like your authorized mechanical signature, whether or not such items bear the actual facsimile signature stamp. You agree to notify us and give us a sample imprint if you plan to use such a device. If you do not give us a sample, this section still applies to your use of the device. You are responsible for the security of any mechanical signature device. We will not be responsible for payment of unauthorized items bearing an imprint from, or similar to, your authorized mechanical signature.

## DEPOSITS

### Truncation, Substitute Checks, and Other Check Images:

If you truncate an original check and create a substitute check or other replacement document, or other paper or electronic image of the original check, you warrant that no one will be asked to make payment on the original check, a substitute check or any other electronic or paper image, if the payment obligation relating to the original check has already been paid. You also warrant that any substitute check(s) you create conforms to the legal requirements and generally accepted specifications for substitute checks. You agree to retain the original check in conformance with the time requirements as outlined in your remote deposit capture agreement with us. You agree to indemnify us for any loss we may incur as a result of any truncated check transaction you initiate. We can refuse to accept substitute checks that have not previously been warranted by a bank or other financial institution in conformance with the Check 21 Act. Unless specifically stated in a separate agreement between you and us, we do not have to accept any other electronic or paper image of an original check.

**Deposit Preparation, Sorting, and Endorsements:** You agree to properly prepare, sort, and endorse all deposits according to requirements specified in any applicable user guides and Federal Regulation CC. We require that you include the external processing code of "6" in Position 44 of the MICR line for all remotely created checks, and we reserve the right to dishonor any remotely created check that does not meet the requirement. You agree to indemnify

us for any loss we incur that results from your failure to comply with these requirements.

**Requalification:** If you elect to have another bank or entity receive and process all of your returned checks, such other bank's endorsement may be obscured by our depository bank endorsement. You understand and agree that any other endorsement placed on your checks that identify another bank as the depository bank or the bank to which checks should be returned may result in illegible or double endorsements, which may delay the return of your checks. You agree we shall not be liable for any such delays.

## FRAUD PREVENTION MEASURES

We offer certain products and services, such as "positive pay," and account blocks and filters that are designed to detect or deter fraud. Failure to use such services could substantially increase the likelihood of fraud. If you fail to implement any of these products or services, or if you fail to follow these or other precautions reasonable for your type of account or circumstances, you agree that you will be precluded from asserting any claims against us for paying any unauthorized, altered, counterfeit or other fraudulent item that such product, service or precaution was designed to detect or deter, and we will not be required to re-credit your account or otherwise have any liability for paying such items.

**CUSTOMER SEGREGATED ACCOUNTS.** Notwithstanding anything to the contrary in this Agreement or any other agreement, we will maintain all money designated as client money—by broker-dealers, future commission merchants, or derivatives clearing organizations—in customer segregated accounts in accordance with acknowledgement letters required by applicable SEC and CFTC rules and regulations.

## ELECTRONIC BANKING AGREEMENT FOR CONSUMER CUSTOMERS

This section applies to payment orders and funds transfers governed by the Electronic Fund Transfer Act. When you enroll in online and mobile banking we will provide you with the U.S. Bank *Digital Services Agreement* that governs the use of all online and mobile services ("Digital Services").

If you have any questions regarding electronic banking transactions or believe that an unauthorized transaction has occurred, please call U.S. Bank 24-Hour Banking (see last page for phone numbers), visit a local U.S. Bank branch or write to:

**U.S. Bank 24-Hour Banking**  
**EP-MN-WSSD**  
**60 Livingston Ave.**  
**St. Paul, MN 55107**

Please read this disclosure carefully because it tells you your rights and obligations for the transactions listed. You should keep this notice for future reference.

## TYPES OF TRANSACTIONS

These are the types of Electronic Fund Transfers that you can accomplish with us (assuming you make arrangements to do so).

**Electronic Fund Transfers Initiated by Third Parties.** You may authorize a third party to initiate electronic fund transfers between

your account and the third party's account. These transfers to make or receive payment may be one-time occurrences or may recur as directed by you. These transfers may use the Automated Clearing House (ACH) or other payments network. Your authorization to the third party to make these transfers can occur in a number of ways. In all cases, these third-party transfers will require you to provide the third party with your account number and bank information. Thus, you should only provide your bank and account number information (whether over the phone, the Internet, or via some other method) to trusted third parties whom you have authorized to initiate these electronic fund transfers. Examples of these transfers include, but are not limited to:

**Direct Deposits.** You can arrange for direct deposits to your checking or savings account(s).

**Preauthorized Payments.** You can arrange to pay certain recurring bills from your checking or savings account(s).

**Electronic check conversion.** You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to pay for purchases or pay bills.

**Electronic returned check charge.** You may authorize a merchant or other payee to initiate an electronic fund transfer to collect a charge in the event a check is returned for insufficient funds.

### Expanded Account Access

**What it is.** Any card or PIN (personal identification number) can be used to access up to five checking, savings, line of credit and credit card account(s) held in the same name at U.S. Bank or any of its bank affiliates; and any account you open with us and our affiliates may be accessed by your card or PIN. "Access" means use of a card or account number and PIN to conduct a transaction or obtain information at ATMs, over the telephone, through personal computer banking, or any other available method. If the card or PIN is for a joint account, that card or PIN can be used to access all the accounts linked to the card or PIN account, whether joint or individual. Expanded Account Access is also applicable to your Digital Services.

**The "cards" that can get Expanded Account Access.** All U.S. Bank Debit Cards and ATM cards (excluding prepaid cards), and all U.S. Bank-issued Credit Cards (including, but not limited to, co-branded credit cards, and all credit lines issued through U.S. Bank and U.S. Bank affiliates).

**Fees and Charges for Expanded Account Access.** There are no additional fees or charges just for Expanded Account Access, but fees applicable to each applicable account will continue to apply in accordance with the terms of the applicable account agreements. The fees and terms for each of your accounts will be as disclosed in the *Consumer Pricing Information* disclosure. (This document can be obtained by contacting a U.S. Bank branch or calling 800.872.2657.)

The fees and terms for your personal credit cards and lines of credit are disclosed in the applicable cardmember agreement.

**How to Cancel.** You can visit a branch or call the U.S. Bank 24-Hour Banking number at any time to cancel Expanded Account Access. If you cancel Expanded Account Access for any account, that account

will not be accessible by any card or PIN other than the card or PIN specifically designated for that account.

### Account Access at Automated Teller Machines

You can access up to five checking, five savings, and five line(s) of credit or credit card accounts at U.S. Bank ATMs through all your cards held in the same name (excluding prepaid cards).

You may perform the following transactions at ATMs:

- Make cash withdrawals from your checking and savings accounts associated with your card. Cash denominations vary by ATM.
- Get cash advances from your credit card account using your U.S. Bank Debit Card or ATM card. (Refer to your cardmember agreement for any cash advance fees and finance charges that may apply.)
- Deposit funds to checking and savings accounts associated with your card. Deposit up to 30 checks and 50 bills in a single transaction. Instant availability for cash deposits if deposited before 6:00 p.m. local time in a non-envelope deposit ATM.
- Transfer funds from your account(s) associated with your card.
- Make payments to credit card or line of credit accounts from a deposit account associated with your card.
- Check the current balance of your checking, savings, credit card and line of credit accounts associated with your card.
- Request a statement showing your most recent deposit account transactions. (Refer to the *Consumer Pricing Information* disclosure regarding any fees for purchasing statements at ATMs. This disclosure can be obtained by contacting a U.S. Bank branch or calling 800.872.2657.)
- Change your ATM or debit card PIN.
- Make certain charitable contributions from a deposit account associated with your card.
- You may access your Home Equity Line of Credit or Personal Line of Credit for balance inquiries and making a payment to the respective line of credit at the ATM.

Some of these transactions are not available at all ATMs.

For customers with a Debit or ATM card that have accessed a Home Equity Line of Credit or a Personal Line of Credit through the expanded card access feature, cash withdrawals/advances and transferring from the Home Equity Line of Credit or Personal Line of Credit is not allowed.

### Purchases at Merchants

You may use any of your U.S. Bank Debit Cards to make purchases at merchants that accept Visa® debit cards. You may use your U.S. Bank ATM Card and any of your U.S. Bank Debit Cards to make purchases by entering your PIN at participating merchants. You may also get cash from a merchant, if the merchant permits. Purchases made with your card will result in debits to your "primary" checking account. These transactions will be itemized on your monthly statement, including the merchant name, location, the date of purchase and the amount of the purchase.

### Partial Debit Card Transactions

Some merchants may be enrolled in Visa's Partial Authorization service. This means that if you chose 'No' to ATM and Debit Card Overdraft Coverage, your transaction may be approved for only

part of your total purchase amount. This occurs when you do not have a sufficient Available Balance, necessary to pay for the entire transaction, at the time of the purchase. Additionally, funds from your designated account(s) linked for Overdraft Protection (if applicable) may be considered when determining the amount that is authorized.

For example, if you attempt a \$30.00 transaction when your account has an Available Balance of \$20.00, your purchase may be approved for \$20.00 instead of the entire transaction being declined.

### Other Electronic Transactions

In addition to transactions initiated by using your U.S. Bank Debit Card, there are other electronic banking transactions that you may arrange through your account. These include:

- Telephone/personal computer activated transfers of funds from your accounts with us to other accounts with us or to third parties. These include but are not limited to transfers made by telephone, text, online and mobile banking.
- Automatic transfer of funds between checking and savings accounts.
- Automatic periodic payments to third parties or us from checking or savings accounts (for example, monthly mortgage payments, installment loan payments, insurance payments, utility payments).
- Direct deposit to checking or savings accounts (for example, payroll checks, social security payments).
- Electronic check conversions from your checking account using a blank, partial or fully completed personal check at merchant locations.
- Payments made to your account through your U.S. Bank Debit Card.
- You can also use any of your U.S. Bank Debit Cards to obtain a cash advance from your checking account at any Visa® member bank anywhere in the world.

## LIMITS ON TRANSFERS

### New Accounts

Generally, you cannot make deposits at a non-U.S. Bank ATM. If we permit a deposit at an ATM that is not identified as ours with the U.S. Bank name, your deposit will not be available until the fifth business day after the day of deposit.

### Security

For security reasons, there are limitations on the transactions that you may perform with any of your U.S. Bank Debit Cards or U.S. Bank ATM Cards per day. There are limitations on the number of transactions that can be performed per day and the limits may vary. For security reasons we do not disclose these limits. There are limitations on the dollar amount of cash withdrawals at ATMs and/or cash that you receive from merchants over the amount of your purchase. There are also limitations on the total dollar amount of purchases at merchants and/or cash advances at Visa® member banks you may perform during each 24-hour period beginning at 4:30 p.m. Central Time. Our standard transaction limits for ATM cards are \$300.00 per day for cash withdrawals and \$1,000.00 per day for purchases. Our standard transaction limits for debit cards are \$500.00 per day for cash withdrawals and \$1,000.00 per day for purchases and/or cash advances at banks. Our standard transaction



limits for receiving money through your U.S. Bank Debit Card are \$3,000.00 per transaction and \$10,000.00 per day. We may change these limitations based on periodic risk assessments and we reserve the right to make such changes without notice to you. Transfer limits are also subject to temporary reductions to protect the security of customer accounts or transfer systems.

### Debit Card Transactions

When you use your U.S. Bank Debit Card (Debit Card) for payment, the merchant requests U.S. Bank to authorize the transaction amount. We rely on the merchant to inform us if a debit card transaction is a one-time or a recurring transaction. At the time of the request, we authorize (promise to pay) or decline the merchant's request. If we authorize (promise to pay) we will reduce your Available Balance by the amount of the merchant's authorization request. Some merchants (e.g., hotels, restaurants, gas stations, car rental agencies) request an authorization that is an estimated amount of the anticipated purchase instead of the full purchase amount. As a result, the reduction of your Available Balance may be less or greater than the final debit card transaction amount presented for payment. It is important to note that your Available Balance may change between the time a debit card transaction is authorized and when the debit card transaction is presented for payment.

Debit card authorizations will be reflected as pending transactions from the time we receive the authorization until the merchant presents the item for payment, a completion message is received, or three business days, whichever occurs first. If the debit card authorization has not been presented for payment after three business days, it will be removed from your pending transactions and your Available Balance will no longer be reduced by the authorization amount. Due to prior authorization (promise to pay), if the debit card transaction is presented for payment at a later date we will pay the item regardless of your Available Balance.

If any debit card transaction results in a negative Available Balance at the time it is presented for payment—even if your Available Balance was positive at the time the debit card transaction was authorized—you may be charged an Overdraft Paid Fee. For more information on Available Balance please see the section titled **INSUFFICIENT FUNDS AND OVERDRAFTS**.

Please know, it is your responsibility to ensure your account has a sufficient Available Balance to cover all transactions you conduct. We recommend keeping a record of your balance and deducting every transaction at the time you initiate it.

### FEES

We will charge you fees for electronic fund transfers in accordance with the information found in our *Consumer Pricing Information* disclosure. (This disclosure can be obtained by contacting a U.S. Bank branch or calling 800.872.2657.) The fees may be changed at any time, subject to our giving you any notice required by law.

**ATM Surcharges.** When you use an ATM that is not identified as ours with the U.S. Bank name, and the ATM does not participate in the MoneyPass® Network, you may be charged a fee by the ATM operator or any network used to complete the transfer. To find MoneyPass ATM locations, please visit [www.moneypass.com](http://www.moneypass.com).

## USING YOUR CARD FOR INTERNATIONAL TRANSACTIONS

You may use your U.S. Bank Debit Card or ATM card for retail purchases with international merchants, for international cash advances and all transactions performed at international ATMs that bear any of the network logos found on your card. Refer to our *Consumer Pricing Information* disclosure for fee information. (This disclosure can be obtained by contacting a U.S. Bank branch or calling 800.872.2657.) We may block transactions in certain foreign countries. Call us at 800.872.2657 for more information. Some merchant and ATM transactions, even if you and/or the merchant or ATM are located in the United States, are considered international transactions under the applicable network rules, in which case we will add International Processing Fees to those transactions.

U.S. Bank does not control how these merchants, ATMs and transactions are classified for this purpose. If the transaction requires a currency conversion, the exchange rate in effect when processed may differ from the rate in effect on the date of the transaction or the date of the posting to your Account.

Transactions processed through the Visa® system will be converted according to the applicable rules established by Visa®. The foreign currency transaction will be converted to U.S. Dollars by multiplying the amount of the foreign currency times (a) a rate selected by Visa® from the range of rates available in wholesale currency markets for the applicable central processing date, which rate may vary from the rate Visa® itself receives, or (b) the government-mandated rate in effect for the applicable central processing date. For transactions processed through other networks, the international currency transaction will be converted by that network in accordance with their rules.

Additional fees may apply. If you need to contact us about your card while outside of the United States, call us collect at 503.401.9991.

### ADVISORY AGAINST ILLEGAL USE

You agree not to use your card(s) for illegal gambling or any other illegal purpose. Display of a payment card logo by, for example, an online merchant does not necessarily mean that transactions are lawful in all jurisdictions in which you may be located; therefore, we reserve the right to decline all online (Internet) gambling transactions.

### DOCUMENTATION

**Terminal transfers.** You can get a receipt at the time you make any transfer to or from your account using automated teller machines or point-of-sale terminals. However, you may not get a receipt if the amount of the transfer is \$15.00 or less.

**Pre-authorized credits.** If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call U.S. Bank 24-Hour Banking, log in to the U.S. Bank Mobile App or visit our online banking site at [usbank.com](http://usbank.com) to find out whether or not the deposit has been made.

**Periodic statements.** You will get a monthly account statement unless there are no transfers in a particular month. In any case, you will get the statement at least quarterly for an account to or from which you have arranged for electronic access. In the event your account has become inactive as defined in the section titled Dormant Accounts

and Escheat (refer to page 31) and you have had no electronic activity, you will receive an annual statement.

### PREAUTHORIZED PAYMENTS

If you have arranged for automatic periodic payments to be deducted from your checking or savings account and these payments vary in amount, you will be notified by the person you are going to pay ten calendar days prior to the payment date of the amount to be deducted. If the date upon which your payment is scheduled to be deducted changes, the person you are going to pay will notify you seven calendar days prior to the new scheduled date. To confirm the completion of automatic transfers, payments and/or direct deposits, please contact U.S. Bank 24-Hour Banking, log in to the U.S. Bank Mobile App or visit our online banking site at [usbank.com](http://usbank.com).

### Right to Stop Payment of Preauthorized Transfers

To stop a preauthorized electronic payment or transfer, please call U.S. Bank 24-Hour Banking (see last page for phone numbers). You must call in time for us to receive your request and to be able to act upon it, which in the case of these electronic payments, is at least three business days before the transfer is scheduled to occur. We may also require you to put your request in writing and forward it to us within 14 days after you call.

**If you order us to stop one of these payments at least 3 business days before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.**

### OUR LIABILITY

**Liability for failure to make transfers.** If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

1. If, through no fault of ours, you do not have enough money in your account to make the transfer.
2. If you have an overdraft line and the transfer would go over the credit limit.
3. If the automated teller machine where you are making the transfer does not have enough cash.
4. If the terminal or system was not working properly and you knew about the breakdown when you started the transfer.
5. If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
6. There may be other rules/limitations stated in our agreement(s) with you that excuse our failure to make a requested transfer (for example, the monthly limit on certain transfers out of non-transaction savings accounts; refer to Savings Accounts, Withdrawal section on page 39 for additional details).

### Authorized Transactions

We assume that all transactions performed with your U.S. Bank ATM Card or any of your U.S. Bank Debit Cards and/or your personal identification number (PIN) are authorized unless you promptly notify us to the contrary. If you intentionally provide another person with the means to perform electronic banking transactions using your account, any resulting transactions will be treated as if they were

performed and authorized by you. Such treatment will continue until you notify U.S. Bank Fraud Liaison Center (see page 62) that the other person is no longer authorized to use your card and/or PIN (in which case the card and PIN will have to be deactivated).

## UNAUTHORIZED TRANSACTIONS AND LOST OR STOLEN CARDS

An unauthorized transaction is one that another person conducts without your permission and from which you receive no benefit.

In order to avoid unauthorized transactions, please observe the following basic precautions:

- Do not keep your U.S. Bank ATM Card or U.S. Bank Debit Card and personal identification number (PIN) together. Do not write your PIN on your card.
- Do not provide your card or reveal your PIN to another person. If you do so, you authorize that person to conduct transactions using your card or PIN. You are liable for that person's transactions until you notify U.S. Bank Fraud Liaison Center (see below) that the person is no longer authorized to use your card or PIN.
- Notify U.S. Bank Fraud Liaison Center or any U.S. Bank branch of the loss, theft or unauthorized use of your card or PIN.
- Notify U.S. Bank Fraud Liaison Center or any U.S. Bank branch if you think an electronic banking transaction is incorrectly reported on a receipt or statement. Failure to promptly notify U.S. Bank Fraud Liaison Center or any U.S. Bank branch of the loss, theft, or unauthorized use of your card or PIN will result in inconvenience to you and will hinder the efficient operation of your account.

**U.S. Bank Fraud Liaison Center**  
**877.595.6256**

We reserve the right to cancel, block, and not renew your access device for any reason, with or without prior notice. Reasons for suspension of access may include, for example:

- Detection of suspicious or fraudulent activity;
- Lack of usage;
- Misuse; or
- Access devices returned as undeliverable by postal service.

## CONSUMER LIABILITY FOR UNAUTHORIZED TRANSFERS

**Zero Liability for All Transactions.** Except as provided in the next paragraph, you are generally protected from all liability for unauthorized use of any of your U.S. Bank Debit Cards, the associated account numbers printed on them (including purchases made over the phone, online or in the U.S. Bank Mobile App) and your ATM card or its associated personal identification number (PIN). You still need to report the loss or theft of these cards, PINs, and any unauthorized transactions to us as soon as you can. This is necessary so you can get any unauthorized transactions reversed, prevent further unauthorized transactions, and avoid liability for subsequent purchases we could have prevented had you given us notice. This policy also protects you from liability for other types of electronic fund transfers. Please follow the section entitled **Error Resolution Notice** to report any unauthorized activity on your account.

**After 60 Days from Statement Notice.** If you fail to give us notice of an unauthorized electronic fund transfer within 60 days of when we first deliver a statement to you that discloses that unauthorized transaction, you will be liable for all unauthorized electronic fund transfers that occur after that 60-day period expires if we could have prevented such transaction had you reported it to us within the 60-day period. This rule applies to all forms of electronic fund transfers (including but not limited to ATM transactions, preauthorized withdrawals, online or mobile transactions, and purchases with any of your U.S. Bank Debit Cards, etc.) that occur after the 60-day period following the first statement notice.

If a good reason (such as a long trip or hospital stay) kept you from telling us, we may extend this time period.

## MINNESOTA LIABILITY DISCLOSURE

If our records assign your account to a branch located in the State of Minnesota, you may bring a civil action against any person violating the consumer privacy and unauthorized withdrawal provisions of Minnesota Statutes § 47.69, and may recover, in addition to actual damages or \$500.00, whichever is greater, punitive damages when applicable, and the court costs and reasonable attorney's fees incurred.

## BUSINESS DAYS

Bank "business days" are Monday through Friday. Federal holidays are not included.

## CONFIDENTIALITY

We will disclose information to third parties about your account as permitted by law or the transfers you make:

1. where it is necessary for completing transfers; or
2. in order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant; or
3. in order to comply with government agency or court orders; or
4. if you give us your written permission; or
5. according to our privacy pledge, which generally permits us to share information with companies that perform marketing or other services on our behalf.

## ERROR RESOLUTION NOTICE

In case of errors or questions about your electronic transfers, call U.S. Bank 24-Hour Banking at a number on the last page, visit any U.S. Bank branch or write us at the address listed below, as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

1. Tell us your name and account number (if any).
2. Describe the error or the transfer you are unsure about and explain as clearly as you can why you believe it is an error or why you need more information.
3. Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your dispute or question in writing within ten business days. We will determine whether an error occurred within ten business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your dispute or

question. If we decide to do this, we will credit your account within ten business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your dispute or question in writing and we do not receive it within ten business days, we might not provisionally credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your dispute or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation. Write to us at:

**U.S. Bank  
EP-MN-WSSD  
60 Livingston Ave.  
St. Paul, MN 55107**

Error resolution and contact information with respect to online and mobile banking services is provided in our *Digital Services Agreement*. The online banking site may be accessed by going to the U.S. Bank web site at [usbank.com](http://usbank.com) and following the directions to log in to online and mobile banking. More detailed information is available on request.

## NOTICE OF ATM/NIGHT DEPOSIT FACILITY USER PRECAUTIONS

As with all financial transactions, please exercise discretion when using an automated teller machine (ATM) or night deposit facility. For your own safety, be careful. The following suggestions may be helpful:

1. Prepare for your transactions at home (for instance, by filling out a deposit slip) to minimize your time at the ATM or night deposit facility.
2. Mark each transaction in your account record, but not while at the ATM or night deposit facility. Always save your ATM receipts. Do not leave them at the ATM or night deposit facility because they may contain important account information.
3. Compare your records with the account statements you receive.
4. Do not lend your ATM card to anyone.
5. Remember, do not leave your card at the ATM. Do not leave any documents at a night deposit facility.
6. Protect the secrecy of your Personal Identification Number (PIN). Protect your ATM card as though it were cash. Don't tell anyone your PIN. Don't give anyone information regarding your ATM card or PIN over the telephone. Never enter your PIN in any ATM that does not look genuine, has been modified, has a suspicious device attached, or is operating in a suspicious manner. Don't write your PIN where it can be discovered. For example, don't keep a note of your PIN in your wallet or purse.
7. Prevent others from seeing you enter your PIN by using your body to shield their view.
8. If you lose your ATM card or if it is stolen, promptly notify us. You should consult the other disclosures you have received

about electronic fund transfers for additional information about what to do if your card is lost or stolen.

9. When you make a transaction, be aware of your surroundings. Look out for suspicious activity near the ATM or night deposit facility, particularly if it is after sunset. At night, be sure that the facility (including the parking area and walkways) is well lighted. Consider having someone accompany you when you use the facility, especially after sunset. If you observe any problem, go to another ATM or night deposit facility.
10. Do not accept assistance from anyone you do not know when using an ATM or night deposit facility.
11. If you notice anything suspicious or if any other problem arises after you have begun an ATM transaction, you may want to cancel the transaction, pocket your card and leave. You might consider using another ATM or coming back later.
12. Do not display your cash; pocket it as soon as the ATM transaction is completed and count the cash later when you are in the safety of your own car, home, or other secure surrounding.
13. At a drive-up facility, make sure all the car doors are locked and all of the windows are rolled up, except the driver's window. Keep the engine running and remain alert to your surroundings.
14. We want the ATM and night deposit facility to be safe and convenient for you. Therefore, please tell us if you know of any problem with a facility. For instance, let us know if a light is not working or there is any damage to a facility. Please report any suspicious activity or crimes to both the operator of the facility and local law enforcement officials immediately.

## ELECTRONIC BANKING AGREEMENT FOR BUSINESS CUSTOMERS

This section governs transactions initiated by you or your employees using a U.S. Bank Business Debit Card or ATM Card, or other U.S. Bank card products offered to business customers from time to time by U.S. Bank ("Business Debit Card(s)"). Your use of business debit cards is subject to the fees and terms of your checking and savings accounts as set forth elsewhere in this Agreement and in related brochures and fee schedules, which are available at any branch in your state. Some ATM networks impose an additional transaction fee unrelated to our fees and charges and may be assessed to your account. Other electronic transactions against your account, whether or not initiated or authorized by you will be governed by the specific Agreement between us related to such transactions and/or all applicable rules and regulations governing such transactions, including without limitation, the rules of the National Automated Clearing House Association (NACHA) as may be amended from time to time.

Under NACHA rules we cannot return an unauthorized electronic transaction (ACH debit) unless you notify us no later than 5:00 p.m. Central Time on the business day following the settlement date of the transaction. Otherwise, your sole recourse is to the originator of the transaction.

## ACCOUNT ACCESS

Any business debit card or personal identification number (PIN) issued to or selected by you, except sole proprietors who choose to have a sole proprietor business debit card, may access only related business

checking or business savings accounts (for example, accounts with the same name or tax identification number). Sole proprietor business debit cards, however, can access up to five checking accounts, five savings accounts, and five line of credit or credit card accounts through Expanded Account Access. Sole proprietor cards may access business and personal accounts. For more information on Expanded Account Access, see the Consumer Electronic Banking Agreement.

Access methods will differ depending on the business debit card selected by you and approved by us. All business debit card services may not be available depending on the access method selected.

## LIMITS ON TRANSFERS

### New Accounts

Generally, you cannot make deposits at a non-U.S. Bank ATM. If we permit a deposit at an ATM that is not identified as ours with the U.S. Bank name, your deposit will not be available until the fifth business day after the day of deposit.

### Security

For security reasons, there are limitations on the transactions that you may perform with any of your U.S. Bank Business Debit Cards or U.S. Bank Business ATM Cards, per day. There are limitations on the number of transactions that can be performed per day and the limits may vary. For security reasons we do not disclose these limits. There are limitations on the dollar amount of cash withdrawals at ATMs and/or cash that you receive from merchants over the amount of your purchase. There are also limitations on the total dollar amount of purchases at merchants and/or cash advances at Visa® member banks you may perform during each 24-hour period beginning at 4:30 p.m. Central Time. Our standard transaction limits for business ATM cards are \$500.00 per day for cash withdrawals and \$2,500.00 per day for purchases. Our standard transaction limits for business debit cards are \$500.00 per day for cash withdrawals and \$10,000.00 per day for purchases and/or cash advances at banks. Our standard transaction limits for receiving money through your U.S. Bank Debit Card are \$3,000.00 per transaction and \$10,000.00 per day. We may change these limitations based on periodic risk assessments and we reserve the right to make such changes without notice to you. Transfer limits are also subject to temporary reductions to protect the security of customer accounts or transfer systems.

### Debit Card Transactions

When you use your U.S. Bank Business Debit Card (Debit Card) for payment, the merchant requests U.S. Bank to authorize the transaction amount. We rely on the merchant to inform us if a debit card transaction is a one-time or a recurring transaction. At the time of the request, we authorize (promise to pay) or decline the merchant's request. If we authorize (promise to pay) we will reduce your Available Balance by the amount of the merchant's authorization request. Some merchants (e.g., hotels, restaurants, gas stations, car rental agencies) request an authorization that is an estimated amount of the anticipated purchase instead of the full purchase amount. As a result, the reduction of your Available Balance may be less or greater than the final debit card transaction amount presented for payment. It is important to note that your Available Balance may change between the time a debit card transaction is authorized and when the debit card transaction is presented for payment.

Debit card authorizations will be reflected as pending transactions from the time we receive the authorization until the merchant presents the item for payment, a completion message is received, or three business days, whichever occurs first. If the debit card authorization has not been presented for payment after three business days, it will be removed from your pending transactions and your Available Balance will no longer be reduced by the authorization amount. Due to prior authorization (promise to pay), if the debit card transaction is presented for payment at a later date we will pay the item regardless of your Available Balance.

If any debit card transaction results in a negative Available Balance at the time it is presented for payment—even if your Available Balance was positive at the time the debit card transaction was authorized—you may be charged an Overdraft Paid Fee. For more information on Available Balance please see the section titled **INSUFFICIENT FUNDS AND OVERDRAFTS**.

Please know, it is your responsibility to ensure your account has a sufficient Available Balance to cover all transactions you conduct. We recommend keeping a record of your balance and deducting every transaction at the time you initiate it.

**Account Access at Automated Teller Machines**

You may use any of your Business Debit Cards (except as noted below in **Employee Debit Cards and ATM Cards**) to make the following transactions at ATMs:

- Make cash withdrawals from your checking and savings accounts. Cash denominations vary by ATM.
- Get cash advances from your credit card or line of credit account. (Refer to your cardmember agreement for any cash advance fees and finance charges that may apply.)
- Deposit funds to checking and savings accounts associated with your card. Deposit up to 30 checks and 50 bills in a single transaction. Instant availability for cash deposits if deposited before 6:00 p.m. local time in a non-envelope deposit ATM.
- Transfer funds from your account associated with your card.
- Make payments to credit card or line of credit accounts from a deposit account associated with your card.
- Check the current balance of your linked checking, savings, credit card and line of credit accounts.
- Request a statement showing your most recent deposit account transactions. (Refer to your account fee disclosures regarding any fees for purchasing statements at ATMs.)
- Change your ATM or debit card PIN.
- Make certain charitable contributions from a deposit account associated with your card.

Some of these transactions are not available at all ATMs.

**Purchases at Merchants**

You may use any of your Business Debit Cards (except as noted below in **Employee Debit Cards and ATM Cards**) to make purchases at Visa® merchants that accept debit cards. You may use any of your business debit cards to make purchases by entering your PIN at participating merchants. You may also get cash from a merchant, if the merchant permits. Purchases made with your card will result in debits to your “primary” checking account. These transactions will be itemized on your monthly statement, including the merchant name, location, the date of purchase and the amount of the purchase.

**Employee Debit Cards and ATM Cards**

Business debit cards issued to employees only allow ATM deposits at an automated teller machine. They do not allow ATM cash withdrawals. Employee ATM cards do not have purchase access at merchants.

**Other Electronic Transactions**

In addition to transactions initiated by using your business debit card, there are other electronic banking transactions that you may arrange through your account. These include:

- Telephone/personal computer activated transfers of funds from your accounts with us to other accounts with us or to third parties. These include but are not limited to transfers made by telephone, text, online and mobile banking.
- Automatic transfer of funds between checking and savings accounts.
- Automatic periodic payments to third parties or us from checking or savings accounts (for example, monthly mortgage payments, installment loan payments, insurance payments, utility payments).
- Direct deposit to checking or savings accounts (for example, payroll checks, social security payments).
- Electronic check conversions from your checking account using a blank, partial or fully completed personal check at merchant locations.
- Payments made to your account through your U.S. Bank Debit Card.
- You can also use any of your Business Debit Cards to obtain a cash advance from your checking account at any Visa® member bank anywhere in the world.

**FEES**

We will charge you fees for electronic fund transfers in accordance with the information found in our *Business Pricing Information* brochure. The fees may be changed at any time, subject to our giving you any notice required by law.

**ATM Surcharges.** When you use an ATM that is not identified as ours with the U.S. Bank name, and the ATM does not participate in the MoneyPass® Network, you may be charged a fee by the ATM operator or any network used to complete the transfer. To find MoneyPass ATM locations, please visit [www.moneypass.com](http://www.moneypass.com).

**USING YOUR CARD FOR INTERNATIONAL TRANSACTIONS**

You may use your business debit card for retail purchases with international merchants, for international cash advances and all transactions performed at international ATMs that bear any of the network logos found on your card. Refer to our *Business Pricing Information* brochure for fee information. (This brochure can be obtained by stopping into a U.S. Bank branch. We may block transactions in certain foreign countries. Call us at 800.673.3555 for more information.) Some merchant and ATM transactions, even if you and/or the merchant or ATM are located in the United States, are considered international transactions under the applicable network rules, in which case we will add International Processing Fees to those transactions. U.S. Bank does not control how these merchants, ATMs, and transactions are classified for this purpose. If

the transaction requires a currency conversion, the exchange rate in effect when processed may differ from the rate in effect on the date of the transaction or the date of the posting to your Account.

Transactions processed through the Visa® system will be converted according to the applicable rules established by Visa®. The foreign currency transaction will be converted to U.S. Dollars by multiplying the amount of the foreign currency times (a) a rate selected by Visa® from the range of rates available in wholesale currency markets for the applicable central processing date, which rate may vary from the rate Visa® itself receives, or (b) the government-mandated rate in effect for the applicable central processing date. For transactions processed through other networks, the international currency transaction will be converted by that network in accordance with their rules.

**Additional fees may apply.** If you need to contact us about your card while outside of the United States, call us collect at 503.401.9991.

**BALANCE REQUIREMENTS**

Transactions using your business debit card will be completed only if sufficient funds are available in the applicable account balance, overdraft protection or other linked credit facility to fully perform the transaction.

**UNAUTHORIZED TRANSACTIONS AND LOST OR STOLEN CARDS AND SECURITY**

You are solely responsible for maintaining the security of your business debit cards and PINs and their use by you and your employees and other agents. You shall be liable for the acts of your employees and agents related to your business debit cards, including business debit card applications and other service requests. If you provide another person with the means to perform transactions related to your accounts using your business debit card or PIN, any resulting transactions will be treated as if they were performed and authorized by you.

You are generally protected from all liability for unauthorized use of your business debit card.

The U.S. Bank Zero Liability policy is subject to certain conditions. If we determine that the unauthorized transaction was caused by your gross negligence or fraud, the U.S. Bank Zero Liability policy will not apply. You still need to report the loss or theft of these cards, PINs, and any unauthorized transactions to us as soon as you can. This is necessary so you can get any unauthorized transactions reversed, prevent further unauthorized transactions, and avoid liability for subsequent purchases we could have prevented had you given us notice.

You must report an unauthorized debit card transaction to us within a reasonable time, not to exceed 60 days, from the day we send or make your account statement available to you on which an unauthorized transaction is first reported. If you fail to give us notice of an unauthorized debit card transaction within 60 days of when we first deliver a statement to you that discloses that unauthorized transaction, you will be liable for all debit card transactions that occur after that 60-day period expires if we could have prevented such transaction had you reported it to us within the 60-day period.

Please be aware that consumer rights governed by the Electronic Fund Transfer Act do not apply to business accounts and we are not

liable to reimburse you for unauthorized or erroneous transactions that may occur on your business account via electronic fund transfer.

If you believe that an erroneous or unauthorized transaction has occurred using your business debit card, or if your card has been lost or stolen, or if you want to cancel a business debit card issued to you or your employee/agent, or if you want to change your PIN, you must immediately telephone us at:

U.S. Bank Fraud Liaison Center

877.595.6256

U.S. Bank 24-Hour Banking

Cincinnati Metro Area:	513.632.4141
Denver Metro Area:	303.585.8585
Milwaukee Metro Area:	414.765.4636
St. Louis Metro Area:	314.425.2000
Minneapolis/St. Paul Metro Area:	612.USBANKS (872.2657)
Portland Metro Area:	503.USBANKS (872.2657)
All Other Areas:	800.USBANKS
Outside the U.S.:	503.401.9991 (call collect)

U.S. Bank Business Service Center

Monday - Friday:	8:00 a.m. to 8:00 p.m. CT
Saturday:	8:00 a.m. to 6:30 p.m. CT
Minneapolis/St. Paul Metro Area:	651.244.7770
All Other Areas within the U.S.:	800.673.3555
Outside the United States:	503.401.9992

U.S. Bank Fraud Liaison Center

877.595.6256

## CITY OF KNOXVILLE EXHIBIT INSURANCE

**Insurance.** When applicable and prior to the commencement of the contract, Bank must, at its sole expense, maintain in full force and effect for the duration of the Agreement and any extension hereof at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement. Bank shall furnish the City of Knoxville with property executed certificates of insurance which shall clearly evidence all insurance required by the City. All insurance must be underwritten by insurers with an A.M. Best rating of A-VIII or better. Such insurance shall be at a minimum the following:

- A. **Commercial General Liability Insurance.** occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than \$2,000,000 dollars each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than \$3,000,000.

Such insurance shall:

- (a) Contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Bank including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds. Proof of additional insured status up to and including copies of endorsements will be required.
- (b) For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, officers, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers shall be excess of Contractor's insurance and shall not contribute with it.

- B. **Automobile Liability Insurance.** including vehicles owned, hired, and non-owned, with a combined single limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Contractor.
- C. **Workers' Compensation Insurance.** Bank shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance with limits of not less than \$500,000. Bank shall require each of its subcontractors to provide Workers' Compensation for all of the latter's

employees to be engaged in such work unless such employees are covered by Contractor's workers' compensation insurance coverage.

- D. **Professional Liability** (including Errors & Omissions). Bank shall maintain professional liability insurance covering claims arising from real or alleged errors, omissions, or negligent acts committed in the performance of professional services under this Agreement with limits equal to the general liability requirement but no less than \$2,000,000.

E. **Other Insurance Requirements.** Bank shall:

1. Prior to commencement of services, furnish the City with original certificates and required endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be reduced in coverage below that which is required here within except on 30 days' prior written notice to the City Attorney of Knoxville; P.O. Box 1631; Knoxville, Tennessee 37901. Proof of policy provisions regarding notice of cancellation will be required.
2. Upon the City's request, provide certified copies of required endorsements if requested by the City in lieu of or in addition to certificates of insurance. Should the certificate of insurance refer to specific coverage wording or endorsements(s), proof of such policy wording or endorsement(s) will be required.
3. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.
4. Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.
5. If Bank cannot maintain insurance through an insurer having an A.M. Best rating of A-VIII, Bank may, in the alternative, place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A. Modification of this standard may be considered upon appeal to the City Law Director.
6. Require all subcontractors to maintain during the term of the Agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation/Employer's Liability insurance (unless subcontractor's employees are covered by Contractor's insurance) in the same manner as specified for Contractor. Bank shall furnish subcontractors' certificates of insurance to the City without expense immediately upon request.
7. Large Deductibles; Self-Insured Retentions. Any deductibles and/or self-insured retentions are the sole responsibility of the Contractor.

8. Waiver of Subrogation Required. The General Liability, Automobile Liability, or Workers' Compensation insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by Bank for the City. Proof of waiver of subrogation up to and including copies of endorsements and/or policy wording will be required.
9. Occurrence Basis Requirement. All general liability policies must be written on an occurrence basis, unless the Risk Manager determines that a claims made basis is reasonable in the specific circumstance. Bank will disclose to Risk Manager if any policies are written on a claims made basis. Retroactive dates and/or continuation dates must be provided to the City prior to commencement of any work performed.

**END.**

## CITY OF KNOXVILLE EXHIBIT GENERAL TERMS AND CONDITIONS

- 1) INDEPENDENT CONTRACTOR. The Bank shall perform all obligations under this Agreement as an independent contractor; neither it nor its employees shall be considered employees, partners or agents of the City, nor shall it or its employees be entitled to any benefits, insurance, pension, or workers' compensation as an employee of the City.
- 2) ASSIGNMENT. Except for assignments arising by operation of law following a merger or acquisition, the Bank shall not assign or transfer any interest in this Agreement without obtaining the prior written approval of the City.
- 3) SUBCONTRACTS TO THE AGREEMENT. The Bank shall not enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the City. Notwithstanding the foregoing, Bank may, in the ordinary course of business, subcontract for third party services or products that are not dedicated to the City or are not material to a particular function constituting a part of the Services provided under the Agreement.
- 4) WRITTEN AMENDMENTS. This Agreement may be modified only by a written amendment or addendum that has been executed and approved by the appropriate officials shown on the signature page of this Agreement.
- 5) REQUIRED APPROVALS. Neither the Bank nor the City is bound by this Agreement until it is approved by the appropriate officials shown on the signature page of this Agreement.
- 6) ARTICLE CAPTIONS. The captions appearing in this Agreement are for convenience only and are not a part of this Agreement; they do not in any way limit or amplify the provisions of this Agreement.
- 7) SEVERABILITY. If any provision of this Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions contained in this Agreement. Failure to enforce any provision of this Agreement does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the rights of the parties to enforce any other provision of this Agreement at any time.
- 8) FEDERAL, STATE AND LOCAL REQUIREMENTS. The Bank is responsible for full compliance with all federal, state, and local laws, rules and regulations applicable to Contractor.
- 9) NO BENEFIT FOR THIRD PARTIES. The services to be performed by the Bank pursuant to this agreement with the City are intended solely for the benefit of the City, and no benefit is conferred hereby, nor is any contractual relationship established herewith, upon or with any person or entity not a party to this Agreement. No such person or entity shall be entitled

to rely on the Contractor's performance of its services hereunder, and no right to assert a claim against the City or the Contractor, its officers, employees, agents or contractors shall accrue to the Bank or to any subcontractors, independently retained professional consultant, supplier, fabricator, manufacturer, lender, tenant, insurer, surety or any other third party as a result of this Agreement or the performance or non-performance of the Contractor's services hereunder.

- 10) NON-RELIANCE OF PARTIES. Parties explicitly agree that they have **not** relied upon any earlier or outside representations other than what has been included in this Agreement. Furthermore, neither party has been induced to enter into this Agreement by anything other than the specific written terms set forth herein.
- 11) FORCE MAJEURE. Neither party shall be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times shall be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.
- 12) EEO/AA. The City of Knoxville is an EEO/AA/Title VI/Section 504/ ADA/ADEA Employer.
- 13) GOVERNING LAW AND VENUE. This Agreement shall be governed and construed in accordance with the laws of the State of Tennessee. Any action for breach of this Agreement or to enforce or nullify any provision of this agreement shall be instituted only in a state or federal court of appropriate jurisdiction in Knox County, Tennessee.
- 14) ENTIRE AGREEMENT. This Agreement, along with Contractor's Master Services Agreement, Services Terms and Conditions, Deposit Account Agreement, and documents referenced or incorporated therein, forms the entire Agreement between the City and the Contractor. Any prior representations, promises, agreements, oral or otherwise, between the parties, which are not embodied in this writing, shall be of no force or effect.

**END.**